ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 19, NUMBER 1
WEDNESDAY, JULY 1, 1992

Administrative Regulation Review Subcommittee, July Agenda 1
Regulation Review Procedure 3

Emergency Regulations Now In Effect:
Board of Landscape Architects 4
NREPC - Waste Management 4
Corrections 5
Education 7
Workforce Development 9
Human Resources 10
As Amended:
Board of Nursing 18
NREPC - Waste Management 22
NREPC - Surface Mining 24
Transportation 45
Libraries and Archives 48
Workforce Development 50
Human Resources 53
Proposed Amendments Received through June 15, 1992:
Personnel Board 80
Board of Physical Therapy 83
NREPC - Waste Management 84
Corrections 200
Transportation 208
Labor - OSHA 242
Racing Commission - Harness Racing 293
Housing, Buildings and Construction - Plumbing 295
Human Resources 298
Proposed Regulations Received Through June 15, 1992:
NREPC - Waste Management 330
Justice - Community Corrections Grant Program 332
Transportation 335
Workforce Development 339
Insurance 340
Human Resources 351
June Minutes of the Administrative Regulation Review Subcommittee . . . 354
Other Committee Reports 358

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates A2
KRS Index A7
Subject Index A10

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on July 1 and 2, 1992. See **tentative** agenda on pages 1-3 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
TENTATIVE AGENDA - July 1, 1992 @ 2:30 P.M.
Room 131, Capitol Annex

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission

Thoroughbred Racing Rules

810 KAR 1:024 & E. Racing commission. (Deferred from June)
810 KAR 1:025 & E. Licensing for thoroughbred racing. (Deferred from June)
810 KAR 1:026 & E. Racing associations. (Deferred from June)
810 KAR 1:027 & E. Entries, subscriptions and declarations for thoroughbred racing. (Deferred from June)
810 KAR 1:028 & E. Disciplinary measures. (Deferred from June)
810 KAR 1:029 & E. Hearings, reviews and appeals. (Deferred from June)

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Loan Program

11 KAR 3:100. Administrative wage garnishment.

KHEAA Grant Program

11 KAR 5:001 & E. Definitions pertaining to Chapter 5 of Title 11 of the Kentucky Administrative Regulations. (Repeals 11 KAR 5:010.)
11 KAR 5:033 & E. KTG student eligibility requirements.
11 KAR 5:034 & E. CAP grant eligibility. (Repeals 11 KAR 11:010.)
11 KAR 5:036. State Student Incentive Grant Program eligibility.
11 KAR 5:110. Dual enrollment under consortium agreement.
11 KAR 5:120. Application by recipients of AFDC.
11 KAR 5:130. Student application. (Repeals 11 KAR 11:020.)
11 KAR 5:140 & E. KTG award determination procedure.
11 KAR 5:145 & E. CAP grant award determination procedure. (Repeals 11 KAR 11:030.)
11 KAR 5:150. Notification of award. (Repeals 11 KAR 11:040.)
11 KAR 5:160. Disbursement procedures. (Repeals 11 KAR 11:050.)
11 KAR 5:170. Refund and repayment policy. (Repeals 11 KAR 11:060.)
11 KAR 5:180. Records and reports. (Repeals 11 KAR 11:070.)

Congressional Teacher Scholarship Program

11 KAR 10:010. Paul Douglas teacher scholarship program.
11 KAR 10:020. Deferment and reduction of repayment.

COUNCIL ON HIGHER EDUCATION

Public Educational Institutions

13 KAR 2:020. Guidelines for undergraduate admission to the state-supported institutions of higher education in Kentucky.

PERSONNEL

Classified

101 KAR 2:036 & E. Compensation plan and pay incentive systems.
101 KAR 2:046 & E. Applications, qualifications and examinations.
101 KAR 2:056 & E. Registers.
101 KAR 2:066 & E. Certification and selection of eligibles for appointment.
101 KAR 2:076 & E. Vacancies, detail to special duty and temporary overlap.

FINANCE AND ADMINISTRATION CABINET
Kentucky Employees' Retirement System

General Rules

105 KAR 1:010. Contributions and interest rates.

GENERAL GOVERNMENT CABINET

Board of Examiners and Registration of Landscape Architects

201 KAR 10:050 & E. Fees.
201 KAR 10:060. Renewals. (Deferred from June)

Board of Ophthalmic Dispensers

201 KAR 13:050. Apprentices. (Deferred from June)

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:040 & E. Fees. (Deferred from June)
201 KAR 18:075. Examination credit for qualified experience. (Deferred from June)

TOURISM CABINET
Department of Fish and Wildlife Resources

Game
301 KAR 2:111. Deer and turkey hunting on special areas.
Hunting and Fishing
301 KAR 3:022. License, tag, permit, and stamp fees. (Repeals 301 KAR 3:021.)

COMMERCE CABINET
Department of Agriculture

Amusement Rides
302 KAR 16:080 & E. Designated bungee ("bungy") or similar apparatus. (Public Hearing Held in May)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection

Water Quality
401 KAR 5:010. Certification of wastewater system operators.
Public Water Supply
401 KAR 8:030. Water treatment plants; water distribution systems; certification of operators.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
AGENDA - July 2, 1992 @ 10 A.M.
Room 131, Capitol Annex

CORRECTIONS CABINET

Office of the Secretary
501 KAR 6:020 & E. Corrections policies and procedures.
501 KAR 6:040. Kentucky State Penitentiary.
501 KAR 6:050. Luther Luckett Correctional Complex.
501 KAR 6:060. Northpoint Training Center.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services

General Administration
702 KAR 1:035. Group health and life insurance.
School District Finance
702 KAR 3:045. Withholding funds.
702 KAR 3:250. Preschool grant allocations.
School Terms, Attendance and Operation
702 KAR 7:050. Attendance; resident, nonresident.

Office of Learning Programs Development

Office of Instruction
704 KAR 3:035. Annual professional development plan.
704 KAR 3:303 & E. Required program of studies.
704 KAR 3:325. Effective instructional leadership act.
704 KAR 3:440 & E. Primary school program guidelines.
Education Professional Standards
704 KAR 20:630. Repeal of 704 KAR 20:190.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education

Personnel System for Certified and Equivalent Employees
780 KAR 3:020 & E. Compensation plan.

LABOR CABINET

Occupational Safety and Health
803 KAR 2:307. Adoption of 29 CFR Part 1910.101-.120.
803 KAR 2:320. Adoption of 29 CFR Part 1910.1000 - 1910.1500.
Kentucky Labor Management Matching Grant Program
803 KAR 6:010. Kentucky labor-management matching grant program.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control

Licensing
804 KAR 4:300. Repeal of 804 KAR 4:060.
Conduct of Business; Employees
804 KAR 5:070. Minors.
Quotas
804 KAR 9:040 & E. Retail package liquor license quota.

Department of Housing, Buildings and Construction

Plumbing
815 KAR 20:078. Storage and installation of SDR 11, CPVC plastic pipe and fittings.
815 KAR 20:090. Soil, waste and vent systems.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

Office of Inspector General
906 KAR 1:110 & E. Rural primary-care hospital services.

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
201 KAR 10:050E

Comes the Kentucky State Board of Examiners and Registration of Landscape Architects (hereinafter the "board") pursuant to KRS 13A.190 and makes the following statement of explanation in support of the attached emergency regulation:

1. This regulation increases certain fees substantially affected by the new renewal year.

2. In the absence of this emergency regulation, the board will not have the new schedule of fees in place by July 1, the relevant date for the new renewal cycle.

3. This emergency regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
MARK E. HORMAN, President

KENTUCKY STATE BOARD OF EXAMINERS AND REGISTRATION OF LANDSCAPE ARCHITECTS

201 KAR 10:050E. Fees.

RELATES TO: 323A.060, 323A.100
STATUTORY AUTHORITY: KRS 323A.060, 323A.210
EFFECTIVE: May 18, 1992
NECESSITY AND FUNCTION: The board is authorized by KRS 323A.060 to fix by rules the fees for services and this regulation is intended to establish such fees.

Section 1. Fees. The following shall be the fees to be charged by the board and no such fee shall be refundable:

(1) Renewal fees: $100 [~~sixty (60) dollars~~]. The secretary shall notify all license holders of the renewal dates on May 1 of each year.

(2) Duplicate certificate: ten (10) dollars.

(3) For issuance of original license certificate: $200 [~~sixty (60) dollars~~].

(4) For restoration of an expired license: restoration fee of $200 [~~125~~] and a $200 [~~sixty (60) dollar~~] renewal fee with penalty as provided in KRS 323A.100.

(5) For reinstatement of a revoked license: $200 [~~thirty five (35) dollars~~].

(6) For issuance of a license on reciprocity basis: $200 [~~150~~].

(7) For an examination: to be determined by the board each year not to exceed $100 per section.

MARK E. HORMAN, President
APPROVED BY AGENCY: March 30, 1992
FILED WITH LRC: May 18, 1992 at noon

STATEMENT OF EMERGENCY
401 KAR 49:009E

Because landfills that do not meet the transition standards adopted by the cabinet in 401 KAR 47:080 will need to close by June 30, 1992, some cities and counties now served by those landfills will need assistance in disposing of their solid waste at landfills that do comply with the cabinet's administrative regulations. KRS 224A.280 establishes a grant program designed to address solid waste emergencies such as this. This emergency administrative regulation establishes the application and review process for the solid waste grant program established under KRS 224A.280. In order to resolve the critical waste management problem described above, it is essential that the application and review process be established immediately. Therefore, these requirements are being established under the emergency promulgation procedures of KRS 13A.190. An ordinary administrative regulation will not be filed with the Regulations Compiler because the cabinet anticipates all available funds will be allocated within the life of this emergency administrative regulation.

BRERETON C. JONES, Governor
PHILLIP J. SHEPHERD, Secretary

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

401 KAR 49:009E. Solid waste grant program.

RELATES TO: KRS Chapters 224, 224A
STATUTORY AUTHORITY: KRS 224A.280
EFFECTIVE: June 8, 1992
NECESSITY AND FUNCTION: KRS 224A.280 authorizes the Natural Resources and Environmental Protection Cabinet to adopt administrative regulations establishing criteria, priorities for eligible projects, and awarding of grants for solid waste programs where universal collection has been adopted. This administrative regulation performs these functions.

Section 1. Definitions. The words and terms used in this administrative regulation shall have the same meaning as in KRS 224.01-010 and KRS 224A.011, with the following additions:

(1) "Applicant" means a county, waste management district, city, urban-county government, area development district, or other political subdivision of the Commonwealth which has submitted an application for financial assistance from the solid waste grant program.

(2) "Application" means an application for a grant from the solid waste grant program, submitted to the cabinet by an applicant on the form incorporated by reference in Section 3(1) of this administrative regulation.

(3) "Capacity crisis" means that the cabinet has notified the landfill now serving the applicant's solid waste disposal needs that the landfill will be closing on or before June 30, 1992, and that the applicant currently does not have access to a transfer station or other facilities or equipment necessary to assist the applicant in disposing of its solid waste.

(4) "Local contribution" means that portion of the applicant's share of funding a project which enables an applicant to be eligible for financial assistance from the solid waste grant program.

(5) "Service area" means the area now served by a landfill that has been notified by the cabinet that it will be closing on or before June 30, 1992.

(6) "Solid waste grant program" means the solid waste grant program established by KRS 224A.280 and by this administrative regulation.

Section 2. Eligibility Requirements and Conditions to Financial Assistance. (1) Applications shall be submitted only by applicants for

those projects consisting of transfer stations or other facilities or equipment necessary to assist in resolving a capacity crisis.

(2) Each applicant shall have the legal authority to construct or acquire, and to operate and maintain, the project for which a grant is sought.

(3) The applicant shall employ or propose a universal collection program approved by the cabinet throughout the service area.

(4) The applicant shall have access to a solid waste disposal facility which has all necessary permits, or is expected to have all necessary permits by June 30, 1992, and which has projected capacity and resources adequate to provide disposal services through the termination date of the assistance agreement relating to the grant.

(5) Only those applicants for which a capacity crisis exists shall be eligible for a grant from the solid waste grant program.

(6) No more than ninety (90) percent of the cost of a project shall be funded by the solid waste grant program.

(7) Each applicant shall provide other funding equal to at least ten (10) percent of the cost of the project.

Section 3. Application Submission Requirements and Review Process. (1) The application form DEP Form 0041, entitled "Solid Waste Grant Program: Application for Assistance" (June 1992) and its requirements, are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601 during the normal work hours of 8 a.m. to 4:30 p.m, Monday through Friday.

(2) One (1) original application and five (5) copies shall be submitted to the cabinet's Division of Waste Management. Applications shall be submitted on or before June 12, 1992.

(3) A single application form shall be used for each grant sought from the solid waste grant program.

(4) An applicant shall submit or be part of only one (1) application.

(5) Applications may be withdrawn at any time.

(6) The cabinet shall review and prioritize applications. Prioritization shall be based on the severity of the crisis, the need demonstrated for the project, and the efficiency of the project in solving the crisis in an environmentally sound manner.

Section 4. Funding Process. (1) The cabinet shall submit the prioritized applications to the Kentucky Infrastructure Authority no later than June 19, 1992.

(2) The applicant shall execute an assistance agreement stating the type, terms, and conditions of the project funding approved.

(3) The applicant shall be granted five (5) working days from receipt to execute and return the assistance agreement indicating acceptance of the terms and conditions of the assistance offered. Failure to respond shall result in forfeiture of the funds offered, and the funds shall then be made available to other applicants in the order of priority established by the cabinet.

Section 5. Project Monitoring. The cabinet shall monitor the project and perform all actions that may be required to assure that the agreements continuously meet the standards of KRS Chapter 224 and 401 KAR Chapters 47, 48, and 49.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 5, 1992
FILED WITH LRC: June 8, 1992 at 11 a.m.
CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601.

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 establishes an application process to be utilized in pursuing moneys under the solid waste grant program established by KRS 224A.280. Counties, waste management districts, area development districts, cities, urban-county governments, and other political subdivisions of the state may be eligible for grant moneys under this program.

3. State the aspect or service of local government to which this administrative regulation relates. The grant moneys referenced above are to be used to resolve capacity crises caused by landfills that are required to close on or before June 30, 1992.

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 (+/-): Up to $50,000 may be allocated per county for use in capital expenses associated with resolving the solid waste capacity crisis described above.

Expenditures (+/-): Applicants will need to match grant moneys up to a 90/10 ratio. Minor expenses may be incurred in preparing the grant application.

Other Explanation: None.

STATEMENT OF EMERGENCY
501 KAR 6:020E

In order to continue to operate in accordance with KRS Chapter 196, the Kentucky Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected cabinet policy regarding necessary professional services provided to inmates is being deleted. A new policy has been written to remove certain language which produces expensive and unnecessary dental services. Further, certain changes are being made to the health services policy to insure cost-effective measures and maintain sound medical care. These policies will save the Kentucky Corrections Cabinet thousands of dollars which was spent on unnecessary and costly procedures. This emergency regulation shall be replaced by the ordinary administrative regulation filed with LRC on May 15, 1992 in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
JACK C. LEWIS, Commissioner

CORRECTIONS CABINET

501 KAR 6:020E. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: MAY 22, 1992
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 May 13, [~~February 14,~~] 1992, are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the

procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities [~~(Amended 2/14/92)~~]
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Corrections Cabinet Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
03-01-01	Code of Ethics [~~(Amended 2/14/92)~~]
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10-03-01	Safekeepers [~~(Amended 2/14/92)~~]
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services (Amended 5/13/92)
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
13.9	Dental Services (Added 5/13/92)
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14-04-01	Legal Services Program
14.6	Inmate Grievance Procedures
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties
15.3	Meritorious Good Time
15-05-01	Restoration of Forfeited Good Time [~~(Amended 2/14/92)~~]
15.6	Adjustment Procedures and Programs
15-07-01	Inmate Account Restriction
16-01-01	Inmate Visits
16.2	Inmate Correspondence
16.3	Telephone Calls
16.4	Inmate Packages
17-01-01	Inmate Personal Property
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates
18.4	Classification of the Inmate
18.5	Custody/Security Guidelines
18.6	Classification Document
18.7	Transfers
18.8	Guidelines for Transfers Between Institutions
18.9	Out-of-state Transfers
18-10-01	Preparole Progress Reports
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
18.15	Protective Custody
19.1	Government Services Projects
19.2	Community Services Projects
20-01-01	Educational Programs
22.1	Privilege Trips
25-01-01	Gratuities
25.2	Public Official Notification of Release of an Inmate
25.3	Prerelease Program
25.4	Inmate Furloughs
25.6	Community Center Program
25.7	Expedient Release
25.8	Extended Furloughs
25.10	Administrative Release of Inmates
27-01-01	Probation and Parole Procedures
27-02-01	Duties of Probation and Parole Officers
27-03-01	Workload Formula Supervisor/Staff Ratio
27-05-01	Testimony, Court Demeanor and Availability of Legal Services
27-06-01	Availability of Supervision Services
27-06-02	Equal Access to Services
27-07-01	Cooperation with Law Enforcement Agencies
27-08-01	Use of Force
27-09-01	Kentucky Community Resources Directory
27-10-01	Advanced Supervision
27-11-01	Intensive Supervision
27-12-01	Supervision: Case Classification
27-12-02	Risk/Needs Assessment
27-12-03	Initial Interview
27-12-04	Conditions of Regular Supervision/Request for Modification
27-12-05	Releasee's Report
27-12-06	Grievance Procedures for Offenders
27-12-07	Employment, Education/Vocational Referral
27-12-08	Supervision Plan
27-12-09	Casebook
27-12-10	Guidelines for Monitoring Supervision Fee
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Client Travel Restrictions
27-13-02	Alcohol Detection
27-14-01	Interstate Compact Transfers
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
27-15-01	Supervision Report; Violations, Unusual Incidents
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01	Absconder Procedures
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions

27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision
27-25-01	Application for Final Discharge from Parole
27-26-01	Assistance to Former Clients and Dischargees
27-27-01	Restoration of Civil Rights
27-28-01	Firearms/Explosives: Application for Relief from Disability
27-29-01	Parole Review Dates Modification
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/-Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: May 13, 1992
FILED WITH LRC: May 22, 1992 at 2 p.m.

STATEMENT OF EMERGENCY
704 KAR 3:303E

Pursuant to KRS 156.160, the State Board for Elementary and Secondary Education is required to establish courses of study for the different grades and kinds of common schools, such courses of study to comply with the expected outcomes for students and for schools as expressed in KRS 158.6451. KRS 156.070(1) gives the state board the management and control of the common schools and all programs in such schools. Prior to July 13, 1990, the effective date of the Kentucky Education Reform Act, in fulfilling and perpetuating such duties, the State Board for Elementary and Secondary Education prepared, promulgated and dispensed the "Program of Studies for Kentucky Schools, Grades K-12", as amended July 11, 1990. In order to provide consistency and continuation of the "Program of Studies" in Kentucky, and further, to accomplish the expected goals and outcomes for all students, an emergency regulation is necessary. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on May 14, 1992.

BRERETON C. JONES, Governor
JOSEPH W. KELLY, Chairman

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development

704 KAR 3:303E. Required program of studies.

RELATES TO: KRS 156.070, 156.160, 158.6451, 160.290
STATUTORY AUTHORITY: KRS 156.160
EFFECTIVE: June 12, 1992
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to establish courses of study for the different grades and kinds of common schools, such courses of study to comply with the expected outcomes for students and schools set forth in KRS 158.6451. KRS 156.070(1) gives the state board the management and control of the common schools and all programs operated in such schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the state board. In fulfilling and perpetuating such duties and intent, this regulation prescribes the document containing the general courses for use in Kentucky's common schools.

Section 1. Pursuant to the authority vested in the State Board for Elementary and Secondary Education by KRS 156.160, the "Program of Studies for Kentucky Schools, Grades K-12," as amended on July 11, 1990, is hereby promulgated and filed with the Legislative Research Commission and incorporated herein by reference. Such document may be inspected and copied at the Division of Curriculum Development, Department of Education, 17th Floor, Capital Plaza Tower, 8 a.m. - 4:30 p.m., Monday through Friday.

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: June 8, 1992
FILED WITH LRC: June 12, 1992 at 4 p.m.

STATEMENT OF EMERGENCY
704 KAR 3:440E

Pursuant to KRS 156.160(1)(a), the ungraded primary program is required to be implemented beginning with the 1992-93 school year, and pursuant to SB 420 (1992 G.A.) full implementation is required by the 1993-94 school year. To implement the primary program, under this regulation the State Board for Elementary and Secondary Education is requiring that by June 15, 1992, each elementary school shall submit an action plan to the Department of Education describing the steps to be taken for implementation of the primary program. For the June 15, 1992, deadline to have the force of law prior to the stated deadline, an emergency regulation is necessary. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on May 14, 1992.

BRERETON C. JONES, Governor
JOSEPH W. KELLY, Chairman

EDUCATION AND HUMANITIES CABINET
Department of Education
Learning Support Services

704 KAR 3:440E. Primary school program guidelines.

RELATES TO: KRS 156.160(1)(a)
STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), 158.030(1)
EFFECTIVE: May 22, 1992
NECESSITY AND FUNCTION: KRS 156.160(1)(a) requires the State Board for Elementary and Secondary Education to establish by regulation the standards that school districts shall meet in student, program service, and operational performance. KRS 158.030 establishes the primary school program and requires the promulgation of regulations to address methods for verifying successful completion of the primary school program.

Section 1. Definitions. Each elementary school shall design the primary school program to include the following seven (7) attributes: developmentally appropriate educational practices; multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement. The definitions of these attributes are:

(1) "Developmentally appropriate practices" means instructional practices that address the physical, aesthetic, cognitive, emotional and social domains of children and that permit them to progress through an integrated curriculum according to their unique learning needs.

(2) "Multiage and multiability classrooms" means flexible grouping and regrouping of children of different age, sex and ability who may be assigned to the same teacher(s) for more than one (1) year.

(3) "Continuous progress" means a student's unique progression through the primary school program at his own rate without comparison to the rate of others or consideration of the number of years in school. Retention and promotion with the primary school program are not compatible with continuous progress.

(4) "Authentic assessment" means assessment that occurs continually in the context of the learning environment and reflects actual learning experiences that can be documented through observation, anecdotal records, journals, logs, actual work samples, conferences and other methods.

(5) "Qualitative reporting methods" means progress is communicated through a variety of home-school communiques, which address the growth and development of the whole child as he progresses through the primary school program.

(6) "Professional teamwork" means all professional staff in the primary school program communicate and plan on a regular basis and use a variety of instructional delivery systems such as team teaching and collaborative teaching.

(7) "Positive parent involvement" means the establishment of productive relationships between the school and the home, individuals, or groups than enhance communication, promote understanding and increase opportunities for children to experience success in the primary school program.

Section 2. Students in the Primary School Program. (1) Children who attend the primary school program shall not be described as enrolled in a specific grade level. Students who transfer from a school system that uses grade levels of kindergarten through third grade shall be enrolled in the primary school program and placed according to their developmental needs.

(2) Each elementary school shall design the primary school program to address the learning needs of all children who meet the entry age for the primary school program and who are not ready to enter the fourth grade. Individual placement decisions for children who are eligible for special education and related services shall be determined by the appropriate admissions and release committee, pursuant to 707 KAR 1:051.

Section 3. Curriculum. (1) The curriculum of the primary school program shall address the goals of education and the model curriculum framework set forth in KRS 158.6451.

(2) Instructional practices in the primary school program shall motivate and nurture children of diverse cultures; shall address the social, emotional, physical, aesthetic and cognitive needs of children; and shall be based upon the following principles of how young children learn:

(a) Young children learn at different rates and through different styles.

(b) Young children learn as they develop a sense of self-confidence in a positive learning environment.

(c) Young children learn best with "hands on" experiences where they are encouraged to question, explore and discover.

(d) Young children learn best through an integrated curriculum by engaging in real-life activities and learning centers.

(e) Young children learn best in a social environment where they can converse with others to expand their language and their thinking.

(3) Students enrolled in the primary school program shall progress through the curriculum at their individual learning rates.

(4) Parents and legal guardians of children enrolled in the primary school program shall receive regular reports at a minimum of four (4) times per year regarding the children's individual progress in meeting the goals of education set forth in KRS 158.6451(1) and successful completion of the primary school program.

Section 4. Implementation. (1) By June 15, 1992, each elementary school shall submit an action plan to the Department of Education describing the steps to be taken for beginning implementation in 1992-93 and full implementation by 1993-94 in order to implement the primary school program as described in this regulation. The procedures and instructions for the plan are contained in "Procedures for Developing the Primary Program Action Plan," effective date of April 1992, which is hereby incorporated by reference. This document may be inspected, copied, and obtained at the Kentucky Department of Education, Division of Early Childhood, 21st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday - Friday, 8 a.m. - 4:30 p.m.

(2) Beginning June 1, 1993, each elementary school shall submit an annual evaluation report to the Department of Education describing the steps to be taken to improve the quality of the primary school program. The evaluation report shall follow the format contained in "Procedures for Developing the Primary Program Action Plan" document cited in subsection (1) of this section.

(3) The action plan and subsequent evaluation reports shall include input from parents, teachers and support staff of children enrolled in the primary school program. The action plan and subsequent evaluation reports shall be adopted by the school-based decision making council if one exists, or by the local district superintendent if the school does not have a council.

(4) Each elementary school shall make the action plan and subsequent evaluation reports available for public inspection. A copy of the action plan and subsequent evaluation reports shall be kept on file by the local school district superintendent.

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: May 12, 1992

FILED WITH LRC: May 22, 1992 at 2 p.m.

STATEMENT OF EMERGENCY
780 KAR 3:020E

The Legislature decreased the number of vocational-technical regions from fourteen (14) to six (6). This will result in the displacement of several certified and equivalent staff members as of July 1, 1992 through no fault of their own. Many of these midmanagers are eligible for placement in other positions; however, the regulation 780 KAR 3:020, Compensation Plan, as it currently exists would penalize these employees unduly due to the demotion clause. While the Department and State Board for Adult and Technical Education believe some reduction in salary should occur when responsibilities are reduced, it is not considered fair or equitable to reduce salaries significantly when the demotion was no fault of their own and not due to unsatisfactory performance at a higher level. Some discretion should be provided the commissioner who is the appointing authority. The proposed change provides that at least a five (5) percent deduction would occur but allows for the range of adjustment parallel to KRS Chapter 18A. An emergency exists to correspond to the July 1, 1992 reorganization mandate. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on April 27, 1992.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education

780 KAR 3:020E. Compensation plan.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
EFFECTIVE: June 11, 1992
NECESSITY AND FUNCTION: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive regulations consistent with the provisions of KRS 151B.035 which govern the pay plan for all certified and equivalent staff and unclassified staff in the Department for Adult and Technical Education. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Appointments. New certified or equivalent employees or reentering certified or equivalent employees shall be appointed at the salary specified on the salary structure for certified and equivalent employees commensurate with education rank and experience. An employee in an administrative position may be provided an index adjustment commensurate with the scope of administrative or supervisory responsibility in addition to the base salary as specified for the particular job classification.

Section 2. Salary Adjustments. (1) Promotion.

(a) A certified or equivalent employee who is promoted shall receive a salary increase of not less than five (5) percent unless his current salary is beyond the minimum on the salary schedule. If the employee's salary is above the minimum, then the five (5) percent increase shall be at the discretion of the appointing authority.

(b) A certified or equivalent employee promoted to an unclassified position in the Department for Adult and Technical Education shall receive a salary increase of not less than five (5) percent upon promotion unless his current salary is beyond the minimum. If the employee's salary is above the minimum, then the salary increase shall be at the discretion of the appointing authority. In no case shall the employee's salary be below the minimum rate of the higher classification following promotion. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the commissioner may grant upon promotion a ten (10) percent to twenty (20) percent salary increase over the employee's previous salary. Upon the successful completion of a one (1) year promotional probationary period, a certified or equivalent employee may receive at the discretion of the commissioner a five (5) percent promotional increase at the beginning of the month following completion of the probationary period.

(2) Demotion. A certified or equivalent employee in the Department for Adult and Technical Education who is demoted shall have his salary adjusted to not more than sixty (60) percent above the proper cell. This salary shall not exceed ninety-five (95) percent of the salary which the employee was receiving prior to the demotion. [~~to the proper cell or to the previous salary plus normal salary adjustments awarded to certified and equivalent employees on July 1 of each year.~~] An unclassified employee in the Department for Adult and Technical Education who is demoted to a certified or equivalent position shall have his salary adjusted to not more than sixty (60) percent above the proper cell. This salary shall not exceed ninety-five (95) percent of the salary which the employee was receiving prior to the demotion. [~~the proper cell or to the previous certified or equivalent salary plus normal salary adjustments awarded to certified and equivalent employees on July 1 of each year while in the unclassified system on the salary structure for certified and equivalent employees.~~]

(3) Rank changes. A certified or equivalent employee shall have a salary adjustment retroactive to July 1 for educational rank changes which are confirmed by September 1 of each year.

(4) Other salary adjustments.

(a) The Commissioner for Adult and Technical Education may authorize performance bonuses in lump sum payments for outstanding job performance for nonprobationary status employees in any fiscal year in which monies are available. The criteria for such awards shall be approved by the State Board for Adult and Technical Education.

(b) Educational achievement increases shall [~~will~~] be honored for those employees who have an approved educational achievement award agreement on file in the Division of Personnel Services as of July 1, 1990. This provision shall [~~will~~] expire when previous commitments have been met.

Section 3. Salary Advancements. (1) The salary structure for certified and equivalent employees shall be adjusted by September 30 of each year. All certified and equivalent staff shall [~~will~~] receive a salary increase not less than the percentage increase provided other state employees. This [~~Such~~] increase shall be provided July 1. Salary adjustments for those entitled employees shall be retroactive to July 1 of each year once the salary schedule is confirmed by September 30 of each year.

(2) Annual salary increments for unclassified employees shall occur commensurate with each person's established increment date.

Section 4. Paid Overtime. When applicable, certified and equivalent employees and unclassified employees shall be awarded overtime payments in accordance with the Fair Labor Standards Act, 29 US §201 et seq.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: April 22, 1992
FILED WITH LRC: June 11, 1992 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 100:012E

This emergency administrative regulation raises by twenty-five (25) percent the fees for registration of radiation producing machines and charges associated with licensing of radioactive materials. In order to have these increases in effect to meet the budgetary requirements of FY 1993 and 1994, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler simultaneously with this emergency regulation.

BRERETON C. JONES, Governor
LEONARD E. HELLER, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 100:012E. Fee schedule.

RELATES TO: KRS 211.840 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.848, HB 468, Part I.G.#52.g. of the 1992 GA, p. 63 (appropriation) and p. 65 (fee authority) [~~1990 Acts, c. 514, HB 709, Part I.G. #56.d~~]
EFFECTIVE: June 4, 1992
NECESSITY AND FUNCTION: KRS 211.848(1) authorizes the Cabinet for Human Resources [~~is empowered by KRS 211.848~~] to establish a reasonable schedule of fees [~~provide~~] by administrative regulation. These fees shall [~~for a reasonable schedule of fees and charges to~~] be paid by applicants for registration of radiation producing machines and radioactive material licenses and for their [~~the~~] renewal, [~~thereof and for inspections~~] and for environmental surveillance activities conducted by the cabinet. The purpose of this administrative regulation is to establish a fee schedule for registration, licensing and inspection services.

Section 1. Applicability. This administrative regulation [~~relating to fees~~] shall apply to applicants, registrants and licensees of radiation producing machines and radioactive materials.

Section 2. Radiation Producing Machine Schedule of Annual Fees and Charges. The following schedule of annual fees applies to radiation producing machine registrants. Applications for registration or annual renewals shall be accompanied by the appropriate fee established [~~set forth~~] below:

(1) Each diagnostic x-ray tube; therapeutic x-ray tube capable of operating up to 150 kVp; or industrial x-ray tube - $50 [~~40~~].

(2) Each therapeutic x-ray tube capable of operating at 150 kVp or above (including particle accelerators) - $50 [~~40~~].

(3) Other x-ray tubes not specified above - $50 [~~40~~].

Section 3. Radioactive Material License Schedule of Annual Fees and Charges. The following schedule applies to radioactive material licenses. Initial and renewal applications shall be accompanied by the [~~appropriate~~] fee established [~~set forth~~] in this section.

(1) Specific radioactive material licenses initial and annual fee.

(a) Human use.

1. Nuclear medicine - $450 [~~360~~].
2. Teletherapy - $450 [~~300~~].
3. Mobile scanning - $450 [~~360~~].
4. Other - $375 [~~360~~].

(b) Industrial radiography - $450 [~~360~~].

(c) Wireline service - $450 [~~360~~].

(d) Broad scope - $600 [~~475~~].

(e) Nuclear laundry - $900 [~~715~~].

(f) Irradiator.

1. Self-contained - $225 [~~180~~].
2. Unshielded during irradiation - $900 [~~715~~].

(g) Manufacturing/processing/distribution.

1. Industrial gauging devices - $750 [~~600~~].
2. In vitro/In vivo kits - $600 [~~475~~].
3. Radiopharmaceuticals - $900 [~~715~~].
4. Other - $900 [~~715~~].

(h) Industrial gauging devices - $225 [~~180~~].

(i) In vitro and clinical laboratory - $225 [~~180~~].

(j) Veterinary use - $375 [~~300~~].

(k) Services (e.g., leak testing) - $150 [~~120~~].

(l) Other (nonspecified) - $225 [~~180~~].

(m) Application for review [~~distribution~~] of a new sealed source or [~~and~~] device or the application for review [~~the use~~] of a custom device in addition to the fees [~~specified~~] in paragraphs (a) through (l) of this subsection - $600 [~~475~~].

(2) General radioactive material licenses initial and annual fee.

(a) In vitro or medical use specified in 902 KAR 100:050, Sections 4 and 5 - $75 [~~60~~].

(b) Measuring, gauging or controlling devices (except emergency exit signs) - $75 [~~60~~].

(3) An application to amend an existing specific license - $75 [~~60~~].

(4) An application for initial reciprocal recognition of an out-of-state license under 902 KAR 100:065 - $300.

Section 4. General Requirements. (1) General radioactive material licenses shall expire on July 31 following the date of issuance.

(2) Radiation producing machine registration certificates shall expire on the last day of the month, one (1) year after the date of issuance.

(3) General radioactive material license fees shall be paid on or before July 31 of each year.

(4) Specific radioactive material licenses shall be renewed annually based on the expiration date stated in the license.

(5) Radiation producing machine registration fees shall be paid within forty-five (45) days of the bill date. Payments postmarked more than forty-five (45) days of the bill date are subject to $100 late payment penalty in addition to the registration fee.

(6) Payment of fees and other charges shall be submitted to Radiation Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621-0001, in the form of a check or money order payable to the Kentucky State Treasurer. [~~The cabinet may designate the form of payment.~~]

(7) The cabinet may designate the form of payment.

(8) If a check issued for payment of the fees set in this administrative regulation is returned to the state treasurer due to insufficient funds, payment will be resubmitted in the form of a money order or cashier's check.

(9) [~~(7)~~] Registration and licensing application fees are nonrefundable.

(10) [~~(8)~~] Failure to submit an [~~any~~] applicable fee set forth in this administrative regulation shall be deemed a violation and subject to the provisions of 902 KAR 100:170.

PATRICIA NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 19, 1992
FILED WITH LRC: June 4, 1992 at 4 p.m.

STATEMENT OF EMERGENCY
902 KAR 105:020E

This emergency administrative regulation raises by twenty-five (25) percent the fees associated with the certification of operators of medical diagnostic radiation producing machines. In order to have the increases in effect to meet the budgetary requirements of FY 1993

and 1994, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler simultaneously with this emergency regulation.

BRERETON C. JONES, Governor
LEONARD E. HELLER, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 105:020E. General requirements.

RELATES TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194.050, 211.090, HB 468, Part I.G.#52. g. of the 1992 GA, p. 63 (appropriation) and p. 65 (fee authority) [~~1990 Acts, Chapter 514, HB 799 Part I.G #56.d~~]
EFFECTIVE: June 4, 1992
NECESSITY AND FUNCTION: KRS 211.870, 211.890 and 211.933 authorizes the Cabinet for Human Resources [~~is authorized by KRS 211.870, 211.890 and 211.993~~] to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform general requirements for the certification of operators of sources of radiation.

Section 1. General Applicability. The Cabinet for Human Resources' administrative regulations relating to radiation operators require the certification of operators of sources of radiation, other than licensed practitioners of the healing arts, for which a specific administrative regulation has been adopted requiring certification within a particular field of practice or operation. The regulation of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste are not covered by these administrative regulations. Nothing contained in these administrative regulations shall be deemed to require the certification of students enrolled in an approved course of instruction in relation to the healing arts or allied health sciences and employees of the federal government, while engaged in the performance[~~, within this state,~~] of their official duties within this state.

Section 2. Application for Certification. (1) Applications for certification as an operator of sources of radiation shall be filed with the Cabinet for Human Resources, Radiation Control, 275 East Main Street, Frankfort, Kentucky 40621. [~~Applications shall be submitted on forms provided by the cabinet.~~]

(2) Applicants for certification shall, as a condition for [~~precedent to~~] certification, be in compliance with the applicable administrative regulations of the cabinet relating to their particular field of practice or operation.

(3) General and limited certificates shall expire on the last day of the month, two (2) years after the date of issuance.

(4) Temporary and provisional certificates shall expire on the last day of the month, one (1) year after the date of issuance and are not renewable.

Section 3. Examinations. (1) A general or limited certificate shall be issued upon passage of an appropriate examination, approved by the cabinet, in the field of practice or operation for which certification is sought.

(a) Examinations shall be divided into appropriate sections and a minimum grade of seventy-five (75) percent is required for passage.

(b) A person [~~An individual~~] shall be allowed to retake the limited examination no more than three (3) times within a calendar quarter.

(2) The cabinet may accept in lieu of an examination conducted by the cabinet: [~~,~~]

(a) A valid certificate from a national organization acceptable to the cabinet if the holder is otherwise qualified for certification and has earned his certificate by passing an appropriate examination.

[~~(3) The cabinet may accept, in lieu of an examination conducted by the cabinet,~~]

(b) A valid certificate from another state or political subdivision acceptable to the cabinet if the holder is otherwise qualified for certification and has earned his certificate by passing an appropriate examination.

(3) [~~(4)~~] Acceptance of an examination from a national organization, state or political subdivision shall be contingent upon:

(a) An annual review of the examination together with an outline by subject: [~~and~~]

(b) An item analysis of each examination section; and [~~relative to individuals graduating from teaching institutions within this state. Acceptance of an examination from a state or political subdivision shall be contingent upon an annual review of the examination together with an outline by subject and an item analysis of each examination section.~~]

(c) The cabinet shall hold the examination information confidential and only make its contents available to authorized representatives of the cabinet.

(4) [~~(5)~~] The cabinet may accept, in lieu of the examination requirements for a general certificate, a person's [~~an individual's~~] current certificate from a national organization acceptable to the cabinet that was issued prior to the effective date of these regulations.

Section 4. Fee Schedule. The following fees shall be paid in connection with the certification of operators of sources of radiation other than licensed practitioners of the healing arts:

(1) Application for certification (nonrefundable) - $25 [~~20~~].
(2) Issuance of a general or limited certificate - $35 [~~30~~].
(3) Issuance of a temporary or provisional certificate - $25 [~~20~~].
(4) Renewal of a general or limited certificate - $35 [~~30~~].
(5) Duplicate certificate - $15 [~~10~~].
(6) Limited examination - $30 [~~25~~]

Section 5. Continuing Education Requirements for Renewal. (1) The continuing education requirements of this section shall be a condition precedent to the renewal of a general or limited certificate.

(2) A general certificate holder shall, during each twenty-four (24) month period that he holds his certificate, obtain a minimum of eighteen (18) clock hours of continuing education approved by the cabinet.

(3) A limited certificate holder shall, during each twenty-four (24) month period that he holds his certificate, obtain a minimum of twelve (12) clock hours of continuing education approved by the cabinet.

(4) Certificate holders attending or participating in continuing education related to their field of practice or operation shall send documented evidence of attendance or participation to the cabinet within [~~a reasonable time frame, not to exceed~~] forty-five (45) days. The evidence shall include:

(a) The certificate holder's name and [~~,~~] certificate number;
(b) Subject title;
(c) Date(s) attended;
(d) Clock hours of instruction; and
(e) The instructor's name and title.

(5) Operators of sources of radiation may receive up to six (6) clock hours credit, on an hour-for-hour basis, toward certificate

renewal for continuing education lectures if they are the instructor.

(6) Continuing education clock hours may be accrued by attending seminars, lectures, or courses relating to the individual's field of practice or operation.

Section 6. General Requirements. (1) It shall be the responsibility of each employer to insure that his employees operating sources of radiation are certified as set forth in these administrative regulations.

(2) The cabinet may impose upon an operator of sources of radiation or institutions teaching students [~~individuals~~] to operate or use sources of radiation, requirements that are in addition to those established in these administrative regulations as it deems appropriate or necessary to minimize danger to public health or safety.

(3) Only persons [~~individuals~~] holding a general certificate shall be employed as an operator of sources of radiation at facilities where contrast studies are performed.

(4) It shall be the responsibility of a certified operator to notify the cabinet within sixty (60) days regarding a change of name or address.

(5) A person [~~An individual~~] certified as an operator of sources of radiation shall display or have available his certificate or a photocopy at his place of employment.

PATRICIA NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 19, 1992
FILED WITH LRC: June 4, 1992 at 4 p.m.

STATEMENT OF EMERGENCY
903 KAR 5:290E

Under KRS Chapter 13A, the administrative body is required to implement this regulation in order to have sufficient authority to establish 1992 contribution rates for Kentucky employers under the Unemployment Insurance Program. These rates are spelled out in 903 KAR 5:290 and per KRS 341.270, are predicated on the trust fund balance as of December 31 of any calendar year. An emergency regulation is needed because this information is necessary in assigning rates for first quarter, 1992 contribution reports which are due before promulgation of regulation through the normal process could occur. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A. The ordinary administrative regulation will be filed with the Regulations Compiler on or before the effective date of the emergency administrative regulation.

BRERETON C. JONES, Governor
LEONARD E. HELLER, Secretary

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance

903 KAR 5:290E. Employer contribution rates.

RELATES TO: KRS 341.270
STATUTORY AUTHORITY: KRS 194.050, 341.270
EFFECTIVE: June 4, 1992
NECESSITY AND FUNCTION: KRS 341.270 requires the Secretary for Human Resources to determine the rate schedule for employer's contributions. The rate schedule in effect for each calendar year is determined by the "trust fund balance" as of December 31, of the preceding year. This regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

Section 1. Trust Fund Balance. The secretary finds the following to exist:

(1) The "trust fund balance" as of December 31, 1991 [~~1990~~], was $357,939,766.55 [~~413,909,901.94~~].

(2) There was no outstanding loan from the Federal Unemployment Trust Fund as of December 31, 1991 [~~1990~~].

Section 2. Rate Schedule. On the basis of the findings in Section 1 of this regulation, and in accordance with KRS 341.270(3), Schedule A of Table A shall be in effect for calendar year 1992 [~~1991~~], because the "trust fund balance" equals or exceeds $350,000,000, on December 31, 1991 [~~1990~~]. Rates listed in Schedule A of Table A are listed below.

Employer Reserve Ratio	Rate Schedule
8.0% and over	0.30%
7.0% but under 8.0%	0.40%
6.0% but under 7.0%	0.50%
5.0% but under 6.0%	0.70%
4.6% but under 5.0%	1.00%
4.2% but under 4.6%	1.30%
3.9% but under 4.2%	1.50%
3.6% but under 3.9%	1.80%
3.2% but under 3.6%	2.00%
2.7% but under 3.2%	2.10%
2.0% but under 2.7%	2.20%
1.3% but under 2.0%	2.30%
0.0% but under 1.3%	2.40%
-0.5% but under -0.0%	6.50%
-1.0% but under -0.5%	6.75%
-1.5% but under -1.0%	7.00%
-2.0% but under -1.5%	7.25%
-3.0% but under -2.0%	7.50%
-4.0% but under -3.0%	7.75%
-6.0% but under -4.0%	8.25%
-8.0% but under -6.0%	8.50%
Less than 8.0%	9.00%

MARGARET WHITTET, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 14, 1992
FILED WITH LRC: June 4, 1992 at 4 p.m.

STATEMENT OF EMERGENCY
906 KAR 1:110E

This emergency regulation implements a new licensure category as mandated by House Bill 310 of the 1992 General Assembly. This bill included an emergency clause and this regulation is promulgated as an emergency regulation to comply with legislative intent. This regulation establishes standards for rural primary-care hospitals in the areas of administration and operations, recordkeeping, personnel, provision of services, and physical and sanitary environment. The emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler before May 15, 1992.

BRERETON C. JONES, Governor
LEONARD E. HELLER, Secretary

CABINET FOR HUMAN RESOURCES
Office of Inspector General

906 KAR 1:110E. Rural primary-care hospital services.

RELATES TO: HB 310, 1992 GA
STATUTORY AUTHORITY: HB 310, 1992 GA, §3(11)
EFFECTIVE: May 22, 1992
NECESSITY AND FUNCTION: HB 310 of the 1992 GA mandates that the Cabinet for Human Resources promulgate regulations necessary to implement a licensure program for rural primary-care hospitals. This regulation sets forth quality of care and licensure standards for rural primary-care hospitals.

Section 1. Special Provisions. (1) The rural primary-care hospital (RPCH) shall be licensed in accordance with 902 KAR 20:008.

(2) The RPCH shall submit a licensure application, strategic plan, and proposed range of services to the Kentucky Board of Family Health Care (KBFHC).

(3) The KBFHC shall approve the RPCH's application, plan, and services prior to licensure by the cabinet.

(4) The RPCH shall comply with the provisions of its approved submissions to the KBFHC.

(5) A licensed acute-care hospital shall have been found to be in compliance with 902 KAR 20:009 on its last licensure survey prior to licensure as a RPCH.

Section 2. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the RPCH and for compliance with federal, state, and local laws and regulations pertaining to the operation of the RPCH.

(2) The RPCH shall be under the medical direction of a physician licensed to practice medicine in Kentucky.

(3) The licensee shall establish written policies, lines of authority, and designate the person who will be principally responsible for the daily operation of the RPCH.

(4) The licensee shall develop patient care policies with the advice of a group of professional personnel that include one (1) or more physicians. At least one (1) member of the group shall not be a member of the RPCH staff. The policies include:

(a) A description of the services the RPCH provides directly and those provided through agreement;

(b) A written program narrative describing in detail the service(s) offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of the service(s);

(c) Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, and the maintenance of health records;

(d) Procedures to be followed in the storage, handling, and administration of drugs and biologicals; and

(e) Procedures for annual review and evaluation of the services provided by the RPCH.

(5) The RPCH shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:

(a) Is informed of these rights and of all rules and regulations governing patient conduct and responsibilities, including a procedure for handling patient grievances;

(b) Is informed of services available at the RPCH and of related charges including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements;

(c) Is informed of his medical condition, unless medically contraindicated (as documented in his medical record), and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

(d) Is encouraged and assisted to understand and exercise his patient rights; to this end he may voice grievances and recommend changes in policies and services. Upon the patient's request, the grievances and recommendations will be conveyed within a reasonable time to an appropriate decision -making level with the organization which has authority to take corrective action;

(e) Is assured confidential treatment of his records and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by Kentucky law or third-party payment contract; and

(f) Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in the care of his personal health needs.

(6) Personnel.

(a) The RPCH shall have a staff that includes at least one (1) physician who shall be on call and available to the RPCH within one-half (1/2) hour. The RPCH shall employ such other staff essential to the RPCH's operation.

(b) A physician shall:

1. Be responsible for all medical aspects of the RPCH and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. In addition, the physician shall provide medical direction, supervision, and consultation to the staff;

2. In conjunction with other medical personnel, participate in developing, executing, and periodically reviewing the RPCH's written policies and services;

3. Periodically review the RPCH's patient records, provide medical orders, and provide medical care services to patients of the RPCH's.

(7) Transfer and linkage agreements.

(a) The RPCH shall have linkage agreements or arrangements with each of the following for:

1. Secondary and tertiary hospital services;

2. Additional and specialized diagnostic and laboratory services that are not available at the RPCH;

3. Home health agency services;

4. Nursing facility services if not provided on site;

5. Emergency medical services; and

6. Pharmacy services.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for appropriate referral and acceptance of patients from the RPCH, provisions for appropriate coordination of discharge planning with RPCH staff, and provisions for the RPCH to receive a copy of the discharge summary and, as necessary, for the medical record for each patient referred to the RPCH.

(c) The written transfer agreements shall include designation of:

1. Responsibility for transfer of information;

2. Responsibility for provisions of transportation;

3. Responsibility for sharing of services, equipment, and personnel; and

4. Responsibility for provision of total care or portions thereof in relation to facility and agency capability.

(8) Medical records.

(a) The RPCH shall maintain medical records identifying all family members (a single patient may be considered a family unit). Medical records shall contain at least the following:

1. Medical and social history, including data obtainable from other providers;

2. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all laboratory, x-ray, and other test findings; and

4. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all individual patient records shall be maintained at all times.

(c) Transfer of records. The RPCH shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and the RPCH shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(9) Utilization review and medical audit. In order to determine the appropriateness of the service(s) delivered, there shall be a written plan for utilization review developed by the RPCH which specifies the frequency of reviews and composition of the body conducting the review.

(10) Quality assurance program. The RPCH shall have a written quality assurance program designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating patient care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the licensee and shall:

(a) Assign responsibility for the monitoring and evaluation activities;

(b) Delineate scope of care provided by the RPCH;

(c) Identify the aspects of care that the RPCH provides;

(d) Identify indicators, and appropriate clinical criteria that can be used to monitor these aspects of care;

(e) Collect and organize data for each indicator;

(f) Evaluate the care in order to identify problems or opportunities to improve care;

(g) Take actions to correct identified problems or to improve care;

(h) Assess the effectiveness of the actions taken and document the improvement in care; and

(i) Communicate relevant information to other individuals, departments, or services as to the quality assurance program.

(11) Contracted services. The RPCH shall be responsible for assuring that any services provided under contract shall be in compliance with applicable local, state, and federal regulations and statutes.

Section 3. Provision of Services. (1) The RPCH staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

(2) The RPCH staff shall provide, either directly or through contract, basic laboratory services essential to the immediate diagnosis and treatment of the patient on a twenty-four (24) hour basis and in compliance with KRS Chapter 333, including:

(a) Chemical examinations of urine by stick or tablet methods or both (including urine ketones);

(b) Microscopic examinations of urine sediment;

(c) Hemoglobin or hematocrit;

(d) Blood sugar;

(e) Gram stain;

(f) Examination of stool specimens for occult blood;

(g) Pregnancy tests;

(h) Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and

(i) Test for pinworms.

(3) The RPCH shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in life-saving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

(a) Emergency room care shall be provided on a twenty-four (24) hour basis.

(b) Examination services shall be provided by the RPCH in accordance with 902 KAR 20:012.

(c) At least one (1) person shall be on duty at the RPCH who is minimally certified as a provider by the American Heart Association in advanced cardiac life support and certified as a basic trauma life support provider-advanced in accordance with the American College of Emergency Physicians curriculum.

(4) Supplemental services. A RPCH may provide additional services to complement the basic services of the RPCH. Additional services shall be identified and submitted to the KBFHC for approval prior to delivery of services. A RPCH may contract with another provider to deliver supplemental services. Supplemental services may include:

(a) Surgical services as approved by the KBFHC;

(b) Obstetrics as approved by the KBFHC;

(c) Primary care in accordance with 902 KAR 20:058;

(d) Adult day health care in accordance with 902 KAR 20:066;

(e) Respite care; or

(f) Rehabilitative and therapeutic services in accordance with 902 KAR 20:016, Section 4(7).

(5) Dietary services shall be provided either directly or by contract in accordance with 902 KAR 20:016, Section 4(3), when an inpatient resides in the RPCH for more than twelve (12) hours.

(6) Long-term care beds, if provided, shall be in accordance with applicable state and federal regulations as follows:

(a) Dual licensure beds shall be in compliance with 902 KAR 20:220;

(b) Swing beds shall be in compliance with 42 CFR 405; and

(c) Nursing facility beds shall be in compliance with 902 KAR 20:300 and 42 CFR 483.

Section 4. Physical and Sanitary Environment. The RPCH shall comply with the provisions of 902 KAR 20:016, Section 3(10).

WILLIAM M. GARDNER, Inspector General
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 12, 1992
FILED WITH LRC: May 22, 1992 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:013E

This emergency administrative regulation is being amended to redefine "available" HICAP funds; this will allow the Medicaid program to reserve additional hospital tax assessment funds to meet Medicaid budgetary needs for the 1992-94 biennium. This action must be taken on an emergency basis to implement these changes for the quarter ending June 30, 1992 due to budgetary necessity. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 15, 1992.

BRERETON C. JONES, Governor
LEONARD E. HELLER, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.575, HB 468 part I.G. #52.b.2. of the 1992 GA

STATUTORY AUTHORITY: KRS 194.050, HB 468 part I.G. #52.b.2. of the 1992 GA, 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4

EFFECTIVE: June 4, 1992

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.575 provides for hospital indigent care assurance program (HICAP) payments. This administrative regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised July 1, 1991, which is incorporated by reference in this regulation. For any reimbursement issue or area not specified in the manual, the cabinet shall apply the Medicare standards and principles (excluding the Medicare inpatient routine nursing salary differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 3. General Description of the Payment System. (1) Use of prospective rates. Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate shall be all inclusive in that both routine and ancillary cost shall be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate shall not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate shall not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data shall have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments shall be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, shall be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used shall be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall be peer grouped according to bed size. The peer groupings for the payment system shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals shall not be peer grouped but shall have a separate array of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature shall not be peer grouped or arrayed.

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

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits with regard to services provided on or after July 1, 1991.

(a) The following upper limits and payment principles shall apply to all hospitals with other limitations for disproportionate share hospitals shown in paragraph (b) of this subsection.

1. For acute care hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. A mental hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living increases using the Data Resources, Incorporated Index. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. Hospitals participating in the Hospital Indigent Care Assurance Program (HICAP) shall also receive, in addition to regular program payments, amounts which are payable under HICAP. Effective with regard to payments for the quarter ending June 30, 1992 and thereafter, the HICAP payments shall be the product of the ratio of each hospital's Medicaid patient days compared to total Medicaid patient days as applied to total available HICAP funds (which are the amounts remaining, from the hospital assessments paid, for distribution to hospitals after exclusion

of appropriate amounts for [~~minus~~] administrative expense, [~~hold harmless amounts, and~~] the contingency reserve amount, and amounts reserved for other program needs in accordance with budget commitments, obligations, and appropriations, and taking into consideration available federal Medicaid matching funds and upper limits on HICAP payments). The formula for determination of HICAP payment amounts is shown in the Reimbursement Manual at Section 102D.(b)(2), (3), (4), and (5). [~~For the quarters ending March 31, 1991 and June 30, 1991, no hospital participating in HICAP shall receive less than its assessment plus $100,000 annually ($25,000 quarterly). Effective with regard to services provided on and after July 1, 1991,~~] No hospital participating in HICAP shall receive on an annual basis less than five and one-quarter (5.25) percent of its operating costs, or five (5) percent of its annual operating costs plus $100,000, whichever amount is greater. [~~Hold harmless amounts are computed separately for the first twenty (20) percent of the fund, for the 21st through 60th percent of the fund, and 61st through 100th percent of the fund.~~] For hospitals which are disproportionate share hospitals the limitations shown in paragraph (b) of this subsection and subsection (9) of this section shall be applicable for HICAP payments. If a hospital which is a nondisproportionate share hospital is determined by the cabinet to be a nonparticipant in HICAP, the amounts otherwise payable under HICAP to the hospital shall not be made.

2. For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section.

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

3. Mental hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The per diem amount shall be computed using this upper limit or by using the disproportionate share minimum payment amount shown in subsection (9)(b)1 of this section if doing so results in a higher per diem amount.

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r-4(b) and (d) and those hospitals which may not meet such criteria but meet the criteria specified in 42 USC 1396r-4(d) and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and mental hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one-half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

1. All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.

2. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 to children under the age of six (6) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children.

3. Effective with regard to services provided on or after July 1, 1990 any hospital which is participating in the Hospital Indigent Care Assurance Program (HICAP) shall receive disproportionate share payments under HICAP. HICAP assessments and payments are described in 907 KAR 1:017, Hospital indigent care assurance program. If a hospital is determined by the cabinet to be a nonparticipant in the HICAP program, the hospital shall be entitled to the minimum adjustment shown in subparagraph 1 of this paragraph.

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

(11) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

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

Section 4. Payments to Participating Out-of-state Hospitals. (1) Effective with regard to services provided on or after July 1, 1990 participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission, participating out-of-state hospitals shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) and children under age six (6), without regard to length of stay or number of admissions of the infants and children.

(3) Effective with regard to services provided on or after February 1, 1991, professional costs (i.e., physician fees) for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

~~[Section 5. Implementation Date. Except as provided in Section 3(8) of this regulation, the amendments to this regulation shall be applicable with regard to services provided on or after July 1, 1991.]~~

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 14, 1992
FILED WITH LRC: June 4, 1992 at 4 p.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUCOMMITTEE

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on Jun 2 and 3, 1992, unless otherwise specified.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended)

201 KAR 20:200. Definitions for mandatory continuing education.

RELATES TO: KRS 314.011(11), [~~314.021,~~] 314.073[~~, 314.131(1)~~]
STATUTORY AUTHORITY: KRS 314.131(1) [~~Chapter 314~~]
NECESSITY AND FUNCTION: In order to implement a statewide system of mandatory continuing education, it is necessary for nurses, providers, and the board to use common terminology for communication about continuing education. [~~For the purposes of mandatory continuing education, and regulations pertaining thereto.~~]

Section 1. The definitions of terms used in 201 KAR 20:215 and 201 KAR 20:220 shall be as follows: [~~Definitions. (1) "Approved" means board recognized.~~]

(1) [~~(2)~~] "Completed" means [~~for the purpose of KRS 314.073(2)~~] that contact hours have been earned.

(2) "Continuing education activity" means an offering given by a provider of continuing education who has been approved by the board and which relates to the practice of nursing or contributes to the competency of a nurse.

(3) "Health care agency" means an entity whose primary purpose is to provide health care services.

(4) "Identified deficiencies" means a learning objective that has been rated as unsatisfactory by at least twenty (20) percent of the participants.

[~~(3) "Contact hour" means that which is defined in KRS 314.073(1).~~

~~(4) "Continuing education" means that which is defined in KRS 314.011(11).~~

~~(5) "Educational unit" means a structural entity with designated administrative and nursing personnel, budget, financial support, facilities, and resources to administer and coordinate continuing education functions.~~]

(5) [~~(4)~~] [~~(6)~~] "In-service education" means that part of an employing agency's staff development program designed to provide information related to the work setting such as philosophy, policies, procedures, on-the-job training, orientation, basic cardiopulmonary resuscitation, and equipment demonstration as distinguished from an offering designed to meet the approved standards and criteria for continuing education.

[~~(7) "Offering" means an organized learning experience, planned and evaluated to meet behavioral objectives based on assessed learning needs of nurse participants; an offering may be presented in one (1) session or a series of sessions.~~]

(6) [~~(5)~~] [~~(8)~~] "Participants' evaluation summary" means the approved form which summarizes participants' evaluations of an offering.

(7) [~~(6)~~] [~~(9)~~] "Participant roster" means the [~~approved~~] attendance record.

[~~(10) "Program" means the overall organized effort of a provider directed towards accomplishing objectives of a planned continuing education curriculum which consists of offerings.~~]

(8) [~~(7)~~] [~~(11)~~] "Provider" means an entity which conducts continuing education activities [~~program/offering(s)~~].

(9) [~~(8)~~] [~~(12)~~] "Provide number" means the permanent, nontransferable number assigned by the board to a provider.

(10) [~~(9)~~] [~~(13)~~] "Self-study" means a self-directed learning experience under the guidance of, and monitored by, an approved provider.

(11) [~~(10)~~] [~~(14)~~] "Successful completion" means the participant has satisfactorily met the specific requirements of an offering.

M. SUSAN JONES, President
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GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended)

201 KAR 20:215. Contact hours, recordkeeping and reporting requirements for renewal of licensure.

RELATES TO: KRS 314.011(11), [~~314.021,~~] 314.073[~~, 314.131(1)~~]
STATUTORY AUTHORITY: KRS 314.131(1) [~~Chapter 314~~]
NECESSITY AND FUNCTION: For administration of the continuing education requirement, it is necessary for the board to develop procedures and standards [~~for awarding contact hour(s)~~].

Section 1. Individuals licensed under KRS Chapter 314 shall complete thirty (30) contact hours of continuing education activities from an approved provider during the earning period of November 1 through October 31 of their current licensure period.

(2) A minimum of two (2) contact hours of the thirty (30) hours shall be an HIV/AIDS education course approved by the Cabinet for Human Resources pursuant to 902 KAR 2:160.

(3)(a) [~~No~~] Partial credit for attendance at a continuing education activity shall **not** be given.

(b) An individual [~~Individuals~~] attending continuing education activities, whether as **a teacher, participant or student** [~~teachers, participants or students~~], shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(4) It is the responsibility of the licensee to determine whether a continuing education activity is offered by an approved provider. [~~To earn contact hour approval, the nurse shall successfully complete the requirements specified by the provider, or as prescribed by the board for an approved continuing education activity. To satisfy the continuing education requirement for an active Kentucky license, contact hours shall be earned in an approved continuing education activity(ies).~~

~~(1) An offering may be presented in one (1) session (one (1) contact hour), or a series of sessions.~~

~~(a) Fractional parts of a contact hour may be approved for an offering which exceeds the minimum of one (1) contact hour in any given session.~~

~~(b) Each five (5) minutes shall equal one tenth (0.1) contact hour.~~

~~(2) Academic credit in nursing may satisfy the continuing education requirement. Academic credit may be converted to contact hours as follows:~~

~~(a) One (1) semester academic credit hour equals fifteen (15) contact hours.~~

~~(b) One (1) quarter academic credit hour equals twelve (12) contact hours.~~

~~(3) Self-study earning via programming approved by national~~

~~nursing organizations recognized by the board may satisfy the continuing education requirement.~~

~~(4) Contact hours awarded by another organization may be recognized by the board as equivalent, or comparable provided the organization's standards and criteria for continuing education and the approval mechanism have been reviewed and approved by the board.~~]

Section 2. The following categories of programs shall not qualify as approved continuing education activities regardless of who the provider is:

(1) Course content included in prelicensure nursing programs, except for licensed practical nurses enrolled in prelicensure registered nurse programs;

(2) Business meetings or committee meetings of organizations; and

(3) In-service and orientation to specific institutional policies and practices.

[~~(1) Courses in nursing which were a part of the nurse's prelicensure preparation. (This does not preclude approval of nursing electives or other courses in nursing science beyond the basic nursing program.)~~

~~(2) Courses in other auxiliary training programs.~~

~~(3) In-service education as defined in 201 KAR 20:200, Section 1(6).~~]

Section 3. [~~Recordkeeping and Reporting Requirements for Renewal of Licensure.~~] (1)**(a) A** [~~Each~~] licensee or applicant for licensure by renewal shall maintain records to substantiate earned contact hours.

(b) Records [~~, which~~] shall include a certificate [~~certification~~] furnished by the provider.

(c) [~~Such~~] Records shall be retained for at least five (5) [~~three (3)~~] years following the earning period [~~year~~] in which the contact hours were earned.

(2)**(a) A** [~~Each~~] licensee or applicant for licensure by renewal shall, upon request, furnish to the board or staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) [~~Said~~] Copies shall be furnished within thirty (30) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this **administrative** regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3) **A licensee or applicant** [~~Licensees or applicants~~] for licensure by renewal who **is** [~~are~~] determined to be in noncompliance with continuing education requirements shall be allowed to cure the noncompliance **if he:**

1. Meets [~~by meeting~~] continuing education requirements within ninety (90) days of notification of noncompliance;

2. Enters [~~, entering~~] a consent decree with the board; and

3. Pays [~~paying~~] a [~~$100~~] civil penalty.

(b) Consent decrees **shall** constitute disciplinary action by the board.

(c) The provisions of paragraphs (a) and (b) of this subsection [~~This provision~~] shall not apply to cases in which:

1. [~~(a)~~] The licensee or applicant fails to furnish records as requested pursuant to subsection (2) of this section; **or**

[~~(b) The licensee or applicant continues to practice subsequent to notification of noncompliance with continuing education requirements; or~~]

2. [~~(b)~~] [~~(c)~~] There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing. [~~In this regard, licensees or applicants who certify compliance with continuing education requirements on the application shall be under a duty to notify the board in writing in the event compliance is not attained by the effective date of license for which the application was filed.~~]

(4) Cases described in subsection (3)**(c)** [~~(a) or (b)~~] [~~or (c)~~] of this section shall be dealt with pursuant to the complaint procedures of 201 KAR 20:161.

[~~(5) Licensees or applicants have the right to have questions of regulatory compliance resolved by hearing pursuant to 201 KAR 20:162.~~]

Section 4. (1) Successful completion of postlicensure academic courses at a college, university or postsecondary vocational institution [~~which are relevant to nursing practice and are not excepted by Section 2 of this regulation~~] shall qualify as continuing education activities obtained from an approved provider **if they are:**

(a) Relevant to nursing practice; and

(b) Not excepted by Section 2 of this administrative regulation.

(2)(a) A copy of the transcript or grade reports shall be submitted upon request of the board.

(b) A description of the course from the school catalog or institution syllabus may be requested, as needed.

(3) Contact hours **shall be** [~~are~~] calculated as follows:

(a) One (1) semester or trimester hour of academic credit equals fifteen (15) contact hours.

(b) One (1) quarter hour of academic credit equals twelve (12) contact hours.

(4) The following courses **shall be** [~~are~~] relevant to nursing practice:

(a) A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee.

(b) An academic course applicable to nursing practice and appropriate for the nurse engaged in clinical practice, administration, education, or research and which is beyond the prelicensure curriculum of the individual licensee.

(5) A licensee may request course review for approval of applicable nursing content pursuant to Section 5 of this regulation.

Section 5. (1) A licensee may request an individual review of a nonapproved continuing education activity **completed during the earning period if, within thirty (30) days after the expiration of the earning period, he has:**

(a) Requested the review by submitting an "Application for Individual Review"; and

(b) Paid a fee of thirty-five (35) dollars.

(2) The review shall be based on the standards established by:

(a) This administrative regulation; and

(b) 201 KAR 20:220.

(3) Approval by the board of a nonapproved continuing education activity:

(a) Shall qualify it as obtained from an approved provider for the individual requesting the review; and

(b) Is limited to the particular offering upon which the request for individual review is based.

(4)(a) "Application for Individual Review (1992)" is incorporated by reference.

(b) It may be reviewed, inspected or copied at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, 8 a.m. to 4:30 p.m., Monday through Friday. [~~by completing the application for individual review and paying the required fee. The application for individual review is hereby incorporated by reference and may be viewed in the board office during regular business hours. The review shall be based on the standards set forth in this and other applicable regulations.~~

~~(2) Approval by the board shall qualify the continuing education activity as one obtained from an approved provider only for that particular offering.~~

~~(3) The continuing education activity must have been completed and review requested within thirty (30) days of the end of the earning~~

~~period.]~~

Section 6. Current certification of advanced registered nurse practitioners as required by KRS 314.042 and 201 KAR 20:056 shall be accepted as documentation of compliance with continuing education requirements for renewal of the ARNP's registered nurse license.

M. SUSAN JONES, President
APPROVED BY AGENCY: February 14, 1992
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GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended)

201 KAR 20:220. Provider approval.

RELATES TO: KRS 314.011(11), 314.073
STATUTORY AUTHORITY: KRS [~~314.021, 314.031(1),~~] 314.131(1)
NECESSITY AND FUNCTION: Only those contact hours earned in [~~approved~~] programs[~~/offerings~~] conducted by approved providers shall satisfy the requirements for relicensure. This regulation contains the substance of 201 KAR 20:205 and 201 KAR 20:210.

Section 1. (1) **A provide shall submit an:**
(a) "Application for Provider Approval"; and
(b) Application fee as set forth in 201 KAR 20:240.
(2) An applicant may establish compliance by submitting evidence of approval by an organization listed in the board's "List of Approved Organizations".
(3)(a) An applicant may request that an organization be added to the "List of Approved Organizations".
(b) An organization shall be included in the "List of Approved Organizations" if the board determines that its standards are comparable to the standards established by the provisions of this administrative regulation.
(4) If an application is approved, the board shall issue a provider number to the applicant.
(5) Provider approval shall initially expire:
(a) For a health care agency, on June 30 of the next even-numbered year;
(b) For a nonhealth care agency, on June 30 of the next uneven-numbered year.
(6) On or before March 30 of the year in which an approval period expires, an approved provider shall submit a:
(a) "Request for Renewal"; and
(b) Fee as set forth in 201 KAR 20:240. [~~To obtain approval by the board, a provider shall submit an application on a form provided by the board and pay the fee as set by regulation. The application for provider approval is hereby incorporated by reference and may be viewed in the board office during regular business hours.~~

~~(2) The board shall review the completed application to determine if the applicant complies with the standards set forth in this regulation and otherwise is competent to offer continuing education activities. The applicant may show compliance with the standards either by supplying specific information or by showing evidence of approval by an organization which has standards comparable to those set forth in this regulation. The board shall publish a list of those organizations it has determined to have comparable standards, which is hereby incorporated by reference and may be viewed during regular business hours at the board office. Organizations not included on this list may be included after submitting evidence of comparable standards. If the application is approved, a provider number shall be issued.~~

~~(3) The provider approval for a health care agency shall initially expire on June 30 of the next succeeding even numbered year following initial approval.~~

~~(4) The approval status for a nonhealth care agency shall initially expire on June 30 of the next succeeding uneven numbered year following initial approval.~~

~~(5) By March 30 at the end of the approval period, approved providers shall submit, on forms provided by the board, a request for renewal of their approval status and pay the fee set by regulation. The renewal form is hereby incorporated by reference and may be viewed in the board office during regular business hours. Providers shall show continued compliance with the standards set forth in this regulation.~~]

(7) [~~(6)~~] Renewal shall be for two (2) years.
(8) [~~(7)~~] The participants' evaluation summary for any continuing education activity which was rated as unsatisfactory by twenty (20) percent or more of the participants shall be submitted with the renewal application.
(9)(a) [~~(8)~~] Participants shall be provided with essential information for review prior to registration. This information shall include:
1. [~~, but not be limited to,~~] Learning objectives;
2. Content overview;
3. Presenter;
4. Number of contact hours;
5. Fee; and
6. Requirements, for successful completion.
(10) [~~(9) All~~] Published information about continuing education activities offered by providers approved by the board shall include the:
(a) Provider number; and [~~the~~]
(b) Following statement: "Kentucky Board of Nursing approval of an individual nursing continuing education provider does not constitute endorsement of program content."
(11) [~~(10)~~] A provider shall notify the board in writing within one (1) month of any changes in **its** [~~the~~] administration, **such as** [~~of the providership, i.e.,~~] nurse administrator, mailing address, telephone number or other relevant information.

[~~Section 1. To administer the continuing education requirement, the board adopts the following standards: Administrative standards. An approved provider shall comply with the following administrative standards:~~

~~(1) Educational unit. There shall be within the provider's organizational structure an identifiable educational unit with designated personnel and resources for conducting an organized schedule of continuing education for nurses and for reporting and recording of contact hours according to the requirements of the board's standards and criteria.~~

~~(2) Philosophy and objectives. The unit's philosophy and objectives for continuing education shall be consistent with those of the provider organization.~~

~~(3) Nurse administrator of continuing education. A nurse, holding a current, active nurse license, with experience in adult and continuing education shall be administratively responsible for the actual planning, development, implementation, and evaluation of the provider's educational unit for continuing education for nurses. The educational qualifications of the nurse administrator shall be as follows:~~

~~(a) For the licensed practical nursing groups' educational units, the nurse administrator of continuing education shall hold a diploma, or its equivalent, from an approved school of practical nursing.~~

~~(b) Other providers' educational units shall have a nurse administrator who holds a baccalaureate or higher degree in nursing or a nurse consultant who meets the nurse administrator qualifications. As of January 1, 1985, newly appointed nurse administrators of program approved providerships shall hold a baccalaureate or higher degree in nursing.~~

~~(4) Policies and procedures. Written policies and procedures of~~

~~the provider shall facilitate the efficient operation of the planned continuing education activities and shall clearly define the provider's accountability, financial support, and administrative control necessary to maintain the board's standards and criteria for continuing education and to achieve the objectives of the planned program/ offering(s).~~

~~(5) Educational facilities and resources. The provider shall have accessible and available, or arrange for, educational facilities, human resources, necessary instructional aids, and equipment for the planners, faculty/ instructor(s), and/or learners consistent with the educational content, format, teaching methodology, and behavioral objectives of each continuing education offering.~~

~~(6) Continuing education planners/committee. A committee composed of nurses holding current, active nurse licenses and qualified by education and expertise in the subject matter, and experience in planning adult and continuing education shall be used in planning and evaluating board approved program/offerings; other advisors or consultants may be used as appropriate.~~]

Section 2. (1) The board may review **a provider's** continuing education activities or [~~a provider's~~] approval status at any time.

(2) Except as provided in subsection (3) of this section, [~~(3)~~] if after a review of a provider it is determined that the provider does not comply with this **administrative** regulation, the board shall send the provider[~~, by regular mail,~~] notice of its intent to deny or limit the provider's approval status.

(3) [~~(2)~~] If after a review of a continuing education activity it is determined that the activity does not comply with this **administrative** regulation, the board shall send the provider[~~, by regular mail,~~] notice of its intent to deny approval status for subsequent offerings of that specific continuing education activity.

(4)**(a) A request for a hearing before the board shall be filed within ten (10) days of receipt of the board's notice.**

(b) If a provider fails to submit a request for a hearing within the time specified in paragraph (a) of this subsection, the board shall implement the action proposed in its notice. [~~The provider may request a hearing before the board, at its next regularly scheduled meeting, within ten (10) days of the receipt of the board's notice. Failure to request a hearing shall result in implementation of the action proposed in the notice.~~]

[~~Section 2. Initial Provider Approval. The potential provider shall request an application for approval as a provider and the board shall assign the potential provider a permanent, nontransferable number. The provider number shall be used to identify all communications, offering announcements, records, and reports.~~

~~(1) Applications for approval as a provider may be submitted at any time during the year.~~

~~(2) If the potential provider meets the board's standards and criteria, approval shall be granted. An approved provider shall apply for approval of program/offering(s) in accordance with board requirements.~~

~~(3) The providership approval period awarded shall be set forth in the approval notification letter sent to the provider by the board. Retroactive approval shall not be granted.~~]

Section 3. Providers shall comply with the following standards:

(1) Continuing education activities **shall** support the promotion of quality continuing education that will**:**

(a) Enhance the quality of care provided by nurses; and

(b) [~~which~~] Contribute directly to the competence of a nurse.

(2) The content of nursing continuing education shall be designed to**:**

(a) Present current theoretical knowledge to enhance and expand nursing skills; and

(b) [~~to~~] Promote the development, or change in attitudes, necessary to make competent judgments and decisions in nursing.

(3) The educational content shall flow from, and support achievement of, learning objectives that promote safe, effective nursing practice.

(4) Objectives for continuing education activities shall be**:**

(a) Related to nursing practice and interventions;

(b) Stated in clearly defined expected learner outcomes; and

(c) [~~be~~] Consistent with needs assessment data.

(5) The continuing education activity shall reflect cooperative planning between the nurse administrator, faculty and content experts.

(6) The content for each activity shall be documented in provider files as follows:

(a) An agenda delineating the organization of the content**, such as** [~~; i.e.,~~] presentation schedule, presenters, topics, meals, breaks.

(b) Topical outline and corresponding time frames sufficient to appraise relevance and value of the educational activity to safe, effective nursing practice.

(7) Identified teaching methods shall be consistent with the content and learning objectives, and shall reflect the use of adult learning principles.

(8) Faculty for continuing education activities **shall** [~~must~~] demonstrate content knowledge and expertise, and **shall** be actively involved in planning their presentations.

(9) The name, title and credentials identifying the educational and professional qualifications for each faculty member shall be retained in the provider offering files.

(10) Resources allocated for the continuing education activity shall be adequate in terms of education unit organization, with fiscal support for adequate staff, facilities, equipment and supplies to ensure quality teaching-learning in a comfortable environment that is accessible to the target audience.

(11) Records of continuing education activities shall be maintained for a period of five (5) years, including the following:

(a) Title, date and site of the activity;

(b) Name of the person responsible for coordinating and implementing the activity;

(c) Purpose, documentation of planning committee activities, learner objectives, content outline, faculty, teaching and evaluation methods;

(d) Participant roster, with a minimum of names, Social Security numbers and license numbers, if held;

(e) Summary of participant evaluations;

(f) Number of continuing education contact hours awarded.

(12) Participants shall receive a certificate of attendance that documents participation with the following:

(a) Name of participant;

(b) Offering title, date and location;

(c) KBN's provider's name, approval number and expiration date;

(d) Name and signature of authorized provider representative;

(e) Number of continuing education contact hours awarded.

(13) There shall be a clearly defined method for evaluating the continuing education activity which includes the following:

(a) An evaluation tool that includes participant appraisal of achievement of each learning objective; teaching effectiveness of each presenter; relevance of content to stated objectives; effectiveness of teaching methods; and appropriateness of physical facilities.

(b) A mechanism for periodic, systematic evaluation of the provider's total program of educational activities.

(14) An action plan for resolution of identified deficiencies as revealed in the summary of participant evaluations**. The plan shall include** [~~, which includes~~] the projected time frame for resolution. [~~Identified deficiencies are any learning objectives rated as unsatisfactory by twenty (20) percent or more of the participants.~~]

(a) A nurse who meets the qualifications established in paragraphs (b) and (c) of this subsection shall be administratively responsible for continuing education activities, including:

1. Planning;

2. Development;

3. Implementation; and
4. Evaluation.
(b) A nurse administrator shall:
1. Hold a current, active license;
2. Have experience in adult and continuing education; and
3. Hold a baccalaureate or higher degree, in nursing.
(c) The nurse administrator of continuing education units for licensed practical nursing groups shall hold a diploma, or its equivalent, from an approved school of practical nursing.

Section 4. (1) The following forms are incorporated by reference:
(a) "Application for Provider Approval (1992)";
(b) "List of Approved Organizations (1992)"; and
(c) "Request for Renewal (1992)".
(2) They may be obtained, reviewed, inspected or copied at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, 8 a.m. - 4:30 p.m., Monday through Friday.

~~[(15) A nurse, holding a current, active license, with experience in adult and continuing education, shall be administratively responsible for the planning, development, implementation, and evaluation of the continuing education activities. The nurse administrator shall hold a baccalaureate or higher degree in nursing. For the licensed practical nursing groups educational units, the nurse administrator of continuing education shall hold a diploma or its equivalent, from an approved school of practical nursing.]~~

~~[Section 3. Continued Approval of a Provider. Applications for continued approval as a provider shall be submitted prior to the end of the current approval period.~~
~~(1) Continued approval of the provider shall be based on the past approval period performance and compliance with board standards.~~
~~(2) The provider's past approval period performance may be evaluated by participant evaluations, provider evaluation, on site visits, and/or an audit of the provider's reports and records.~~
~~(3) Providership approval awarded by another organization may be recognized by the board as equivalent or comparable, provided the organization's standards and criteria for continuing education and the approval mechanism have been reviewed and approved by the board.~~
~~(a) The board shall assign a permanent nontransferable number to providers approved through this mechanism.~~
~~(b) Provider approval granted through this mechanism shall be subject to board action identified in Section 4 of this regulation.]~~

~~[Section 4. The board may deny, revoke, suspend, or probate approval of any provider, continuing education activity, or other approved entity for just cause.]~~

~~[Section 5. Appeal. If a provider is dissatisfied with a board decision concerning approval and wishes a review of the decision, the following procedure shall be followed:~~
~~(1) Written requests for the review must be filed with the board within thirty (30) days after the date of notification of the board action which the provider contests.~~
~~(2) The board, or its designee, shall conduct a review in which the provider may appear in person and present reasons why the board's decision should be set aside or modified.]~~

Section 5. ~~[4.]~~ 201 KAR 20:205, Standards for continuing education offerings and 201 KAR 20:210, Standards for a program of continuing education, are hereby repealed.

M. SUSAN JONES, President
APPROVED BY AGENCY: February 14, 1992
FILED WITH LRC: March 19, 1992 at 8 a.m.

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

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-**010** **[**~~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 a special waste site or facility [~~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
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

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, 14 [~~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 **site or facility** 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: May 13, 1992
FILED WITH LRC: May 14, 1992 at 1 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

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. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing [~~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.~~]

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

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.]

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

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: May 15, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

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)(e) 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 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. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit **after opportunity for hearing** [~~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 area of surface operations and facilities [~~permit area~~] and adjacent area, and areas subject to probable impacts from underground workings, including areas of probable subsidence. 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 area of surface operations and facilities [~~permit area~~] or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, are [~~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 area of surface operations and facilities [~~permit area~~] or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include[s] an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060 [~~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 areas of surface operations and facilities [~~permit~~] or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, 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.~~]

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

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 area of surface operations and facilities ~~[permit area]~~ or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include[s] an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060 [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 areas of surface operations and facilities [permit] or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, 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.]

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

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: May 15, 1992
FILED WITH LRC: May 15, 1992 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
Division of Motor Carriers
Division of Motor Vehicle Enforcement
(As Amended)

601 KAR 11:040. Medical waivers for intrastate operators of commercial motor vehicles.

RELATES TO: KRS Chapter 281A, 281.600, 49 CFR Part 383, 49 CFR Part 391

STATUTORY AUTHORITY: KRS 281A.040, 281.600, 49 CFR 383 Subpart E, 49 CFR 391 Subpart E

NECESSITY AND FUNCTION: The federal requirements for the issuance of a commercial driver's license to a driver operating in interstate commerce include a certification that the driver meets the qualification requirements contained in 49 CFR Part 391.The Federal Highway Administration does not require a person who operates entirely in intrastate commerce to be subject to 49 CFR Part 391. He is subject however, to Kentucky driver qualification requirements. In 601 KAR 1:005 the Transportation Cabinet adopted the majority of the driver qualification requirements of 49 CFR Part 391 on both an interstate and intrastate commerce basis. However, medical waivers in addition to those allowed in 49 CFR 391.49 are allowed until March 31, 1993 [1992] for drivers operating exclusively in intrastate commerce. This administrative regulation sets forth the procedure and standards for obtaining an intrastate medical waiver.

Section 1. Application for Intrastate Medical Waiver. (1) **Until**

March 31, 1993, a commercial driver may apply to the Transportation Cabinet for a medical waiver if he:

(a) Operates exclusively in intrastate commerce; and

(b) Has failed to meet the physical requirements of 49 CFR 391, Subpart E, adopted in 601 KAR 1:005. [A commercial driver who operates exclusively in intrastate commerce and who has failed to meet the physical requirements of 49 CFR 391 Subpart E, adopted in 601 KAR 1:005 may apply to the Transportation Cabinet until March 31, 1993 [January 31, 1992] for a medical waiver.]

(2) The application for medical waiver shall be on Kentucky Transportation Cabinet from TC 94-38, "Request for Medical Waiver" effective [adopted] January, 1991. This form is incorporated by reference as a part of this administrative regulation.

(3)(a) A copy of the completed medical examination form required by 49 CFR 391.43 and 601 KAR 1:005 shall be attached to the application for medical waiver.

(b) The form shall be completed by a licensed doctor of medicine or osteopathy.

(c) The medical examination form shall indicate the reason the applicant failed to meet the requirements of 49 CFR 391 Subpart E.

(d)1. [(4)] A copy of the applicable supplemental medical report form completed by a licensed doctor of medicine or osteopathy shall be attached to the application for medical waiver.

2. The vision conditions form may be completed by a licensed doctor of optometry.

(e) The following supplemental medical report forms each with an edition date of December 1990, shall be incorporated by reference as a part of this administrative regulation:

1. [are titled] "Cardiovascular Conditions";
2. "Neurological Conditions";
3. "Musculoskeletal Conditions";
4. "Metabolic Conditions";
5. "Alcohol or Other Drug Dependence";
6. "Mental and Emotional Conditions"; and
7. "Vision Conditions".

(f) The licensed doctor of medicine or osteopathy shall determine which ones of these supplemental medical report forms are applicable to the medical waiver applicant. [Each of these forms was effective [adopted by the Transportation Cabinet] in December, 1990 and is incorporated by reference as part of this administrative regulation.]

(4) [(5)] The application for medical waiver, medical examination form and supplemental medical report form shall be submitted to the Transportation Cabinet, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.

(5) [(6)] A copy of the forms incorporated by reference may be obtained, inspected or copied at [from] the Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622 by writing or appearing in person, 8 a.m. to 4:30 p.m. Eastern time, Monday through Friday. [The office hours on regular Kentucky state government working days are 8 a.m. through 4:30 p.m. eastern time.] [Copies of the forms may also be obtained from the driver license issuance office of the circuit court clerk in each county.]

Section 2. (1) The Division of Driver Licensing shall base its decision on granting the requested medical waiver on the information obtained from the driving history record of the following:

(a) Applicant;

(b) [the] Original medical examination form; and

(c) [the] Supplemental medical report form;

(d) [, in some cases] A skills test if suggested by the Medical Review Board, the applicant, or the provisions of this administrative regulation; and

(e) [and] Any other information supplied to the Division of Driver Licensing about the driving ability of the applicant by the Medical Review Board, a physician, police officer or acquaintance. [deems pertinent.]

(2) The following medical guidelines shall be considered by the Division of Driver Licensing in evaluating the information related to the commercial driver:

(a) Paraplegics or quadriplegics.

1. If the applicant has a loss or impairment of foot, leg, arm, hand or fingers[. Neither paraplegics nor quadriplegics] shall not be issued a medical waiver unless he passes a skills test administered by the Kentucky State Police in the commercial vehicle adapted for his specific disability.

2. If a waiver is issued, it shall be vehicle specific.

3. If the applicant makes any adjustments to the specially adapted commercial vehicle or acquires a different commercial vehicle, it shall be approved by the Division of Driver Licensing prior to operation by the person with the medical waiver.

(b) Vision. To be considered for a medical waiver, the commercial driver['s distance visual acuity] shall:

1. Have a distance visual acuity of [be] 20/60 (Snellen) or better with corrective lenses in one (1) or both eyes;

2. Have visual fields which are [. The commercial driver's visual fields shall] not [be] narrowed to less than 110 degrees of total visual field;

3. [. The commercial driver shall] Readily distinguish which light of traffic signals and devices showing standard red, green and amber is illuminated;

4. Not [. The commercial driver shall neither] wear bioptic lenses; and

5. Not [nor] have uncorrectable double vision.

(c) Hearing. A [No] waiver of 49 CFR 391.41(11) shall be issued.

(d) Epilepsy or other condition likely to cause loss of consciousness. A [The] commercial driver with epilepsy or other condition which may [likely to] cause loss of consciousness shall:

1. Have been seizure free for one (1) year prior to requesting the waiver;

2. [. The commercial driver shall] Not have experienced loss of consciousness, blackout, fainting or disorientation in the year immediately prior to requesting the waiver; and

3. [. The commercial driver shall] Be reliable in taking his prescribed medication to be considered for a medical waiver as proven by the blood content levels of his medication.

(e) Cardiovascular. [The commercial driver shall not have experienced a fainting or blackout spell in the year immediately prior to requesting the waiver. The commercial driver shall have no heart disease symptoms while operating a motor vehicle or sitting at rest to be considered for a medical waiver. The commercial driver shall not have any difficulty in breathing or painful breathing. The commercial driver shall have had no uncontrollable attacks of choking, suffocation or shortness of breath during the year immediately past. The commercial driver's blood pressure shall not be irregular. The commercial driver's diastolic blood pressure shall not consistently be above 110 millimeters of mercury. The commercial driver shall not have an aortic or ventricular aneurysm. The commercial driver shall not have had any uncontrollable instances of syncope or vertigo during the year immediately prior to the application for waiver.]

1. In the year immediately preceding a waiver request, a commercial driver shall not have experienced:

a. A fainting or blackout spell;

b. Uncontrollable attacks of choking, suffocation, or shortness of breath; and

c. Uncontrollable instances of syncope or vertigo.

2. A commercial driver shall not have heart disease symptoms while:

a. Operating a motor vehicle; or

b. Sitting at rest.

3. A commercial driver shall not have:

a. Difficulty in breathing;

b. Painful breathing; or

c. An aortic or ventricular aneurysm.

4. A commercial driver's:

a. Blood pressure shall not be irregular; or

b. Diastolic blood pressure shall not consistently be above 110 millimeters of mercury.

(f) Diabetes. **A commercial driver shall not have:**

1. An uncontrolled condition of diabetes; or

2. In the year immediately preceding a waiver request, had an instance of diabetes shock or coma. ~~[The commercial driver shall neither have an uncontrolled condition of diabetes nor shall he have had any instances of diabetes shock or coma in the year immediately prior to the application for waiver.]~~

(g) Alcohol or drugs. **A** ~~[The]~~ commercial driver shall have been free of addiction to or abuse of alcohol or other drugs for at least one (1) year.

(h) Emotional or mental. **A commercial driver shall:**

1. Not exhibit homicidal, suicidal, or destructive behavior;

2. In the year immediately preceding a waiver request, not have experienced bouts of:

a. Extreme anxiety;

b. Depression;

c. Paranoia;

d. Confusion;

e. Delusions; or

f. Hallucinations.

3. Not, in the three (3) years immediately preceding a waiver request, have been hospitalized for a mental or emotional condition. ~~[The commercial driver shall exhibit no homicidal, suicidal or destructive behavior. The commercial driver shall have had no bouts of extreme anxiety, depression, paranoia, confusion, delusions or hallucinations within the year immediately prior to the application for waiver. The commercial driver shall not have been hospitalized for any mental or emotional condition in the three (3) years immediately prior to the application for waiver.]~~

~~[(3) The guidelines the Division of Driver Licensing shall follow in evaluating the information on the commercial driver's complete driving history record shall be the following:~~

~~(a) If there are three (3) or more accidents on the commercial driver's driving history record during the immediately preceding two (2) year period and the commercial driver has indicated or a court has determined them to be the fault or partial fault of the commercial driver, the waiver request may be denied.~~

~~(b) If there is an accident involving a fatality or victim incapacitation on the commercial driver's driving history record and the commercial driver has indicated or a court has determined the accident to be the fault or partial fault of the applicant, the waiver request may be denied.]~~

~~[(c) If during the immediately prior two (2) years the commercial driver's driving privilege was withdrawn in accordance with the requirements of KRS 186.560, the application for waiver shall be denied.~~

~~(d) If during the immediately prior two (2) years the commercial driver's driving privilege was withdrawn in accordance with the provisions of 601 KAR 13:025, the application for waiver shall be denied.~~

~~(e) If during the immediately prior two (2) years the commercial driver was convicted of more than one (1) serious violation as defined in KRS 281A.010, the application for waiver may be denied.~~

~~(4) The commercial driver shall have been a commercial driver for the immediately preceding two (2) years to be considered for a medical waiver.]~~

Section 3. (1) If a commercial driver is granted a medical waiver prior to March 31, 1993 ~~[1992]~~, he shall submit to ~~[at least annual]~~ medical reexaminations ~~[as]~~ required by the Division of Driver Licensing.

(2) **After a reexamination, a waiver shall remain in effect if the physician performing the reexamination certifies that:**

(a) The condition for which a waiver was issued has not worsened; and

(b) An additional nonqualifying condition has not manifested. ~~[For the waiver to continue in effect after it has been issued, [1992] the physician performing the medical reexamination shall be able to state that the condition of the commercial driver which caused the waiver to be issued has not worsened and that no additional nonqualifying condition has manifested.]~~

(3)**(a)** The driving history record of a commercial driver approved for a medical waiver may be evaluated **by the Division of Driver Licensing:**

1. At any time**;**

2. ~~[but shall be evaluated by the Division of Driver Licensing]~~ At least once a year.

(b) If **a review of the person's driving history record would cause the person to ordinarly be referred to the Medical Review Board under the provisions of 601 KAR 13:010, the waiver or waiver request shall be referred to the Medical Review Board for evaluation.** ~~[any of the events listed in Section 2(3) of this regulation occur, the medical waiver may be withdrawn.]~~

(4)**(a)** After completion of a test of the commercial driver's driving skills requested by the Division of Driver Licensing, the Kentucky State Police shall submit **to the Division of Driver Licensing:**

1. The test results; and

2. Recommendations for waiver refusal or restrictions on a medical waiver ~~[to the Division of Driver Licensing]~~.

(b) If a medical waiver with restrictions is issued, the restriction shall be noted on the commercial driver's motor vehicle operator's license or commercial driver's license.

(5) If an intrastate medical waiver is issued to a commercial driver, he shall notify the Division of Driver Licensing immediately of any change in or worsening of his physical or mental condition.

(6) If an intrastate medical waiver is issued to a commercial driver with a progressive disease, the Division of Driver Licensing may require the commercial driver to submit to a periodic skills test with the Kentucky State Police.

(7) If an intrastate medical waiver is issued to a person with a pacemaker, he shall submit an annual report on the functioning of the device to the Division of Driver Licensing.

(8) **A medical waiver shall be cancelled if a commercial driver fails to within forty-five (45) days:**

(a) Submit to a periodic report requested by the Division of Driver Licensing; or

(b) Report for a skills test. ~~[The commercial driver shall submit all periodic reports requested by the Division of Driver Licensing or report for a skills test in a timely manner. If he fails to do so, his medical waiver shall be cancelled.]~~

(9) **The employer of a commercial driver who has obtained a medical waiver shall notify the Division of Driver Licensing of a change in the commercial driver's:**

(a) Physical or mental condition; or

(b) Employment or employment conditions. ~~[The employer of a commercial driver who has obtained a medical waiver shall notify the Division of Driver Licensing of any change in the physical or mental condition of the commercial driver. In addition, the employer shall notify the Division of Driver Licensing of any changes in employment or employment conditions of the commercial driver.]~~

Section 4. (1) If a commercial driver is denied a medical waiver by the Division of Driver Licensing, he may appeal to the Commissioner of the Department of Vehicle Regulation. In considering the appeal, the Commissioner of the Department of Vehicle Regulation shall request from the Medical Review Board established in accordance with 601 KAR 13:010 a review of the case and recommendation on the appeal.

(2) The appeal shall be filed with the Commissioner of the Department of Vehicle Regulation in writing within thirty (30) days of

the decision of the Division of Driver Licensing.

(3) A member of the Medical Review Board with specific qualifications in the medical area relating to the appeal shall review the appeal when requested by the commissioner.

(4) The commissioner's review shall be based on the information provided to the Division of Driver Licensing, the recommendation of the Medical Review Board and any additional information requested by the commissioner.

(5) The findings of the Commissioner of the Department of Vehicle Regulation shall be administratively final.

(6) The Commissioner of the Department of Vehicle Regulation shall provide a copy of his findings to ~~[both]~~ the:

(a) Commercial driver; and

(b) ~~[the]~~ Division of Driver Licensing.

(7) A commercial driver aggrieved by the findings of the Commissioner of the Department of Vehicle Regulation may appeal to Franklin Circuit Court.

Section 5. Medical Review Board. Any applicant denied a medical waiver under the provisions of this administrative regulation shall be referred to the Medical Review Board under the provisions of 601 KAR 13:010.

LEWIS DOTSON, Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: April 13, 1992
FILED WITH LRC: April 14, 1992 at 9 a.m.

EDUCATION AND HUMANITIES CABINET
Department for Libraries and Archives
Board for the Certification of Librarians
(As Amended)

725 KAR 2:060. Certification of public librarians.

RELATES TO: KRS 171.230-171.300
STATUTORY AUTHORITY: KRS Chapter 13A, 171.250, 171.260
NECESSITY AND FUNCTION: Certification of public librarians is mandated by KRS 171.250 and 171.260. Regulations are needed to prescribe the rules by which public librarians shall be certified. This program is administered by the Kentucky Department for Libraries and Archives.

Section 1. Definitions. (1) "Board" means the Kentucky State Board for the Certification of Librarians.

(2) "Library work experience" means employment in a library which includes administration, collection development, technical or public services, or support for public service areas, and excludes secretarial, custodial, groundskeeping, security, food service, driver, and messenger duties.

(3) "Library information services" **means** ~~[are]~~ duties which require special skills and knowledge to be performed properly.

(4) "Continuing education units (CEU)" means education offerings that provide credit through a certified program.

Section 2. Required Certification by Public Library Position. (1) Library directors serving a population of more than 15,00 shall hold or obtain a professional certificate regardless of part-time or full-time employment.

(2) Library directors serving a population of 15,000 or less shall hold or obtain at least the paraprofessional certificate regardless of part-time or full-time employment.

(3) Assistant librarians, bookmobile librarians, branch or department heads shall hold or obtain at least the paraprofessional certificate regardless of part-time or full-time employment.

(4) All other permanent positions, whether held by one (1) or more individuals, providing library information services as determined by local library policy shall be filled by persons who obtain of hold at least the library experience certificate.

Section 3. Types of Certificates. (1) A Professional Certificate I **shall be awarded if an applicant has obtained** ~~[requires]~~ a master's degree in library science from an ALA accredited school and **shall be** ~~[is]~~ valid for five (5) years;

(2) A Professional Certificate II **shall be awarded if an applicant has obtained** ~~[requires]~~ a master's degree in library science from a library school which has not been ALA accredited and **shall be** ~~[is]~~ valid for five (5) years;

(3) A Professional Certificate III **shall be awarded if an applicant has obtained** ~~[requires]~~ a bachelor's degree with at least twenty-one (21) hours in library science and **shall be** ~~[is]~~ valid for five (5) years;

(4) A Professional Certificate IV **shall be awarded if an applicant has passed** ~~[required successful passage of]~~ the library certification examination before July 1, 1980, **and shall be** valid for five (5) years;

(5) A praprofessional certificate **shall be** ~~[is]~~ valid for five (5) years and **shall be awarded if an applicant has completed** ~~[requires]~~:

(a) Sixty (60) hours of college training, twelve (12) hours of library science (library science hours may be included in the sixty (60) hours of college training), and two (2) years of library work experience; or

(b) A high school diploma or GED, fifteen (15) hours of library science and five (5) years of library work experience.

(6) A library experience certificate **shall be** ~~[is]~~ valid for three (3) years and **shall be awarded if an applicant has completed** ~~[requires]~~ a high school diploma or GED and:

(a) Twelve (12) hours in library science; or

(b) Nine (9) hours in library science and three (3) hours in a related field of study; or

(c) Six (6) hours in library science and ten (10) years of library work experience; or

(d) A bachelor's degree and six (6) hours in library science; or

(e) Successful completion of an on-the-job training program as approved by the board.

(7) Professional, paraprofessional and library experience certificates shall be renewed according to 725 KAR 2:070.

(8)**(a) A temporary certificate shall be issued to a person who:**

1. Holds a job requiring certification as provided in Section 2 of this administrative regulation; and

2. Does not meet the requirements of Section 2 of this administrative regulation.

(b) A temporary certificate:

1. Shall be valid for one (1) year; and

2. May be renewed four (4) times. ~~[A temporary certificate shall be issued only to persons who hold jobs requiring certification as stated in Section 2 of this regulation and who do not meet such requirements. The temporary certificate is valid for one (1) year from date of issuance and may be renewed four (4) times.]~~

Section 4. Sources of Education for Initial Certification. (1) The board shall accept academic credit from college credit courses offered by institutions of higher education which are accredited by their respective regional associations.

(2) The board shall accept library and information science credits from courses offered by:

(a) Graduate schools accredited by the Committee on Accreditation of the American Library Association and these courses shall be approved for all types of certificates;

(b) Colleges whose library and information science departments are accredited by their respective regional associations and these courses shall be approved for all types of certificates;

(c) Accredited colleges which offer individual library and informa-

tion science courses and these courses shall be approved for all types of certificates;

(d) Community colleges which offer library or information science courses that are nontransferrable to a four (4) year college and these courses shall be approved for paraprofessional and library experience certificates. One (1) of these courses may be approved for an initial professional certificate.

(3) The board shall accept nontraditional sources of education toward attainment of specified certificates as follows:

(a) A library institute **shall be** ~~[is]~~ an in-depth program of library and information science developed according to approved guidelines and shall be accepted for paraprofessional and library experience certificates. The program shall be submitted to the board for approval sixty (60) days in advance of implementation. One (1) institute **shall** ~~[will]~~ substitute for a three (3) hour college level library and information studies course.

(b) An on-the-job training program **shall** consist of at least three (3) structured, library-based training series, developed according to approved guidelines and shall be accepted for the library experience certificate. The program **shall** ~~[must]~~ be submitted to the board for approval sixty (60) days in advance of implementation. Each program **shall** ~~[will]~~ substitute for nine (9) hours of library and information science credit.

(c) ~~[Continuing education units (CEU) are educational offerings which provide credit through a certified program.]~~ Four (4) CEUs in library topics **shall** ~~[will]~~ equal one (1) three (3) hour credit and may be substituted once toward initial paraprofessional and library experience certificates.

(d) **Audited courses shall be college level library and information science courses for which:**

1. Students register, attend, but do not receive college credit;

2. Proof of attendance and satisfactory completion shall be provided by the course instructor; and

3. Credit toward paraprofessional and library experience certificates shall be accepted until December 31, 1992. ~~[Audited courses are college level library and information science courses for which students register and attend but receive no college credit and shall be accepted for credit toward paraprofessional and library experience certificates until December 31, 1992. Proof of attendance and satisfactory completion of the course must be provided by the course instructor.]~~

(e) Successful completion of an approved on-the-job training program and achievement of the library experience certificate may substitute for three (3) hours of college credit toward the paraprofessional certificate.

Section 5. Application for public library certification **shall** ~~[should]~~ be made to the board.

Section 6. A fee of five (5) dollars shall be charged for all certificates issued.

Section 7. Professional, paraprofessional and library experience certificates shall be issued to voluntary applicants who meet the requirements and submit the required fee.

Section 8. (1) The following materials are hereby incorporated by reference:

(a) The guidelines of the "On-The-Job Training Program", dated January 29, 1992, referred to in Section 4(3)(b) and (e) of this regulation.

(b) The guidelines for a "Library Institute", dated January 29, 1992, referred to in Section 4(3)(a) of this regulation.

(c) The "Application for Public Library Certification", dated January 29, 1992, referred to in Section 5 of this regulation.

(2) The materials incorporated by reference in subsection (1) of this section may be **inspected,** copied or obtained from the Kentucky Department for Libraries and Archives, P. O. Box 537, Frankfort, Kentucky 40602-0537, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 9. 725 KAR 2:020 is repealed.

VERA GUTHRIE, Chair
APPROVED BY AGENCY: January 29, 1992
FILED WITH LRC: April 8, 1992 at 10 a.m.

EDUCATION AND HUMANITIES CABINET
Department for Libraries and Archives
Board for the Certification of Librarians
(As Amended)

725 KAR 2:070. Certification renewal of public librarians.

RELATES TO: KRS 171.230-171.320
STATUTORY AUTHORITY: KRS Chapter 13A, 171.250, 171.260
NECESSITY AND FUNCTION: Renewal of certification of public librarians is authorized by KRS 171.250. Regulations are needed to prescribe rules for the manner in which public librarians shall renew their certification. This program is administered by the Kentucky Department for Libraries and Archives.

Section 1. Definitions. (1) "Board" means the Kentucky State Board for the Certification of Librarians.

(2) "Library work experience" means employment in a library which includes administration, collection development, technical or public services, or support for public service areas, and excludes secretarial, custodial, groundskeeping, security, food service, driver, and messenger duties.

(3) "Library information services" mean duties which require special skills and knowledge to be performed properly.

(4) "Professional library association" means an organization of librarians and persons interested in libraries.

(5) "Certification renewal point" means a unit of measurement which is the equivalent of ten (10) contact hours of learning activity.

(6) "Learning activity" means a class, institute, seminar or workshop which is planned, coordinated, administered and evaluated in terms of learning objectives.

Section 2. Required Certification Renewal by Public Library Position. (1) Library directors serving a population of more than 15,000 shall renew the professional certificate every five (5) years regardless of part-time or full-time employment. Ten (10) certification renewal points **shall** ~~[must]~~ be accumulated within the five (5) year period.

(2) Library directors serving a population of 15,000 and less shall renew at least the paraprofessional certificate every five (5) years regardless of part-time or full-time status. Ten (10) certification renewal points **shall** ~~[must]~~ be accumulated within the five (5) year period.

(3) Assistant librarians, bookmobile librarians, branch or department heads shall renew at least the paraprofessional certificate every five (5) years regardless of part-time or full-time status. Ten (10) certification renewal points **shall** ~~[must]~~ be accumulated within the five (5) year period.

(4) All other employees in permanent positions providing library information services as determined by local library policy shall renew the library experience certificate every three (3) years, regardless of part-time or full-time status. Three (3) certification renewal points **shall** ~~[must]~~ be accumulated within the three (3) year period.

Section 3. Types of Certificates. (1) **The following certificates may be renewed for a period of five (5) years:**

(a) Professional Certificate I;

(b) Professional Certificate II;
(c) Professional Certificate III;
(d) Professional Certificate IV;
(e) Paraprofessional Certificate.

(2) A library experience certificate may be renewed for a period of three (3) years. [~~A Professional Certificate I requires a master's degree in library science from an ALA accredited school and renewal is valid for five (5) years;~~

~~(2) A Professional Certificate II requires a master's degree in library science from a school which has not been ALA accredited and renewal is valid for five (5) years;~~

~~(3) A Professional Certificate III requires a bachelor's degree with at least twenty one (21) hours in library science and renewal is valid for five (5) years;~~

~~(4) A Professional Certificate IV required successful passage of the library certification examination before July 1, 1980, and renewal is valid for five (5) years;~~

~~(5) A paraprofessional certificate is valid for five (5) years and requires:~~

~~(a) Sixty (60) hours of college training, twelve (12) hours of library science (library science hours may be included in the sixty (60) hours of college training), and two (2) years of library work experience; or~~

~~(b) A high school diploma or GED, fifteen (15) hours of library science and five (5) years of library work experience.~~

~~(c) Successful completion of an approved on the job training program and achievement of the library experience certificate may substitute for three (3) hours of college credit toward the paraprofessional certificate.~~

~~(6) A library experience certificate is valid for three (3) years and requires a high school diploma or GED and:~~

~~(a) Twelve (12) hours in library science; or~~

~~(b) Nine (9) hours in library science and three (3) hours in related field of study; or~~

~~(c) Six (6) hours in library science and ten (10) years of library work experience; or~~

~~(d) A bachelor's degree and six (6) hours in library science; or~~

~~(e) Successful completion of an on the job training program as approved by the board.~~]

Section 4. Sources of Learning Activities which Provide Certification Renewal Points. (1) The board shall accept job-related coursework or continuing education offerings from institutions of higher education as follows:

(a) Classes, institutes, seminars, workshops, conferences, lecture series or internships;

(b) Courses [~~may be~~] taken for academic credit or audited.

(2) The board shall accept activities in professional library associations as follows:

(a) Participation in seminars, workshops, conferences and lecture series;

(b) The holding of an association office, with statement specifying learning activity and derived educational benefit.

(3) The board shall accept participation in seminars, workshops, conferences and lecture series sponsored by the Kentucky Department for Libraries and Archives.

(4) The board shall accept participation in workshops, lecture series and on-the-job training programs sponsored by individual libraries.

(5) The board shall accept self-directed learning activities as follows:

(a) Writing reviews of library materials or library-related books, articles, or chapters which are published in statewide, regional or national publications; or

(b) Editing a library publication with statewide, regional or national distribution; or

(c) Making a prepared library-related presentation to library staff, library school students [~~and~~]or library trustees; or

(d) Preparing for and teaching a course, workshop, seminar or institute; and

(e) Documenting that each learning activity incorporates new subject matter.

(6) The board shall accept participation in group learning activities which **shall** [~~must~~] be documented as job-related.

Section 5. Application for public librarian certification renewal **shall** [~~should~~] be made to the board.

Section 6. A fee of five (5) dollars shall be charged for all certificate renewals issued.

VERA GUTHRIE, Chair
APPROVED BY AGENCY: April 6, 1992
FILED WITH LRC: April 8, 1992 at 10 a.m.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(As Amended)

780 KAR 2:100. Attendance policies for long-term adults in state-operated vocational schools.

RELATES TO: KRS 151B.025, 151B.110, 151B.145
STATUTORY AUTHORITY: KRS 151B.145
NECESSITY AND FUNCTION: KRS 151B.025 provides that the State Board for Adult and Technical Education has all necessary power and authority in administering vocational education. The state board finds it necessary to establish attendance policies for adults sixteen (16) years of age and older who are enrolled in a vocational education program of 500 hours or more.

Section 1. State-operated vocational schools shall establish and publish attendance policies governing the programs in the school **that comply with the provisions of this administrative regulation.**

Section 2. **(1)** [~~1.~~] Students shall be treated fairly [~~uniformly~~] in terms of compliance with [~~their~~] attendance policies [~~in all state-operated vocational schools~~].

(2) Each school shall maintain a uniform attendance accounting procedure.

Section 3. Each student shall be provided a copy of the school's attendance policy and specific information regarding course attendance requirements.

Section 4. [~~2.~~] **(1) Unless there is a valid reason for absence or lateness, a student shall attend classes regularly and at the prescribed times.** [~~Regular attendance and punctuality are expected of all students as the student's [school] attendance record may have a positive or negative impact on initial employment opportunities.~~]

(2) An accurate record of total hours absent and total hours in attendance for the program shall be reflected on the student's transcript.

(3) Each student shall assume responsibility for:

(a) Regular attendance;

(b) Completion of all assignments;

(c) Completion of all examinations; and

(d) Completion of required laboratory, internship, and clinical time.

Section 5. [~~3.~~] **(1)** Work missed because of absence for any reason shall be made up satisfactorily to the teacher within a reasonable time after returning to school.

(2) Makeup work not turned in by the time designated by the instructor shall receive a grade of "0". [~~It is~~] The **student shall**

[~~student's responsibility to~~] contact the teacher on the day **he returns** [~~returning~~] to school to arrange for makeup work.

(3) A teacher may require makeup of examinations, clinical time, or other instructional activities [~~may require extra hours as arranged by the teacher~~].

Section 6. [~~4.~~] **Leave Policy. (1) A student may be excused from attending a class because of his, or a family member's:**

(a) Illness;

(b) Death;

(c) Accident; or

(d) Other personal emergency.

(2) A student may be asked to verify the reason for an absence, if there is reasonable cause to suspect that he has abused the leave policy.

(3) Either prior to an absence, or as soon as thereafter as possible, a student shall notify his teacher, or an administrator designated by the school, of:

(a) An absence; and

(b) The reason for the absence. [~~The school recognizes that there are times when a student must be absent because of illness, death in the family, accident or other personal emergency. Students are expected to keep leave time to a minimum and may be asked for verification of illness or personal emergency if there is reasonable cause to suspect abuse of this leave policy. The student shall notify the teacher or an appropriate administrator of the absence(s) and the reason for the absence [therefor] either prior to the absence(s) or as soon thereafter as practicable.~~]

[~~Section 5. If a student has more than seventy (70) hours of total absence during the school year, the student shall receive an official warning. The student shall be referred to a guidance counselor for guidance and counseling services. After receiving an attendance warning, a student shall notify the school principal or the principal's designee of reasons for any further absence. The principal or the principal's designee shall determine whether or not the absence is for an essential cause, including serious illness, injury, or accident; court appearance; military assignment; or other emergency situations. Only one (1) day or six (6) cumulative hours, whichever is greater, past the warning notification shall be allowed for any cause. If the student has any additional absence of one (1) hour or more, the student shall, without compelling circumstances, be subject to suspension or expulsion as prescribed in 780 KAR 2:060.~~]

[~~Section 6. Absences shall be recorded for any time of more than a half hour missed from class or an assigned work station unless the student participates in an approved alternate school activity such as a vocational student organization conference. Arriving after the roll is checked but within the first half hour of the class period is recorded as tardy; i.e., arriving forty (40) minutes late equals one (1) hour of absence and twenty five (25) minutes late is one (1) tardy. Leaving class within the last half hour of the program is considered the same as tardy. Three (3) tardies or three (3) times leaving early equals one (1) hour of absence.~~]

Section 7. **(1) At the first or second class meeting, each instructor shall provide each student an attendance policy for the class.**

(2) An attendance policy shall:

(a) Comply with the provisions of this administrative regulation; and

(b) Include:

1. Class attendance;

2. Makeup of class work;

3. Penalties for failure to comply with attendance policy;

4. Excused and unexcused absences; and

5. Other matters governing attendance.

(3) An attendance policy shall not deny a makeup examination to a student:

(a) Who missed an announced or unannounced examination; and

(b) Whose absence was excused. [~~At the first or second class meeting, each instructor shall provide each student with an attendance policy for the class. This policy shall include, but not be limited to, rules regarding class attendance, excused and unexcused absences, missing announced or unannounced examinations, making up class work, and any penalties with regard to grades which may result from failure to comply with the attendance policies. However, an instructor may not deny a make up exam to a student who missed an announced or unannounced examination due to an excused absence.~~]

Section 8. **(1) An** [~~The~~] instructor shall report to the school director or designee the name of any student not making satisfactory progress in class due to irregular attendance.

(2) The [~~That~~] student shall be provided counseling support. [~~If after reasonable time with counseling support, the student continues to fail to make satisfactory progress, the student may be dropped from the course or courses.~~]

(3) The student may be dropped from the course if:

(a) A reasonable time of counseling support has been given to him; and

(b) He continues to fail to make satisfactory progress.

Section 9. [~~7.~~] **(1)** Satisfactory progress for the purpose of financial aid **shall be** [~~is~~] based on academic progress.

(2) An official warning for attendance problems shall not result in withholding financial aid payments.

[~~Section 8. A student scheduled for a support class (such as, related instruction, computer laboratory, economics, or study skills) who misses fifteen (15) percent or more of the total hours scheduled shall be required to repeat the support class prior to graduation.~~]

[~~Section 9. Students subject to dismissal for attendance violations may request a hearing by filing a request for such with the regional administrator within three (3) days of notification of the recommendation for dismissal. Otherwise, no hearing shall be scheduled pursuant to 780 KAR 2:060, and expulsion shall be automatic.~~]

Section 10. **A student shall have the right to petition for a "W" withdrawal from a course if:**

(1) Attendance is a requirement for receiving a grade; and

(2) His absences were excused under the provisions of:

(a) This administrative regulation; and

(b) Attendance policies that comply with this administrative regulation. [~~If attendance is a requirement for receiving a grade in a particular class and if a student has absences which are excused absences, then the student shall have the right to petition for a "W" withdrawal from the course.~~]

[~~Section 10. Students attending a program of less than eleven (11) total months duration or students attending a program on a part time basis shall have the maximum of seventy (70) hours prior to attendance warning reduced proportionately.~~]

[~~Section 11. Students completing a program with five (5) or fewer total days' absence for the program shall be given a Certificate of Merit for Attendance. Students completing a program with less than one (1) day of absence during the program shall receive a Certificate of Excellence for Attendance.~~]

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: March 19, 1992

FILED WITH LRC: April 13, 1992 at 9 a.m.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(As Amended)

780 KAR 2:110. Student medical and accident insurance.

RELATES TO: KRS 151B.025, 151B.110, 151B.175 [~~151B.145~~]
STATUTORY AUTHORITY: KRS 151B.175 [~~151B.145~~]
NECESSITY AND FUNCTION: KRS 151B.175 [~~151B.145~~] authorizes the Commissioner for Adult and Technical Education to provide medical and accident insurance for students enrolled in the state vocational-technical schools and area vocational education centers and requires the State Board for Adult and Technical Education to adopt regulations to implement the [~~any such~~] insurance program [~~and to set fees and limits of liability with respect to such. This regulation implements such duties~~].

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

Section 2. The commissioner shall enter into a contract with a surety or insurance company or its agent to provide medical and accident insurance coverage for students enrolled in vocational-technical schools and area vocational centers. [~~The coverage limits shall be at least these amounts:~~

~~Accident Medical Expense Maximum—$250,000~~
~~(Subject to Exclusions and Limitations)~~

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

Section 3. The policy **shall:** [~~will~~]:
(1) Be a full excess policy; and
(2) [~~will~~] Pay the covered expenses incurred which are in excess of those paid or payable by another plan [~~providing medical expense benefits to a maximum of $250,000~~].

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

Section 5. **After it has been signed by an official of the insuring company with authority to sign, the insurance policy shall:**
(1) Be attached to the contract; and
(2) Become a part of the medical and accident insurance contract. [~~The insurance policy shall be attached to the contract to become part of the medical and accident insurance contract after having been signed by an official of the insuring company having the proper corporate authority to sign this type document.~~]

Section 6. Coverage shall:
(1) Take effect on the date requested; and
(2) Remain in effect through [~~continue to~~] the expiration date shown on the application.

Section 7. **(1) The Office of Kentucky Tech System shall pay the premium to:**
(a) A surety; or
(b) An insurance company; or
(c) An agent thereof.
(2) The premium shall be based on the number of students that were enrolled:
(a) During the previous month;
(b) In state vocational-technical schools and area vocational centers. [~~The premium will be paid monthly by the Office of Kentucky Tech to the surety or insurance company or its agent for the number of students enrolled during the previous month in state vocational-technical schools and area vocational centers.~~]

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: March 19, 1992
FILED WITH LRC: April 13, 1992 at 9 a.m.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(As Amended)

780 KAR 2:120. Standard for academic progress for post-secondary and adult students.

RELATES TO: KRS 151B.025, 151B.110
STATUTORY AUTHORITY: KRS 151B.110
NECESSITY AND FUNCTION: KRS 151B.025 establishes a state vocational education program, and KRS 151B.110 gives the State Board for Adult and Technical Education all necessary power and authority in administering the state's vocational education program. This regulation is necessary in order to set a statewide standard for academic progress for postsecondary and adult students in the state's vocational technical schools and area vocational education centers to meet in order to remain in good academic standing [~~in such schools~~].

Section 1. **(1) A** [~~Any~~] postsecondary or adult student enrolled in a state operated vocational school shall maintain satisfactory progress toward completion of the prescribed competencies in all requirements for a diploma or certificate program.
(2) Evaluation of the quality of **a** [~~the~~] student's performance shall include:
(a) The grades of shop or laboratory work;
(b) Technical knowledge; [~~and~~]
(c) Occupational work experiences such as clinical or cooperative education;
(d) Work habits and attitudes;
(e) [~~, as well as~~] Completion of assigned tasks and learning activities [~~are evaluated~~].

Section 2. (1) Postsecondary and adult students shall complete each course required for a diploma or certificate program with a "C" average or above prior to completion of the program. Any course identified as a prerequisite to an advanced level course shall be completed with a "C" average or above prior to enrolling in the advanced course. [~~A required course completed with less than a "C" average may be repeated one (1) time at no charge to the students.~~]
(2) For a repeated course, the highest grade earned **shall be** [~~is~~] used in **the** calculation of the overall grade point average.

Section 3. (1) Remedial assistance shall be offered [~~during the course~~] to **a** student in those instructional areas **in which he has less than a** [~~below the~~] "C" **average** [~~in an effort to allow them to successfully complete the course and program~~].
(2) Remedial assistance [~~Remediation~~] may include:
(a) Tutorial service;
(b) Clearly defined independent study;
(c) Scheduled time in the learning center; or
(d) Other appropriate assistance.

Section 4. (1) A student earning a [whose overall cumulative] grade point average (GPA) [is] below a 2.0 or "C" at the end of a term shall be placed on academic probation for the next [one (1)] term **in which he is** enrolled.

(2) A student shall be removed from academic probation **if he earns at least a:**

(a) 2.0 or "C" in each course in which he received a grade of less than 2.0 or "C"; or

(b) 2.0 or "C" cumulative average for the next term in which he carries at least a half-time course load [when they either successfully complete ("C" or better) the courses in which they received a grade of less than a "C" or when they earn a "C" or better average with at least a half-time course load].

(3)(a) **A** student earning less than a "C" average for two (2) consecutive terms [. If, at the end of the probationary period, the cumulative overall GPA is less than a "C", the student] shall be academically expelled by the principal;

(b) He shall not have [, without] the right **to a** [of] formal hearing.

(4) The grade point average for each term shall be considered separately. Terms shall not be averaged together.

Section 5. (1) Clear and specific notice of the academic progress policy **established by this administrative regulation** [set forth herein] shall be included in each school's student handbook.

(2) **The handbook** [, which] shall be disseminated to each student upon entrance into a vocational program.

(3) [, and] Each teacher shall clearly explain to each student the grading criteria to be used at the outset of a student's participation in that teacher's course or program.

(a) **A** [(2) Any] student being placed on academic probation shall be **notified** [so [clearly] advised] [of such] by the school;

(b) The notification shall include [, including] the:

1. Duration of [such] probation; and

2. [the] Consequences of continued failure to make satisfactory academic progress.

Section 6. (1) **Except as provided in subsection (2) of this section, after the first expulsion of a student for academic reasons he shall not be readmitted before the expiration of the waiting list at the time of expulsion, or two (2) academic terms, whichever is longer.**

(2) He may be readmitted after the expiration of a shorter period, or after he has been expelled more than once for academic reasons, if the school determines that earlier readmission is warranted because of:

(a) Extenuating circumstances; or

(b) Other facts related to his expulsion. [A student expelled for academic reasons, shall, unless extenuating circumstances or the facts of individual cases warrant shorter expulsions, be readmitted to school on the basis of waiting list priorities at the time of expulsion or on the basis of two (2) academic quarters, whichever is longer.

(2) A school shall not be obligated to, but may, readmit a student to the school after a second academic expulsion.]

Section 7. (1) Readmission to the same program after academic dismissal from **the** [this] school **attended** or another state vocational school shall be conditional admission.

(2) [, and] Continuation in the program shall be contingent upon attaining a cumulative grade point average of a "C" or above by the end of the first term.

(3) Students dismissed from one (1) vocational school may not be readmitted to another vocational school for a period of at least **two (2)** [one (1)] academic **terms** [quarter] after dismissal.

Section 8. **A graduate of a diploma level vocational-technical program may receive specific retraining without charge, if a written certification by his employer:**

(1) States that his performance on the approved task list for the program from which he graduated is unsatisfactory; and

(2) Is received by the school within two (2) years after graduation. [Graduates of any diploma level vocational technical program may return to the vocational school within two (2) years after program completion to receive specific retraining at no charge [repeat one (1) or more courses one (1) time at no charge] if the graduate's [his or her] employer files a letter with the school certifying the need for the retraining because the graduate is performing below a satisfactory level on the approved task list for the program from which the employee graduated [such course(s) for continued employment].]

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: March 19, 1992
FILED WITH LRC: April 13, 1992 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(As Amended)

902 KAR 10:085. Kentucky on-site sewage disposal systems.

RELATES TO: KRS 211.350 to 211.380, 211.990(2)
STATUTORY AUTHORITY: KRS 194.050, 211.090(3), 211.180(3)
NECESSITY AND FUNCTION: KRS 211.350 to 211.380 and 211.990(2) direct the cabinet to regulate the construction, installation, or alteration of any on-site sewage disposal system, except for systems with a surface discharge. This regulation establishes uniform standards for on-site sewage disposal systems. The function of this regulation is to assure the construction, installation, or alteration of on-site sewage disposal systems in such a manner as to protect public health and the environment.

Section 1. Citation of Regulation. This regulation may be cited as the "Kentucky On-site Sewage Disposal Systems Regulation."

Section 2. Definitions. As used in this regulation the following terms shall have the meanings set forth below:

(1) "Approved" means that which has been considered acceptable to the cabinet.

(2) "Areas subject to frequent flooding" means those areas inundated at a one (1) year or less frequency, for a period of time exceeding seven (7) consecutive days.

(3) "Artificial drainage systems" means a manmade system of surface ditching or berming to divert surface water run-off; or curtain or vertical drains for interception and diversion of lateral groundwater flow; or underdrains for lowering the level of high water tables.

(4) "Blackwater" means liquid and solid human body waste and the carriage waters generated through toilet usage. It also includes wastes resulting from a garbage disposal.

(5) "Cabinet" means the Cabinet for Human Resources and includes its authorized agents.

(6) "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360.

(7) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357.

(8) "Clay" means a soil separate consisting of particles less than 0.002 mm in equivalent diameter.

(9) "Effluent" means the liquid discharge of a septic tank or other sewage pretreatment unit.

(10) "Gravelless pipe" means large diameter perforated piping designed for use in lateral field trenches without the use of trench rock or gravel fill material. Such pipe includes a mandatory overwrap or encasing of synthetic filter material meeting specific criteria.

(11) "Grease" means fats or oils of animal, vegetable, or mineral origin, separately or in colloidal or dissolved states in combination with soaps, detergents, and/or food particles.

(12) "Grease trap" means an on-site sewage disposal system component designed to separate grease and its constituents from the wastewater stream, provide for storage of separated grease, and discharge the remaining wastewater for treatment.

(13) "Greywater" means wastewater generated by water-using fixtures and appliances, excluding the toilet and the garbage disposal.

(14) "Landscape position" means the location of the proposed on-site sewage disposal system installation area on a site relative to the surrounding topographic relief of the land surface. Different landscape positions are defined as follows:

(a) Hill or ridge top: the relatively level area occupying the summit of a hill or ridge.

(b) Shoulder slope: the transitional area immediately adjacent to the hill or ridge top where the slope begins to steepen and fall downward.

(c) Side slope: the slightly to steeply sloping portion of a hillside lying between the shoulder and foot slopes.

(d) Foot slope: the slightly to steeply sloping portion of a hillside near the base or lowest point of elevation.

(e) Toe slope: the lowest point of elevation at the base of a hillside; generally concave in cross-sectional profile.

(f) Terrace: a naturally occurring elevated shelf of level to slightly sloping character adjacent to streams and drainageways.

(g) Plain: level to slightly sloping or undulating areas in wide valleys.

(h) Flood plain: level to slightly sloping areas adjacent to streams or other bodies of water subject to flooding for extended periods.

(i) Depressions: sinkholes or other areas with a concave or cupped cross-sectional profile and lacking surface drainage outlets.

(j) Drainageway: a naturally occurring depressional area in the landscape with slight to steeply sloping sides which causes accumulation of surface and groundwater and channels it to surface or subsurface drainage outlets.

(k) Convex slope: a sloping area with a humped or upwardly bowed cross-sectional profile which promotes dispersal of surface and groundwater.

(l) Concave slope: a sloping area with a cupped or downwardly bowed cross-sectional profile which causes accumulation of surface and groundwater.

(15) "Lateral field" means the area in which the subsurface soil absorption system is installed and is a general term for the system itself.

(16) "Low pressure pipe system" means an on-site sewage disposal system consisting of a sewage pretreatment unit, a dosing tank with pump(s) or siphon(s), a pressurized supply line, manifold, and lateral lines, and necessary control devices and appurtenances.

(17) "Leaching chamber" means a specially designed component for use in lateral field trenches or beds, with or without the use of trench rock or gravel fill material, which forms an open bottomed chamber or cavern over the subsurface soil absorption surface, and which interlocks with other such chambers to obtain the necessary absorption surface area.

(18) "Mottling" means spots or blotches of different color or shades of color interspersed with the dominant color of soil.

(19) "On-site sewage disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground. The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of a sewage pretreatment unit(s), distribution box(es), and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit(s), necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system, or connection to a municipal sewer.

(20) "Parent material" means weathering fragments of bedrock underlying a soil, colluvial or alluvial deposits, or loess deposits, from which the soil is being formed.

(21) "Perched water table" means a saturated zone as identified by soil mottling, caused by a restrictive horizon and is generally above the natural water table.

(22) "Percolation test" means a physical test conducted according to prescribed methods on a parcel of land. Such test measures the ability of the soil to accept a volume of water over a measured time period, under falling hydraulic head conditions. Results are given as a consistent acceptance rate or equilibrium rate in inches per hour.

(23) "Permanent water table" means the zone of soil saturation by groundwater which remains relatively constant unless acted upon by artificial means of drainage or severe weather conditions. Such zone is evidenced by soil colors of black (due to high organic content), grays, blues, or olive greens.

(24) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company or governmental unit.

(25) "Repair area" means an area, either in its natural state or which is capable of being modified, consistent with this regulation, which is reserved for the installation of an additional lateral fields(s) and is not covered with permanent structures or impervious materials.

(26) "Restrictive horizon" means a soil horizon, which due to its cemented, compacted or structural condition, is relatively impervious to the downward movement of water or treated effluent and includes: fragipans; hard pans; iron pans; plow pans and platy or massive structural grades.

(27) "Rock" means the consolidated or partially consolidated mineral matter or aggregate, including weathered rock or saprolite, not exhibiting soil properties, and exposed at the surface or overlain by soil.

(28) "Sand" means a soil separate consisting of particles between two (2) mm and 0.05 mm in diameter.

(29) "Seasonal high water table" means the upper level of a zone of saturation caused by groundwater fluctuation in the soil.

(30) "Secretary" means the secretary for the Cabinet for Human Resources.

(31) "Sewage" means the blackwater and greywater wastes generated in residential, commercial, or public structures or facilities.

(32) "Sewage pretreatment unit" means a watertight sewage treatment structure designed and constructed to receive raw sewage, separate solids from liquids, digest organic matter through a period of retention, and allow clarified effluent to discharge to a subsurface soil absorption system. Such pretreatment units fall into three (3) basic categories:

(a) Septic tanks - which rely predominantly on anaerobic bacterial action for treatment;

(b) Aerobic units - which introduce atmospheric air into the

sewage to promote treatment by aerobic bacteria; and

(c) Combination units - which provide treatment through both anaerobic and aerobic bacterial action and/or mechanical filtering, ozonation or ultraviolet irradiation.

(33) "Silt" means a soil separate consisting of particles between 0.05 mm and 0.002 mm in diameter.

(34) "Site" means the area or parcel of land on which structures or other facilities generating sewage and the on-site sewage disposal system(s) serving such structures or facilities are to be located.

(35) "Slope" means the deviation of the surface of the land from true horizontal, measured as the rise or fall in feet or fractions thereof in a line from a fixed point to another point 100 feet distant. This rise or fall is normally expressed as a percentage of slope.

(36) "Soil" means the naturally occurring unconsolidated mineral and organic material of the land surface. It consists of sand, silt and clay minerals, and variable amounts of organic materials.

(37) "Soil horizon" means a layer of soil or soil material approximately parallel to the land surface and differing from adjacent genetically related layers in physical, chemical, and biological properties or characteristics such as color, structure, texture, consistence, pH.

(38) "Soil map" means a map showing the distribution of soil types or other soil mapping units in relation to the prominent physical and cultural features of the earth's surface.

(39) "Soil morphology" means the physical constitution, particularly the structural properties, of a soil profile as exhibited by the kinds, thickness, and the arrangement of the horizons in the profile, and by the texture, structure, consistence, and porosity of each horizon.

(40) "Soil series" means a basic unit of soil classification, and consisting of soils which are essentially alike in all major profile characteristics.

(41) "Soil structure" means the combination or arrangement of individual soil particles into definable aggregates, or peds, which are characterized and classified on the basis of size, shape, and degree of distinctness.

(42) "Soil survey" means the systematic examination, description, classification, and mapping of soils in an area.

(43) "Soil texture" means the relative proportions of sand, silt, and clay in a soil, and may include particles greater than two (2) mm in diameter, such as gravel, cobblestones, flagstones, chert, etc.

(44) "Subdivision" means the separation of a parcel or tract of land into three (3) or more parcels or tracts for the purpose of development into residential, commercial, or public building sites.

(45) "Subsoil" means, in general concept, that part of the soil below the A horizon.

(46) "Subsurface soil absorption system" means that portion of an on-site sewage disposal system which accepts effluent from a sewage pretreatment unit(s) for further treatment by microbial, plant and animal life within the soil, as well as treatment by filtration, chemical decomposition and bonding within the soil itself, and consists of:

(a) Devices, components, and piping to transport effluent under pressure or by gravity flow, and distribute the effluent to the soil absorption surfaces;

(b) Trenches, beds, chambers, mounds, lagoons, artificial marshes, separately or in combination, which form or enclose the soil absorption surfaces;

(c) Rock, gravel, or other fill materials required within the system, including barrier materials, and fill soil within or over the system; and

(d) Artificial drainage systems, and other necessary site or soil modifications.

(47) "System repair" means minor replacement or reconstruction of a component of an on-site sewage disposal system.

(48) "Textural class" means soils grouped on the basis of a specified range in texture.

(49) "Topsoil" means:

(a) The layer of soil moved in cultivation; and

(b) The A or Ap horizon, as described in published U.S. Conservation Service soil surveys.

(50) "Variance" means a waiver of certain specified requirements of this regulation granted by the cabinet after consideration of documented evidence that the granting of the waiver cannot reasonably be expected to result in the system contaminating groundwater supplies or creating a health hazard through surfacing of effluent, or otherwise creating a public health nuisance.

Section 3. Site Approval Procedures. (1) Individual site approval procedures.

(a) All persons seeking approval of an individual site for the installation of an on-site sewage disposal system shall submit to the local health department an application for a site evaluation on forms provided by the cabinet, pay the required fee as established by the local board of health, and submit a basic site plan drawing showing the following information:

1. Specific address and/or location of the site.

2. Site boundary lines and dimensions of same.

3. Location of existing structures, wells, ponds, streams, easements, roads, drives, if present.

4. Proposed (or existing) location of structure to be served by the system, and proposed system location.

(b) Person(s) seeking approval shall establish with the local health department an appointment time and date for the site evaluation, if they desire to be present during the evaluation for consultation.

(c) If the site evaluation reveals that the applicable requirements of this regulation are met, the area designated for system installation shall be flagged off by the certified inspector using suitable, readily observable markers. The person seeking approval shall receive a copy of the Site Evaluation Form including the overall evaluation rating, along with instruction relative to site limitations (where found) requiring site or system modifications (or alternative systems). Instructions shall also be included to be presented to the Certified Percolation Tester selected by the person to conduct the percolation test (when required). Such instructions shall include the depth at which the test is to be conducted in the designated area, as well as any additional instructions deemed necessary by the Certified Inspector.

(d) After the site evaluation (and percolation test, when required) has been conducted and found acceptable by the cabinet, a permit to construct or install an on-site sewage disposal system shall be obtained prior to construction of any portion of that system. An application for a construction permit shall be submitted and accompanied by a detailed drawing of the proposed system, including all necessary specifications, and required permit fees. Such permits shall be issued only by a certified inspector and only to a certified installer or homeowner as provided in 902 KAR 10:110, and shall expire one (1) year from date of issuance unless an extension is granted by the cabinet.

(2) Subdivision approval procedures - tentative.

(a) All persons seeking tentative approval for new subdivisions developed after the effective date of this regulation shall submit to the local health department the following information:

1. Specific location of the site including a detailed site location map;

2. A preliminary land plan of the property to be developed, showing proposed lots and dimensions of same, topography with ten (10) foot contour intervals, and all proposed or existing wells, ponds, streams, easements, roads, streets, or existing structures; on a minimum 1:100 scale;

3. A detailed overlay for the plan delineating areas of soils with differing characteristics as found on the property, along with descriptive information of those characteristics as per Section 4(4) through (7) of this regulation, prepared by an approved consultant;

4. A statement, supported by official agency documentation, that municipal sewer system service is unavailable or economically

infeasible to provide; and

5. Any other relevant information deemed necessary for site evaluation.

(b) After review of the above information, and any site visits or evaluation deemed necessary, the local health department may issue a tentative approval of the proposed subdivision for on-site sewage disposal system usage. Such approval shall be granted only insofar as to the general feasibility of on-site sewage disposal system usage for the subdivision as a whole, or for specific tracts or areas within the subdivision, and shall not be construed as an approval of any specific lot or site for system installation.

(c) Except where required by local health department regulation, securing tentative approval shall not be construed as a prerequisite to final approval, in that any person seeking approval for a subdivision may elect to initially apply for official site evaluations as outlined in subsection (1)(a) and (b) of this section on a lot-by-lot basis. Local health departments may adopt more specific requirements for subdivision approval, within their respective jurisdictions, which are not in conflict with these regulations.

(3) Subdivision approval procedures - final.

(a) All persons seeking final approval for subdivisions developed after the effective date of this regulation, and for all existing subdivisions of record shall follow the procedures for approval outlined in subsection (1)(a) and (b) of this section, in that each individual lot or site shall stand on its own merit as to approval or disapproval or type, size or design of the system to be installed.

(b) Whenever either tentative or final site evaluation reveals that individual lot or site on-site sewage disposal systems are infeasible or unapprovable due to site and/or soil characteristics, the person(s) seeking approval shall be directed to submit a proposal for a cluster system (or systems) where feasible, or pursue other alternatives under the authority of the Division of Water, Natural Resources and Environmental Protection Cabinet. When cluster system(s) are proposed, legal documents relative to ownership, operation and maintenance of such systems in perpetuity shall also be submitted.

Section 4. Site Evaluation Standards. (1) A certified inspector shall evaluate each proposed site. Based upon the factors contained in subsections (2) through (8) of this section, an official site evaluation form shall be completed classifying each factor as SUITABLE (S), PROVISIONALLY SUITABLE (PS), or UNSUITABLE (U).

(2) Topography.

(a) Uniform slopes under fifteen (15) percent shall be considered SUITABLE with respect to topography.

(b) Uniform slopes between fifteen (15) percent and thirty (30) percent shall be considered PROVISIONALLY SUITABLE with respect to topography. Slopes within this range may require installation of curtain or vertical drains upslope from the lateral field. Usable areas larger than normally required may be needed in this slope range.

(c) Slopes greater than thirty (30) percent shall be considered UNSUITABLE except when a thorough study of the soil characteristics indicates that a subsurface soil absorption system will function satisfactorily and sufficient ground area is available to properly install such a system. Slopes greater than thirty (30) percent may be classified as PROVISIONALLY SUITABLE when:

1. The slope can be terraced or otherwise graded and the lateral field located in naturally occurring soil a minimum ten (10) foot horizontal distance from the top edge of the fill embankment; or

2. The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE to a depth of at least thirty (30) inches;

3. Surface water run-off is diverted around the lateral field;

4. If necessary, groundwater flow is intercepted and diverted through curtain or vertical drains; and

5. There is sufficient ground area available to install the on-site sewage disposal system with these modifications.

(d) Complex slope patterns and slopes dissected by gullies and ravines shall be considered UNSUITABLE with respect to topography.

(3) Landscape position.

(a) Convex hill or ridge tops, shoulder slopes, side slopes, and level plains shall be considered SUITABLE with respect to landscape position.

(b) Convex foot slopes and natural terraces shall be considered PROVISIONALLY SUITABLE with respect to landscape position.

(c) Concave hill or ridge tops, shoulder slopes, side slopes, foot slopes, toe slopes, natural drainageways and terraces may be considered PROVISIONALLY SUITABLE when:

1. The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE to a depth of at least thirty (30) inches;

2. Surface water run-off is diverted around the lateral field; and

3. Groundwater flow is intercepted and diverted through curtain or vertical drains.

(d) If the provisions above listed in paragraph (c) of this subsection cannot be met the landscape position shall be classified UNSUITABLE.

(e) Areas closer than fifty (50) feet to the rim of a sinkhole, or areas subject to frequent flooding shall be considered UNSUITABLE with respect to landscape position.

(4) Soil characteristics (morphology). Soil borings shall be taken in the area to be used for subsurface soil absorption systems. At least four (4) such borings shall be taken to a depth of forty-two (42) inches or as required to determine the soil characteristics. Backhoe pits may be required when a more direct observation of soil horizons is deemed necessary for proper evaluation. Backhoe pits shall be required on all individual sites where the presence of stony or rocky soils precludes auger use, and on all sites which have been strip mined, filled or otherwise disrupted. Soil boring cores or exposed soil horizons in backhoe pits shall be evaluated and a determination made as to the suitability of the soil to absorb effluent. The important soil characteristics which shall be evaluated by the certified inspector are as follows:

(a) Texture. The texture of the different horizons of soils may be classified into four (4) general groups.

1. SOIL GROUP I - sandy texture soils contain more than seventy (70) percent sand-sized particles in the soil mass. These soils do not have enough clay to be cohesive. Sandy soils have favorable sewage application rates, but may have a low filtering capacity leading to malfunction due to contamination of groundwater. The sandy group includes the sand and loamy sand soil textural classes and shall generally be considered SUITABLE with respect to texture.

2. SOIL GROUP II - coarse loamy texture soils contain more than thirty (30) percent clay-sized particles in the soil mass. They exhibit slight or no stickiness. The coarse loamy group includes sandy loam and loam soil textural classes and shall generally be considered SUITABLE with respect to texture.

3. SOIL GROUP III - fine loamy texture soils contain less than forty (40) percent clay-sized particles and not more than thirty (30) percent sand-sized particles in a soil mass. They exhibit slight to moderate stickiness. The fine loamy group includes sandy clay loam, silt loam, clay loam, and silty clay loam textural classes and shall generally be considered PROVISIONALLY SUITABLE with respect to texture.

4. SOIL GROUP IV - clayey texture soils contain forty (40) percent or more clay-sized particles and include sandy clay, silty clay, and clay. There are two (2) major types of clays: the 1:1 clays shall generally be considered PROVISIONALLY SUITABLE as to texture; and the 2:1 and mixed mineralogy clays, which shall be considered UNSUITABLE as to texture.

5. The soil texture shall be estimated by field testing. Laboratory estimation of texture by particle-size analysis may be substituted for field testing when conducted in accordance with ASTM (American Society for Testing and Materials) C-136 and D-422 standard for sieve and hydrometer analyses, at the property owner's expense.

(b) Structure is usually not important in soil Groups I and II, and

these types of soils shall generally be considered SUITABLE as to structure. The four (4) kinds of soil structure that are most significant in movement of sewage effluent through Groups III and IV soils are described as follows:

1. Block-like soil structure - block-like soil structure in Group III and IV soils shall be considered PROVISIONALLY SUITABLE. Some rocks even though weathered, such as slates or creviced or fractured rocks, exhibit block-like structure. Rock shall be considered UNSUITABLE as to structure.

2. Prismatic soil structure - prismatic structure is generally found in fragipans or other restrictive horizons and shall be considered UNSUITABLE.

3. Platy soil structure - if Group III and IV soils fall out into plate-like sheets, then the soil would have platy structure which shall be considered UNSUITABLE.

4. Absence of soil structure - soils in Groups II, III, or IV which are massive and exhibit no structural aggregates shall be considered UNSUITABLE.

(5) Internal soil drainage.

(a) Internal soil drainage characteristics shall be determined by the following procedures:

1. Comparison of moist soil samples collected from each soil horizon, to a minimum depth of forty-two (42) inches, to standard Munsell notation soil color charts to establish color hue, value and chroma; and

2. Observation of soil profile for evidence of low chroma (chroma 2 or less) soil horizons, and mottling characterized as to abundance, size and contrast; and

3. Observation of soil profile for evidence of freestanding groundwater.

(b) Soils exhibiting uniform colors of greater than chroma 2 with no mottling or free groundwater at a depth of forty-two (42) inches or greater shall be considered SUITABLE with respect to internal drainage, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE.

(c) Soils exhibiting uniform colors of greater than chroma 2 with no mottling or free groundwater at a depth of less than forty-two (42) inches but greater than twenty-four (24) inches shall be considered PROVISIONALLY SUITABLE with respect to internal drainage, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE.

(d) Soils exhibiting uniform colors less than chroma 2 and/or mottling, or free groundwater at a depth of less than twenty-four (24) inches may be classified as PROVISIONALLY SUITABLE, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE; and

3. Curtain drain, vertical drain, or underdrain systems are installed to intercept lateral groundwater movement, or to lower and maintain the free groundwater level to a depth of greater than twenty-four (24) inches.

(e) Soils exhibiting uniform colors less than chroma 2 and/or mottling, or free groundwater at a depth of less than twenty-four (24) inches which cannot meet the criteria listed in paragraph (d)1 or 2 of this subsection shall be considered UNSUITABLE.

(6) Soil depth.

(a) Presence of bedrock or large flagstones ("floaters") shall be determined by probing the site and through direct observation of the soil profile. Soil depth shall be considered the vertical distance from the existing ground surface to solid, fractured or rippable bedrock; or to weathered parent material; or to large flagstones which occupy more than thirty (30) percent of the exposed soil profile.

(b) Soil depths forty-two (42) inches or greater shall be considered SUITABLE as to depth.

(c) Soil depths less than forty-two (42) inches, but at least twenty-four (24) inches, shall be considered PROVISIONALLY SUITABLE as to depth.

(d) Soil depths less than twenty-four (24) inches shall be classified UNSUITABLE as to depth.

(e) Where special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between the bottom of the lateral field, such soils may be reclassified PROVISIONALLY SUITABLE as to depth.

(7) Restrictive horizons.

(a) Presence of restrictive horizons such as fragipans, iron pans, clay pans, plow pans, or platy or massive structural grades shall be determined by observation of the soil profile for brittle or dense horizons underlying shallow horizons displaying mottling or concretions of iron or manganese.

(b) Soils in which restrictive horizons are at forty-two (42) inches in depth or greater shall be considered SUITABLE.

(c) Soils in which restrictive horizons are at depths less than forty-two (42) inches, but at least twenty-four (24) inches, shall be considered PROVISIONALLY SUITABLE.

(d) Soils in which restrictive horizons are at depths less than twenty-four (24) inches may be classified PROVISIONALLY SUITABLE, provided that:

1. Special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between the bottom of the lateral field and the restrictive horizon; or

2. The provisions of Section 5(3)(a)2 of this regulation are met.

(e) Soils in which restrictive horizons are at depths less than twenty-four (24) inches which cannot meet the above listed provisions in paragraph (d)1 or 2 of this subsection, shall be considered UNSUITABLE.

(8) Available space.

(a) Sites shall have sufficient usable land area to permit the installation and proper functioning of on-site sewage disposal systems, in addition to the land area to be occupied by existing or proposed structures, or other natural or manmade features of the site which are not compatible with system installation.

(b) For general determination of sufficient usable land area ONLY for the subsurface soil absorption system (lateral field) and NOT including the structure(s) it serves, the pretreatment unit portion of the complete on-site sewage disposal system, or any other site features, the following shall apply for each 100 gallons per day wasteload or fraction thereof:

1. Uniform slope range of zero to no more than fifteen (15) percent in the system area - 1,000 square feet;

2. Uniform slope range from more than fifteen (15) percent to no more than twenty (20) percent in the system area - 1,250 square feet;

3. Uniform slope range from more than twenty (20) percent to no more than twenty-five (25) percent in the system area - 1,500 square feet;

4. For each five (5) percent increase, or fraction thereof over twenty-five (25) percent add an additional 250 square feet;

5. The above figures are based upon space requirements for a conventional trench type lateral field installed in a Group III provisionally suitable soil and does not include any minimum setback distances which may apply on any given site. Group IV soil sites will require more space than indicated, and Groups I-III suitable soil sites will require less, as will most other modified or alternative subsurface soil absorption systems.

(c) Sites classified PROVISIONALLY SUITABLE shall have a minimum repair area equal to 100 percent of the land area occupied

by the lateral field set aside in addition to the space required in paragraph (b) of this subsection.

(9) Determination of overall site suitability. All of the criteria in subsection (2) through (8) of this section shall be determined to be SUITABLE, PROVISIONALLY SUITABLE, or UNSUITABLE as indicated. If all criteria are classified the same, that classification will prevail. However, it is unlikely that all criteria will be classified the same in all situations. Where there is a variation in classification of the several criteria, the following shall be used in making the overall site classification. The lowest of the uncorrectable characteristics will determine the site classification.

(a) If the topography is classified as UNSUITABLE it may be reclassified PROVISIONALLY SUITABLE under the conditions outlined in subsection (2) of this section.

(b) If the landscape position, soil texture, soil structure, internal drainage, or depth to restrictive horizon is classified as UNSUITABLE, and cannot be reclassified as PROVISIONALLY SUITABLE through modification the overall classification will be UNSUITABLE regardless of the other criteria unless the provisions of Section 5(6) of this regulation are met.

(c) When soil depth is classified as UNSUITABLE, it may be reclassified as PROVISIONALLY SUITABLE under the conditions outlined in subsection (6)(e) of this section.

Section 5. Site Classification and System Restrictions. (1) Restrictions shall be placed upon the types of on-site sewage systems which will be approved for use due to site limitations and/or daily waste load volume. Such restrictions shall be determined by the following conditions, and the modified or alternative system(s) listed shall be considered as the minimum acceptable system(s).

(2) On sites with an overall evaluation rating of SUITABLE a conventional subsurface soil absorption system (twenty four (24) inches deep), shall be permitted.

(3) On sites with an overall rating of PROVISIONALLY SUITABLE (the provisionally suitable rating was originally granted or site modifications were made raising an unsuitable rating to that level) due to:

(a) Depth to rock, water table, or restrictive horizon.

1. Twenty-four (24) inches but less than forty-two (42) inches - a shallow (six (6) - twenty-three (23) inch deep) modified conventional trench, gravelless pipe, or low pressure pipe (LPP) system, with a minimum of ten (10) inches of fill soil above the trench barrier material and a minimum separation distance of eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon.

2. Eighteen (18) inches to less than twenty-four (24) inches (for soils with restrictive horizons only) a shallow (six (6) inches to eleven (11) inches deep) modified, conventional trench, gravelless pipe, or low pressure pipe (LPP) system with a minimum of ten (10) inches of fill soil above the trench barrier material; a corresponding minimum separation distance of twelve (12) to seventeen (17) inches between trench bottoms and the restrictive horizon; a two (2) foot increase in minimum spacing between individual trenches; and, a twenty-five (25) foot increase in minimum setback distances downslope of the lateral field.

3. Eighteen (18) inches to less than twenty-four (24) inches - (for soils with rock or water tables only) a mound system; or, sufficient filling of the area with suitable soil to allow installation of a modified or alternative system after a one (1) year settling period.

4. Less than eighteen (18) inches - filling of the area with suitable soil to sufficient depth to allow modified or alternative system installation after a one (1) year settling period.

(b) Soil texture or structure.

1. Soil Group III - a conventional system.

2. Soil Group IV - a conventional trench system modified by the use of multiple septic tanks in series or an aerobic pretreatment unit, as outlined in Section 8(2) of this regulation. Such systems may also be required to be modified by the use of alternate lateral fields; by dosing tank and pump or siphon; by dosed alternate lateral fields; by dosed automatic alternating lateral fields; or by the use of a low pressure pipe (LPP) system; by a lagoon and lateral field system; or by other alternative systems approved for such use by the cabinet. Modified conventional trench systems on sites with this soil group shall use equal flow distribution boxes only.

(4) On sites where available space is restricted due to site size or topography:

(a) A conventional system with lateral beds in lieu of trenches or a combination of trenches and beds; or installation of as much linear footage of lateral trench and/or bed as can be installed using hillside or drop distribution with overflow from the last box in series going into a holding tank.

(b) A low pressure pipe (LPP) system.

(c) Installation of permanent low-volume flush water closets or nonwater carriage toilet devices to reduce wasteload.

(5) On sites where a PROVISIONALLY SUITABLE rating was initially obtained (or was obtained after site modifications), which may be affected by a combination of site limitations, the on-site system(s), whether conventional, modified, or alternative, which will overcome all limitations involved shall be installed.

(6) Sites originally classified as UNSUITABLE may be used for on-site sewage disposal systems, provided engineering, hydrogeologic, and soil studies indicate to the local health department that a suitable conventional system or a suitable modified or alternate system can reasonably be expected to function satisfactorily. Such sites may be reclassified as PROVISIONALLY SUITABLE upon submission to the local health department of the following:

(a) Adequate substantiating data including a percolation test to indicate that an on-site sewage disposal system can be installed so that the effluent will receive adequate treatment;

(b) Adequate substantiating data to indicate the effluent will not contaminate any drinking water supply, groundwater used for drinking water, or any surface water;

(c) Adequate substantiating data to indicate that the effluent will not be exposed on the ground surface where it could come in contact with people, animals, or vectors.

Section 6. Percolation Testing Standards. (1) Local health departments may require percolation testing, when deemed necessary to confirm site evaluation findings, only on sites where the original, naturally occurring soil horizons have been destroyed, commingled or buried through strip mining, road cutting, filling or other disruptive site modifications in the area proposed for system installation. Such percolation testing results shall be used to determine the relative ability of the commingled fill material to accept effluent. When such a test is deemed necessary it shall be performed in the presence of a certified inspector.

(2) All percolation tests shall be performed in accordance with the procedures outlined in this section. Such tests meeting all procedure standards shall be considered "approved."

(3) Excavation of test holes.

(a) Test holes shall be located on each site within the staked area designated by the certified inspector.

(b) A minimum of four (4) test holes shall be dug in this area to the depth of the proposed lateral field as specified by the site evaluation.

(c) Test holes shall be located in the designated area so as to provide uniform coverage of the area, with no more than a fifty (50) foot spacing between centers of adjacent test holes.

(d) Test holes shall be six (6) to eight (8) inches in diameter.

(e) After excavation, all holes shall be scarified in the lower twelve (12) inches of the hole to break up smearing and restore absorption surfaces.

(f) All loose soil material shall be removed from test holes to reduce puddling and sealing of soil pores by fine soil materials.

(g) A portion of the excavated materials from the test holes shall

be mounded around each hole to prevent surface water run-off from entering the hole in the event of rainfall during the period preceding and continuing through the conduct of the test.

(4) Presoaking of test holes.

(a) In soils which do not exhibit surface or subsurface cracking in dry weather (low shrink-swell potential), the test holes shall be presoaked by filling with water for at least fourteen (14) hours prior to the test.

(b) In soils which exhibit surface or subsurface cracking during dry weather due to moderate to high shrink-swell potential (Soil Group IV), the soil surrounding the test holes shall be saturated at least three (3) days by maintaining at least twelve (12) inches of water in each hole during that period. After completion of the swelling procedure stated above, test holes shall be left for a period of fourteen (14) hours before proceeding with measurement procedures. In lieu of the above procedure, testing for such soils may be conducted using the presoak procedure outlined in paragraph (a) of this subsection, when such tests are conducted during the months of December through April.

(5) Conduct of test measurements.

(a) All measurements shall be made from fixed reference points establishing the bottom of the test hole and a point exactly six (6) inches above the bottom. Measurement shall be made using calibrated measuring sticks, calibrated instruments or devices using floats, or other such equipment acceptable to the cabinet.

(b) In test holes containing more than six (6) inches of water remaining after the presoaking/swelling period (assuming significant rainfall has not occurred between the completion of presoak/swelling procedures and the start of test measurement), the water depth shall be recorded and considered as prima facie evidence of an unsatisfactory percolation rate.

(c) In test holes containing six (6) inches or less of water remaining after the presoaking/swelling period, the water shall be adjusted to a six (6) inch depth and testing period.

(d) Water added to test holes for testing purposes shall be free of sediment and foreign material, and shall be added in such a manner that slaking and scouring of test hole surfaces is minimized.

(e) Testing on each hole shall begin by adjusting the water depth as in paragraph (c) of this subsection, followed by measurement of the amount of decrease in water depth at the end of a one (1) hour period from the six (6) inch reference point. Measurements shall be recorded on forms supplied by the cabinet for this purpose. Such measurements shall be recorded to the nearest one-eighth (1/8) inch.

(f) After first hour measurements, all test holes shall be readjusted to the six (6) inch water depth and remeasured and recorded at the end of another one (1) hour period. This process shall be repeated for a total four (4) hour period. The hourly periods for each test hole shall begin at the time the water depth is readjusted to six (6) inches. Actual time at which the test was initiated on each hole shall be recorded.

(g) The fourth hour readings of all test holes shall be averaged and the result recorded on the report form as the equilibrium rate, or consistent rate of acceptance.

(h) For percolation testing in Group I soils the time period between readings shall be reduced to ten (10) minute intervals for at least four (4) successive readings. The percolation rate in inches per hour for all holes shall be calculated from the results thus obtained, and the last reading averaged to obtain the equilibrium rate.

(i) In the event the rate of acceptance in any of the test holes is not consistent, the affected test hole or holes shall continue to be tested until a consistent rate is obtained. The rate(s) thus obtained for the affected hole(s) shall be used in calculating the equilibrium rate. A consistent rate shall be considered to have been obtained when the acceptance rate for an affected test hole remains the same, or decreases no more than one-half (1/2) inch, on two (2) consecutive hourly measurements.

(j) When test holes fail to meet the minimum acceptance rate of one-half (1/2) inch per hour, the area represented by the hole or holes involved shall be removed from consideration for placement of the lateral field system. In the event that the area represented by the failing hole or holes reduces the usable (passing) area to the extent an approved system cannot be installed, or a failing equilibrium rate for all holes is obtained, the site shall be considered unacceptable for a subsurface sewage disposal system, if percolation test findings confirm similar site evaluation findings.

Section 7. Certification to Conduct Percolation Tests and Approval of Consultants. (1) No person shall offer service to conduct percolation tests until they have met the requirements of this section and have been issued certification.

(2) All persons who propose to offer such service shall submit their name, occupation, professional registration number, and address to the cabinet.

(3) Persons eligible for certification shall include:

(a) Engineers;

(b) Land surveyors;

(c) Architects;

(d) Soil scientists;

(e) Registered sanitarians;

(f) Geologists.

(4) To be eligible for recertification the persons listed in subsection (3) of this section shall possess a valid professional registration, license, certificate or other such document, issued by the respective profession's registration, licensure, or certification board, agency, committee, or other recognized body within the state of Kentucky. Failure to maintain professional registration shall result in the suspension of certification to conduct percolation tests until such registration is reestablished.

(5) Persons meeting eligibility requirements shall be issued a certification number, which shall be placed on all percolation test report forms, and any additional documents related thereto.

(6) Persons seeking certification may be required to demonstrate their ability to conduct percolation tests in accordance with the standards in Section 6 of this regulation prior to receiving such certification.

(7) All certified persons shall be subject to unannounced monitoring by the cabinet, while conducting percolation tests, to determine if standards are being met.

(8) When the cabinet finds that improper testing or test reporting practices exist, the certified person involved shall be subject to suspension or permanent revocation of such certification.

(9) Whenever suspension or revocation proceedings are initiated by the cabinet, the certified person shall have the right to request a hearing before the cabinet to present evidence on his behalf as to why the intended action should not be taken.

(10) Whenever the cabinet has suspended or revoked certification for cause, the cabinet shall provide notification to the appropriate professional body(ies) with which the person affected is registered, licensed, or certified, for any further action they deem necessary.

(11) Approval of consultants. The cabinet may, as it deems necessary, grant limited approval to eligible persons to perform tentative site evaluations ONLY for subdivisions proposed for development which intend to utilize on-site sewage disposal systems for sewage disposal.

(a) Persons eligible for approval as consultants shall include:

1. Registered engineers;
2. Registered architects;
3. Soil scientists;
4. Geologists;
5. Former fully certified inspectors who are no longer employed by the cabinet or its agents and whose certification has not been suspended or revoked, but was rescinded upon termination of employment.

(b) The cabinet may require attendance at training seminars and

competency testing as a condition of maintaining approved status.

(c) Approval granted under this subsection may be suspended or revoked for cause, and the procedures outlined in subsections (9) and (10) of this section shall apply, as applicable.

Section 8. System Sizing Standards. (1) Design waste flows. Daily waste flow volumes for system design and sizing purposes shall be computed for each residential unit, business or commercial facility, or other public facility, based upon the design flow per designated flow unit listed in Table 1 below, times the number of such flow units involved.

(a) When approved permanent low-volume flush water closets using one (1) gallon or less of water per flush cycle are installed exclusively in any residence, commercial facility or other public facility, the daily design waste flow unit for that specific residence or facility may be reduced to the figure given in Column B in Table 1.

(b) When approved permanent nonwater carriage water closet type devices (composting toilets, incinerator toilets, oil carriage toilets, etc.) are installed exclusively in any residence and no other blackwater type wastes are created, the daily design waste flow unit for that specific residence may be reduced to the figure given in Column C in Table 1.

(c) No daily waste flow unit reduction shall be granted for installation of nonpermanent flow reduction devices such as: showerheads, showerhead or faucet inserts, suds-saver type automatic washing machines, or other such devices. Use of water saving devices including low-volume flush water closets, may be required by the cabinet when deemed necessary due to site limitations.

(d) All on-site sewage systems which receive a design daily waste flow of 2,000 gallons or more (or require more than 1,000 lineal feet of lateral field) shall be designed to provide dosing of the lateral field through the use of dosing tanks and pumps or siphons, or through the installation of a low pressure pipe (LPP) system.

(e) The following businesses or facilities shall not be approved for disposal of waste waters into an on-site sewage disposal system due to the nature of the wastes generated or the high volume of wastewater created:

1. Laundromats except on an experimental basis as provided under Section 8(14) of this regulation;
2. Car washes;
3. Livestock slaughterhouses (kill room wastes only);
4. Funeral parlors or mortuaries (embalming wastes only); and
5. Factories (industrial or process wastes only).

Table 1
Design Daily Waste Flow

Source of Sewage	Units	Gallons/Unit/Day Standard	Column B	Column C
Dwelling Units:				
Single Family Residences	Each bedroom	120	96	90
Hotels or Motels	Each room	100	80	
Apartments/Condominiums/Townhouses	Each bedroom	120	96	
Rooming Houses	Each bedroom	120	96	
Mobile Home Parks	Space	300	No reductions	
Commercial/Industrial:				
Retail stores	Each toilet room	200	120	
Malls, shopping Centers	Each 1,000 sq. ft.	200	120	
Offices	Employee	20	12	
Medical offices (with laboratories)	Employee	50	40	250 additional
Dental offices (with water rinse units)	Exam chair	250	200	
Dental offices (with suction units)	Exam chair	50	40	
Industrial buildings	Employee/ shift (does not include process water or cafeteria)	20	12	
(Add for showers)	Employee/ shift	10	No reductions	
Construction site	Employee/ shift	20	12	
Visitor center	Visitor	5	3	
Barber shops	Chair	75	60	
Beauty shops	Chair	125	100	
Laundromats: (Experimental only)	Machine	300	No reductions	
Eating and Drinking Establishments:				
Restaurant (does not include bar or lounge)	Meal/seat	15	12	
Bar or Lounge	Seat	20	16	
Drive-in (no public restrooms)	Established	500	No reductions	
Drive-in (with public restrooms)	Car stall	20	16	
Food Markets:				
Prepackaged	Store	250	No reductions	
Food processing	Store	1,000	900	
(With eat-in delicatessen)	Meal/ Seat	15 Add.	12 Add.	
(With carryout delicatessen)	Store	250 Add.	250 Add.	
Rabbit, or fish processors (with solid waste separation)	Employee/ Shift per animal or fish processed	20 0.5	12 No reduction	
Institutional (Includes Food Service):				
Hospitals and surgical centers	Each bed	300	240	
Mental	Each bed	100	80	
Prison or jail	Each inmate bed	100	80	
Nursing Home, Rest Home	Each resident bed	100	80	
Schools and Churches (Includes Food Service):				
Elementary, day care, kindergarten	Student	25	20	
High School	Student	35	28	
College	Student	35	28	
Boarding school	Student	60	48	
Churches (without kitchen facilities)	Average attendance/ person	3	2	

(with kitchen facilities)	Average attendance/ person	5	4
Recreational:			
Recreational Vehicle park w/ sewers to each space	Space	125	No reductions
With central bath only	Space	75	60
Dump station only	Space	25	No reductions
Day Camp (no meals)	Person	15	12
Residential camp (includes cafeteria)	Person	60	48
Resorts/housekeeping cabin	Bedroom	120	96
Tent Camping areas w/ central bath	Space	75	60
Country Clubs (does not include food service)	Member	15	12
Golf courses	Average Attendance/ Person	10	8
Swimming pools	Design Capacity/Person	10	8
Picnic Parks, sports facilities, ball parks (w/toilet only)	Average Attendance/ Person	5	3
(w/food service)	Average Attendance/ Person	8	6
Movie theaters	Seat	5	3
Drive-in theaters (includes food service)	Space	15	12
Skating rink/ dance hall	Person (based on rated capacity)	10	8
Bowling Alley	Lane	100	80
Transportation:			
Airport, bus or rail depot	Passenger	5	3
Auto service station	Each Water Closet or Urinal	250	150

(2) Residential pretreatment units. All septic tanks used in single-family residence on-site sewage disposal systems shall meet the minimum working liquid capacities listed below, based on the number of bedrooms involved. Aerobic units or other types of approved pretreatment units shall be sized according to their rated treatment capacities in gallons per day, based upon the design daily waste flow per design unit given in Table 1. On sites with soils of Soil Group IV, additional pretreatment shall be provided by use of one (1) of the following methods:

(a) Installation of multiple septic tanks in series. The first tank, receiving raw sewage from the residence shall be of the required minimum capacity in Table 2, or of at least 1,000 gallons capacity. Additional tanks shall be installed in series as needed to provide a total capacity equal to the required minimum plus an additional fifty (50) percent;

(b) Installation of an aerobic pretreatment unit. For those aerobic units which do not include an integral trash or primary settling chamber in their construction, such shall be provided by the series installation of a minimum 500 gallon septic tank to receive raw sewage, with effluent discharging into the aerobic unit.

Where required minimum tank capacities for residential systems exceed 1,000 gallons and larger capacity tanks are unavailable, serial installation of multiple tanks is permitted to obtain the necessary capacity. In such instances the first tank in series shall have a minimum capacity of 1,000 gallons.

Table 2
Minimum Capacity of Pretreatment Units

Number of Bedrooms	Gallon Capacity (Without Garbage Disposal)	Gallon Capacity (With Garbage Disposal)
2 or less	750	1,000
3	1,000	1,250
4	1,250	1,500
5	1,500	1,750
Each Additional	250	250

(3) Commercial and public facility pretreatment units.

(a) Minimum working liquid capacities for all septic tanks for commercial and public facility on-site sewage disposal systems shall be determined by multiplying the daily design waste flow per unit times the total number of such units, plus an additional fifty (50) percent of that figure for solids storage. (Gallons/unit/day X Number of Units) + 50% = MINIMUM CAPACITY REQUIRED.

(b) Procedures and requirements listed in subsection (2) of this section relative to: sites with soils in Soil Group IV; aerobic and other types of pretreatment units; and use of multiple tanks in series to obtain required capacity; shall also apply to commercial facility system installation.

(c) All commercial or public facilities engaged in the manufacture, processing, preparation, and service of food and food products shall be provided with an approved grease trap. All wastewater drain piping from food processing equipment; sinks for washing of food, equipment and utensils; dishwashers; and floor drains in food preparation and processing areas shall be separated from other wastewater piping, and discharge into a grease trap prior to entrance into an on-site sewage disposal system. Minimum liquid capacity of grease traps shall be based upon the total design daily waste flow for the facility served. Grease trap capacity shall be a minimum of 150 gallons for daily waste flows of 4,000 gallons or less; 300 gallons for daily waste flows of 4,001 to 8,000 gallons; and 500 gallons for daily waste flows greater than 8,000 gallons. All grease traps shall be placed outside of the structure served unless special approval is granted by the cabinet. In all instances the grease trap shall be located as close as practicable to the source of the wastewater to prevent separation of grease prior to entry into the grease trap.

(4) Sizing of gravity distribution lateral fields. All gravity distribution lateral fields for on-site sewage disposal systems shall be sized based upon the design daily waste flow for the residence, commercial or public facility involved as determined from Table 1. The total daily waste flow multiplied by the linear footage requirement per gallon found in Table 3 for the specific site soil characteristics, shall determine the minimum linear footage of lateral trench required.

Table 3
Application Rates for Gravity Distribution
Lateral Fields Based on Two (2) Foot
Conventional Trench Width

Soil Group	Soil Texture Classes	Application Rate Gal/Sq. Ft/Day	Linear Ft. Per Gallon
I Sands	Sand	1.2	.42
	Loamy Sand	.9	.56
II Coarse loams	Sandy Loam	.7	.72
III Fine loams (with suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	.5	1.0
Fine loams (with provisionally suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	.37	1.35
IV Clays (Kaolinitic or 1:1 with provisionally suitable structure)	Sandy Clay Silty Clay Clay	.27	1.85

(5) Sizing of low pressure piping distribution lateral fields. All low pressure piping (LPP) distribution lateral fields for on-site sewage disposal systems shall be sized based upon the calculated total design daily waste flow for the residence, commercial or public facility involved as determined from Table 1. The total daily waste flow divided by the allowable daily loading rate found in Table 4, for the specific site soil characteristics, shall determine the minimum square footage of absorption area required. Further system design requirements shall be determined based upon the criteria and specifications given in the North Carolina State University Publication UNC-SG-82-03, "Design and Installation of Low-Pressure Pipe Waste Treatment Systems."

Table 4
Application Rates for
Low Pressure Pipe (LPP) Lateral Fields

Soil Group	Soil Texture Classes	Rate Gal/ Sq.Ft./Day
I Sands	Sand Loamy Sand	0.5
II Coarse Loams	Sandy Loam Loam	0.4
III Fine Loams (with suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	0.3
Fine Loams (with provisionally suitable structure	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	0.175
IV Clays (Kaolinitic or 1:1 with provisionally suitable structure	Sandy Clay Silty Clay Clay	0.1

(6) Sizing of gravelless pipe systems. Gravelless pipe in eight (8) and ten (10) inch internal diameter sizes only, may be used in lieu of standard lateral trenches for all conventional and modified conventional lateral field applications (except those in Group IV soils where gravelless pipe is permitted only on an experimental basis), linear footage requirements listed in Table 3 shall also apply to gravelless pipe.

(7) Sizing of gravity distribution lateral beds. When lateral beds are permitted in lieu of standard two (2) foot wide lateral trenches, the required total length of standard lateral trench needed shall be calculated from Tables 1 and 3 information. That figure shall be multiplied by the percentage shown on Table 5; for the bed width intended for use. The number of linear feet resulting shall be the amount required for installation for that particular bed width.

Table 5
Lateral Bed Length Requirements
for Gravity Distribution Systems
Based on Bed Width

Bed Width	Multiply Total Linear Footage of Two (2) Foot Wide Trench Required By:
3'	70%
4'	55%
5'	45%
6'	40%
7'	35%
8'	32%
9'	30%
10'	28%
11'	27%
12'	26%

(8) Sizing of leaching chamber systems. Leaching chamber systems may be used in lieu of standard lateral trenches for all conventional and modified conventional lateral field applications and for experimental alternative systems on slopes of no more than ten (10) percent for trench installation and no more than five (5) percent for bed installation. Linear footage requirements for chambers shall be based on nominal internal chamber width as follows:

(a) In trench configuration - for nominal widths of twenty-eight (28) inches to thirty (30) inches, sixty (60) percent of Table 3 required linear footage; for nominal widths of forty-two (42) inches to forty-four (44) inches, forty-five (45) percent of Table 3 required linear footage.

(b) In bed configuration - for all chamber widths eighty-five (85) percent of Table 5 linear footage requirements based on total bed width to nearest foot.

(c) Other chamber designs with nominal widths outside the ranges listed in paragraph (a) of this subsection shall be sized on a case-by-case basis, accordingly.

(9) Sizing of gravity distribution alternate lateral fields or beds. When alternate gravity distribution lateral fields or beds are used or required, the individual alternate lateral fields or beds shall each contain one-half (1/2) of the total linear footage required for the system. Such alternate lateral fields or beds shall be alternated in use on a yearly basis through the use of an approved alternating valve or device.

(10) Sizing of dosed gravity distribution automatic alternating lateral fields or beds. When dosed automatic alternating lateral fields or beds are used or required, the individual alternating lateral fields or beds shall each contain one-half (1/2) of the total linear footage required for the system. Dosed automatic alternating lateral field or bed systems shall be designed and operated so as to alternate between lateral fields or beds with doses of effluent, through the use of two (2) or more dosing siphons or pumps controlled by an automatic alternating device, or by dosing simultaneously.

(11) Sizing of combination evapotranspiration/absorption lagoon and lateral field systems. On sites with Group IV soils where a conventional lateral field system or alternative system cannot be installed due to heavy clay soils with poor or no structure conditions, a combination evapotranspiration/absorption lagoon and shallow lateral field system may be considered for installation. Total daily waste flow shall be determined by using Table 1, and the total square footage of lagoon waste surface area shall be calculated by multiplying the total gallons of waste flow per day by five (5) square feet per

gallon. Effluent entering the lagoon shall have passed through a properly sized pretreatment unit, and overflow shall be directed to a shallow (six (6) inches to eighteen (18) inches depth) lateral field. Such lateral field size shall be calculated by multiplying the total daily waste flow in gallons by .10 linear feet per gallon.

(12) Sizing of mound systems. Mound systems used to overcome site conditions of shallow depth to rock or water tables, or slowly permeable soils shall be designed and sized based upon the information and criteria given in the United States Environmental Protection Agency publication EPA 625/1-80-012 "Design Manual, On-site Wastewater Treatment and Disposal Systems," Chapter 7.2.4 on Mound Systems.

(13) Sizing of residential laundry waste systems. When, in the cabinet's opinion, improved system performance may be attained by separating laundry greywater waste flows from other residential waste flow for new system installations, or as repair for existing systems, such separation shall be accomplished in the following manner:

(a) Greywater sewer for the washing machine shall be separated from the main house sewer;

(b) Laundry greywater shall discharge into a lateral bed or trench(s) of a minimum of 100 square feet of bottom surface soil absorption area for a two (2) bedroom residence and an additionally fifty (50) square feet for each additional bedroom.

(c) On new system installations where laundry wasteflow separation is permitted a fifteen (15) percent reduction in the primary system lateral field requirements shall be allowed only for sites with soils in Soil Groups I-III. On sites with soils in Soil Group IV such separation may be required but no system site reduction will be granted.

(14) Sizing of other on-site sewage disposal systems. Other alternative systems not specifically mentioned in this regulation, or experimental systems, shall be sized according to applicable standards on a case-by-case basis by the cabinet. Such sizing shall be based upon site characteristics, effluent characteristics, pretreatment processes, technology involved, and other demonstrable factors.

(15) Sizing of dosing tanks. Dosing tanks shall be of sufficient capacity to hold two (2) times the total design daily waste flow calculated from Table 1 for single-family residential structures, and one and one-half (1 1/2) times for commercial and public facilities.

(16) Use and sizing of holding tanks. Holding tanks shall only be permitted under the following conditions:

(a) For single family residences, commercial and public facilities - where written official verification is submitted that a municipal sewer system will be available within a maximum two (2) year period; as an addition to a new or existing system due to limited space precluding required full system installation or existing system expansion; and, as per paragraph (c) of this subsection.

(b) For commercial and public facilities only - where less than 200 gallons per day total wasteflows are involved and no other feasible method of wastewater disposal is available due to site limitations.

(c) For all residential, commercial, and public facilities - when site limitations preclude immediate system installation, the local health department certified inspector may grant usage of a holding tank to allow use of the structure served, during a one (1) year settling period for system area fill soil which will enable an approved system to be installed.

(d) In all situations where holding tanks are permitted, installation of low-volume flush (one (1) gallon or less) water closets shall be mandatory, as shall be the installation of an audible or visible, electrically operated alarm system located within the structure served.

(e) All holding tanks shall be sized to hold a minimum seven (7) day wasteflow and serviced in accordance with KRS 211.970 to 211.990. A copy of a contract with a licensed septic tank cleaning company for servicing the holding tank shall be submitted with the permit application. The owner shall maintain records on all servicing which shall be available for inspection by the cabinet. Local health departments may also require the posting of a reasonable cash performance bond by the owner.

Section 9. System Installation Standards. (1) System layout standards.

(a) All systems shall be designed, laid out, and installed in the flagged area set aside for such purpose during the site evaluation. Installation of the system in any other area is prohibited without the written consent of the local health department certified inspector.

(b) Layout of the system on the site by the certified installer shall be accomplished by using suitable stakes or markers to locate excavation sites for system components, and shooting of surface grades to establish necessary excavation depths to assure proper elevation "fall" in the system. Lateral trenches or beds shall be laid out to follow parallel to the surface contour lines of the site.

(c) Maximum length for individual lateral trenches or beds for gravity distribution systems shall be no more than 100 feet. Maximum length for individual lateral trenches in low pressure pipe (LPP) systems shall be seventy (70) feet.

(d) Lateral trenches for gravity distribution systems shall be spaced a minimum of eight (8) feet on centers. Lateral trenches for low pressure pipe (LPP) systems shall be spaced a minimum of five (5) feet on centers. Lateral beds or leaching chambers for gravity distribution systems shall be spaced a minimum of eight (8) feet from side wall to side wall. Lateral trench spacing shall be increased two (2) feet on centers on all sites with slopes greater than fifteen (15) percent and less than twenty (20) percent. On slopes greater than twenty (20) percent, each five (5) percent increase in slope, or fraction thereof, shall require an additional spacing of two (2) feet on centers for lateral trenches.

(e) Lateral line spacing in gravity distribution bed systems shall be as follows:

1. For beds of four (4) to six (6) feet in width, one (1) lateral line placed on the centerline of the bed is required;

2. For beds of seven (7) to ten (10) feet in width, two (2) lateral lines are required, spaced two and one-half (2 1/2) feet from the side walls;

3. For beds eleven (11) feet and wider, the two (2) laterals spaced two and one-half (2 1/2) feet from the side walls shall be used, and additional lateral lines installed five (5) feet on centers, or fraction thereof, from the side wall laterals.

(2) Excavation standards.

(a) Only that heavy equipment necessary to the installation of an on-site sewage disposal system shall be permitted in the flagged area set aside for that system. Such equipment shall be operated so as to minimize travel over, and compaction of, the system area.

(b) Excavation of the lateral field, bed or other subsurface soil absorption system portion of the total system area shall be restricted by the soil moisture conditions of that portion of the area at the intended depth of excavation for all soil texture classes listed in Soil Group IV. Such restriction shall apply for all system installations taking place during the months of November through May, or anytime immediately after heavy rainfall occurs. Soil moisture conditions shall be determined by test excavation to the intended depth of the lateral trenches or beds. A small portion of soil excavated from that depth shall be rolled between the thumb and fingers. If the soil can be rolled into a "wire" shaped form which does not easily crumble, the soil is too wet to work and will compact and seal absorption surfaces. If a "wire" form cannot be rolled and the soil crumbles, excavation can proceed.

(c) Excavation for septic tanks or other pretreatment units, distribution boxes, alternating valves or devices, and all nonperforated piping used to conduct effluent to other components through gravity flow means, shall be done only after shooting of grades to assure a positive gradient from the outlet of the pretreatment unit through all components to the distribution box(es) or device(s). Such determinations of grade shall take into account the intended excavation depth from grade of lateral trenches or beds.

(d) Excavations for placement of all components except lateral trenches or beds shall be made to the necessary depth for installation and shall be dug level in undisturbed earth. If filling is required to level or raise components to the proper grade, tamped gravel or sand shall be used for such bedding purposes. When installation occurs in stony areas, large stones, flags, boulders, etc., shall be removed from component placement excavations to prevent component damage, and the cavities created by their removal shall be filled with tamped gravel or sand, if they are located on the bottom surface of the excavation.

(e) Excavations for lateral trenches or beds shall be made to the depth specified by the certified inspector based on site evaluation results. Maximum trench or bed depth from grade for a conventional on-site sewage disposal system shall be considered as being twenty-four (24) inches. Minimum trench or bed depth for modified gravity and dosed gravity distribution systems using four (4) inch diameter lateral lines shall be six (6) inches from grade. Minimum trench depth for low pressure pipe (LPP) systems shall be six (6) inches from grade. Trench width for low pressure pipe systems shall be a minimum of twelve (12) inches. Minimum trench width for gravelless pipe shall be eighteen (18) inches to a maximum of twenty-four (24) inches. Minimum or maximum trench width shall be as per manufacturer's specifications for leaching chambers.

(f) Lateral trench and bed bottom grades shall be as shown in Table 6 below:

Table 6
Maximum Grades for Trench and Bed Bottoms

Distribution Method	Type	Maximum Grade inches/100 feet
Hillside or drop box (also serial distribution)	Trench	Level to 2"
Equal Flow Box	Trench	2" to 4"
	Bed	Level to 1" in all directions from center
Gravelless Pipe	Trench	Level
Low Pressure Pipe	Trench	Level
	Bed (Mound)	Level
Leaching Chambers (using any of the above methods except low pressure)	Trench layout	2" to 4"
	Bed Layout	Level
(using low pressure pipe)	Trench	Level

(g) Excavations for curtain drains, vertical drains or under drains to intercept and/or lower groundwater tables shall be made to the depth determined by the certified inspector and graded to drain to the surface or to a pumped catchment basin.

(h) Excavations for distribution leaders (nonperforated pipe) from the distribution box(es) on gravity distribution systems, shall be made so as to provide a "benched" distribution corridor above the trench or bed bottom. This "benched" corridor shall be bedded in undisturbed earth, and shall be excavated so as to provide a "bench" height of six (6) inches above the elevation(s) of the trench or bed bottoms. Benching of the distribution corridor shall be used to reduce the possibility of "short circuiting" of effluent and effluent ponding around distribution boxes.

(i) Excavation of evapotranspiration/absorption lagoons shall be done using a bulldozer or similar track type equipment to reduce compaction of the lagoon bottom. Lagoon bottoms shall be uniformly level and shall be constructed to provide a maximum wastewater depth below the overflow outlet of four and one-half (4 1/2) feet, and a freeboard of two (2) feet. Containment berming, dikes, or dams may be of excavated materials, if sufficient clay content exists in the soil to prevent seepage between the berm and the original soil surface after compaction and are "keyed" into the original soil beneath at least one (1) foot at the base. Berms, dikes or dams shall be constructed on a three (3) to one (1) (three (3) feet vertical to one (1) foot horizontal) slope. All lagoons located in areas accessible to children or livestock shall be enclosed within a six (6) foot high chain-link fence or its equivalent with a locked gate.

(3) Component installation standards.

(a) Septic tanks and other pretreatment units, dosing tanks and holding tanks shall be installed level and all connections to the unit which conduct sewage or effluent, and all unit joints or seams, are to be rendered watertight. Manufacturer's instructions on installation, and all connections to the unit (piping and/or electrical), shall be followed by the installer. Units showing structural damage on delivery, or damaged in placement shall be replaced with an undamaged unit. Patching of minor damage which does not affect the structural integrity or watertightness of the unit may be permitted under the supervision of the certified inspector.

(b) It shall be the certified installer's responsibility to provide access to within twelve (12) inches of finished grade to the outlet end manhole on all septic tanks. Such access shall be provided through the use of suitable manhole risers of a minimum eighteen (18) internal dimension to allow removal of the tank manhole lid. Such manhole risers shall be provided with tamper-resistant lids or covers. Lids or covers of precast concrete, cast iron or steel shall be considered tamper-resistant if weighing sixty (60) pounds or more and require a vertical lift for removal. Lids or covers of sheet metal, plastic or fiberglass shall be attached by bolts or other suitable fastener requiring a tool for removal.

(c) Distribution boxes, and alternating valves or devices, shall be installed level, and all piping connections shall be rendered watertight. Such components showing structural damage on delivery, or damaged in placement shall be replaced with an undamaged component.

(d) Equal flow distribution boxes shall be installed on a stable base to prevent settling. Tamped sand or gravel shall be sufficient for concrete boxes, but plastic or fiberglass boxes shall be securely anchored to a poured concrete base a minimum of four (4) inches thick and extending on all sides of the box side walls at least four (4) inches. Rough leveling of the box may be done using a carpenter's level, however, final leveling shall be done by the "water leveling method" described below:

1. Outlet leader piping shall be extended past the inside side wall of the box at least three-fourths (3/4) of an inch but no greater than one (1) inch to allow attachment of plastic caps or plugs by solvent welding or cementing. Once attached, the water level is raised to the desired point on the caps or plugs, the level is marked on all caps or plugs, and a knife is used to cut out the upper portion of the cap or plug to the level marked.

2. Additional water is carefully added while closely observing the water as it enters the outlets. If the outlets are properly leveled, all outlet lines will begin to receive water at the same level and time. If one or more lines are receiving water while others remain dry, adjustments to those higher outlets are necessary. Fine adjustment is then made by shaving down the cutouts on the caps or plugs until leveling is achieved.

3. Special leveling devices in the form of caps or inserts designed for this purpose shall be used where available. Other methods may be considered acceptable by the cabinet provided that they can be demonstrated to be of equal or superior performance to the above method.

(e) Approved nonperforated plastic pipe shall be used as leader piping to connect outlets in the distribution box(es) to the perforated lateral lines in gravity distribution systems, and shall extend two (2) feet into all trenches or beds before connection to perforated lateral line.

(f) All leader piping connected to equal flow boxes shall be installed at no greater than one-eighth (1/8) inch per foot slope for the

first five (5) feet of run from the box to restrict the flow velocity of effluent.

(g) Lateral lines for conventional gravity distribution trenches or beds shall be laid as follows:

1. A six (6) inch deep layer of approved trench rock or other fill material is carefully placed in the trench or bed to prevent sealing of absorption surfaces from fill impact, and leveled;

2. Lateral piping is placed and leveled on the trench fill material in the center of the trench (or properly spaced in beds), and retained in place to prevent movement, while additional trench fill material is added to a point two (2) inches above the top of the top of the lateral piping, for a total of twelve (12) inches of trench fill material;

3. Other methods of lateral piping and trench rock placement may be approved by the cabinet upon demonstration of equivalent compliance.

4. A two (2) to four (4) inch layer of approved barrier material, straw or a single layer of synthetic filter fabric, is then placed over the trench fill material to prevent entry of backfill soil fines.

(h) Lateral lines for low pressure pipe (LPP) systems shall be laid as follows:

1. At the beginning of each trench and at twenty (20) foot intervals thereafter, barrier walls of undisturbed earth or compacted earth fill at least one (1) foot thick shall be placed from side wall to side wall of the trench to the level to which lateral piping is to be installed;

2. Six (6) inches of pea gravel or approved alternate trench rock shall be placed in the trench and leveled;

3. Lateral piping is laid in place and assembled (may be preassembled), and leveled;

4. Trench earth barrier walls are completed to ground surface and additional pea gravel or other trench fill material is carefully placed over the laterals to a height of two (2) inches over the top of the piping;

5. Other methods of lateral piping and trench rock or pea gravel placement may be approved by the cabinet upon demonstration of equivalent compliance.

6. A one (1) to two (2) inch layer of approved barrier material, straw or a single layer of synthetic filter fabric, is then placed over the pea gravel to prevent entry of backfill soil fines.

(i) Lateral lines for gravelless pipe systems shall be installed as follows:

1. Remove plastic shipping and storage bags from pipe; do not remove filter wrap.

2. Lay out gravelless pipe with top stripe UP. Roll filter wrap back from ends of each section of pipe to allow proper connection of pipe sections and/or reducer connectors or end caps.

3. Join pipe sections together with approved connectors - make sure top stripes are in direct alignment on both sections to be joined, and tape joint with plastic tape supplied by pipe manufacturer to seal joint. Pull filter wrap ends back over joint and tape them together.

4. Fit offset reducer connectors (four (4) inches by eight (8) inches or four (4) inches by ten (10) inches) to inlet ends of joined pipe sections and locate four (4) inch inlet at top of pipe in alignment with top strips; tape joints to seal. Leave filter wrap loose at this time.

5. Fit end caps on other end of joined pipe sections, seal joints with tape, pull filter wrap over end joint and tape in place. Note: on systems for Group IV soils (clays) at least two (2) inspection ports per system must be provided at the end of selected lateral and brought to finished grade.

6. Lay joined lateral pipe sections into trenches with top stripe directly UP. Connect solid smooth wall header piping from distribution box outlets to four (4) inch inlet on offset reducer connector (insert header pipe four (4) inches into connector) and seal joint with tape. Pull filter wrap over end of reducer cap and around four (4) inches header piping and tape in place.

(j) Leaching chambers shall be installed according to manufacturer's specification; however, where such specifications are less restrictive or conflict with these regulations, the regulations shall take precedence, except that reduced backfill cover (no less than six (6) inches) over the leaching chamber may be permitted.

(k) Installation of effluent piping to an evapotranspiration/absorption lagoon and overflow piping to the lateral field system shall be as follows:

1. Nonperforated gravity flow or pressurized piping is laid in an excavated trench into the lagoon and anchored to a poured concrete, three (3) foot square, four (4) inch thick apron. The inlet shall be a tee laid on its side.

2. Overflow piping consists of a supported, vertically oriented tee connected to a nonperforated gravity flow plastic pipe which conducts overflow to the distribution box(es) of the lateral field. The overflow should be located at a point within the lagoon that is the furthest distance from the inlet apron. The upper leg of the tee shall be screened and the lower leg extended downward to within three and one-half (3 1/2) feet of the lagoon bottom.

3. All submerged piping into and out of a lagoon shall be provided with suitable water stops or leak collars with a minimum extension of twelve (12) inches on all sides of the pipe.

(4) Curtain drain, vertical drain, underdrain installation standards.

(a) Curtain drains and underdrains shall be installed according to the following procedures:

1. After excavation of drain trenches to the required depth (by backhoe or trencher) the perforated plastic drainage pipe may be laid in the trench. Depending on trench width and depth it may be necessary to bed the pipe in small gravel or pea gravel to provide lateral and vertical support to pipe side walls to prevent collapse of the pipe.

2. After bedding and grading the pipe to drain, regular trench rock fill material (for trenches twelve (12) inches or wider) or pea gravel (for trenches narrower than twelve (12) inches) shall be added to the trench to a point four (4) inches from grade.

3. Suitable barrier material as used in lateral trenches shall be placed over the drain trench fill material.

(b) Vertical drains may be used when more permeable soil horizons exist below a restrictive horizon, and shall be installed according to the following procedures:

1. After excavation of the drain trenches to the required depth the trenches are filled with crushed rock or pea gravel as in curtain drains above, to the points listed in paragraph (a)2 of this subsection, as applicable. Drainage piping is unnecessary in vertical drains since drainage is encouraged downward through the restrictive horizon to more permeable soils.

2. Suitable barrier material as used in lateral trenches shall be placed over the drain trench fill material.

(5) Filling, backfilling and finish grading standards.

(a) On sites requiring the placement of fill soil before any on-site sewage disposal system can be installed, the following requirements shall apply:

1. Surface vegetation shall be removed and the original soil surface layer shall be tilled to a depth of two (2) inches prior to placement of fill.

2. Soil fill material shall meet or exceed the textural class characteristics of Soil Group III outlined in Section 4(4)(a) of this regulation.

3. Soil fill material shall be placed in the area to be filled by methods acceptable to the cabinet, to prevent stratification and unnecessary compaction.

4. Soil fill shall be protected by establishing a fast growing ground cover and allowed to settle for a period of one (1) year and be reevaluated before system installation can proceed.

5. Depth of soil fill required shall be determined by the local health department on a case-by-case basis, based upon minimum separation distances between lateral trench bottoms and restrictive horizons, bedrock, or water tables.

(b) Backfilling around and over septic tanks and other pretreat-

ment units, dosing tanks, holding tanks, distribution boxes, low pressure pipe manifolds, alternating valves and devices and nonperforated effluent piping and distribution leader piping, shall be accomplished by filling and tamping by layers. While the filling and tamping process is being carried out, care shall be taken to prevent shifting, tilting, misalignment or damage of system components or damage to watertight joints, seams or connections. The location of all such components shall be clearly marked by staking or flagging after backfilling and prior to final grading.

(c) When manufacturer's installation instructions require specific backfilling procedures to protect component warranties, prevent damage, or prevent flotation of the component due to ground water pressure, those procedures shall be followed. Soil for backfilling gravelless pipe trenches shall be loose and friable. Soil aggregates (clods or clumps) shall be no larger than one-half (1/2) inch in any dimension for backfill in contact with the pipe and filter wrap to assure proper operation. Use of large clods or clumps of soil for backfill is prohibited. If soil excavated from trenches will not meet this criteria, suitable backfill soil shall be obtained elsewhere.

(d) Backfilling of lateral trenches or drainage trenches shall be accomplished with minimal compaction of soil fill, and soil fill material shall be left mounded four (4) to six (6) inches above grade over trenches to allow for settling. Backfilling over lateral beds shall be accomplished through the use of lightweight wheeled or crawler type tractors to minimize compaction, and shall be left mounded four (4) to six (6) inches above grade to allow for settling.

(e) Backfilling shall not be done until after the system has been inspected and approved to that point of construction by a certified inspector.

(f) On sites where additional fill soil is required over the lateral field due to shallow depth of installation, the following procedures shall apply:

1. The requirements of paragraph (a)1 through 3 of this subsection;

2. Fill shall be extended on all sides of the lateral field to a minimum distance of ten (10) feet, except on sloping sites where the fill on each end of the system shall expand outward to a minimum of fifteen (15) feet at the lowest point downslope, and the fill at the downslope side of the system shall be increased to a minimum of fifteen (15) feet beyond the system;

3. Minimum depth of fill shall be as required by the certified inspector, but may not be less than ten (10) inches over the trench rock fill material, or top of the gravelless pipe (for leaching chambers six (6) inches minimum) and that depth shall extend over the entire lateral field to a point at least two (2) feet beyond the sidewall of any trench, bed or chamber, at which point the remainder of the fill may be tapered to original grade out to the minimum distances specified in subparagraph 2 of this paragraph.

(g) Finish grading over the on-site sewage system shall be performed in such a manner as to minimize compaction through the use of lightweight equipment. Such grading shall be restricted to work necessary to provide positive surface drainage away from the system, especially the lateral field. Final grading over staked or flagged system components shall be accomplished manually, or with lightweight equipment using extreme care to prevent damage to or misalignment of components.

(h) Finish grading work which removes soil from the system area, or which results in that area being used to dispose of excess soil graded from other areas on the site, shall be prohibited.

(i) Finish grading on other areas of the site shall be done in such a manner as to divert surface water run-off from driveways, patios, downspouts, slopes, ditches, gullies, etc., away from the area where the system is installed. When site conditions are such that normal grading procedures cannot divert all such run-off, diversion ditches, swales, berms, or other such diversion drainage means shall be constructed to divert run-off away from the system.

Section 10. System Setback Restrictions. (1) Minimum setback distances shall be required for installation of on-site sewage disposal systems from structures, water supplies, roads, streams, bodies of water, and other structural or topographic features, as listed in Table 7 below:

Table 7
Minimum Setback Distances
for On-site Disposal Sewage Systems

Structure or Topographic Feature	Minimum Distance (Ft.) from Pretreatment Unit (or Holding Tank)	Minimum Distance (Ft.) from Side wall of Lateral Trench, Bed, or Lagoon
Property lines	5	5 (50 for lagoons)
Building foundations	10	10
Basements	10	20
Basements (Downslope from system)		30 (5-15% Slope) 40 (15-25% Slope) 50 (25% and Higher)
Wells	50	70
Cisterns	50	70
Cisterns (Upslope from system with bottom at higher elevation than system)	10	10
Natural Lakes or Impoundments (Shoreline)	25	50
Streams	25	25
Springs (Upslope from system)	25	50
(Upslope with curtain interceptor drain)	10	20
(Downslope from system)	50	70
Drainage Ditches, Road cutbanks (Downslope)	10	25
Underdrain system	10	10
Curtain or vertical drain	10	10 (Upslope and Sides) 25 (Downslope)
Sinkholes (Rim)	50	50
Buried Water Lines or Utility Lines	10	10
Utility Easements	10	10
Driveways, parking lots, or paved areas	10	5
Livestock pens, feed lots, corrals, etc.	10	10

Section 11. System Installation Inspection. (1) All on-site sewage disposal systems installed, constructed, altered or repaired shall be inspected by a certified inspector.

(2) The inspection sequence performed shall be as follows:

(a) The certified installer shall complete an installer's affidavit recording all grade shot readings of all excavation work certifying by his signature that such work has been performed in compliance with the regulation. In lieu of the installer's affidavit, the certified installer may request an initial inspection be performed by a certified inspector. Inspection shall consist of shooting of grades in all excavations to determine compliance with this regulation.

(b) An installation inspection shall be conducted by the certified inspector prior to backfilling of the system. The certified installer shall be responsible for requesting this inspection at the discretion of the certified inspector. To facilitate inspection of lateral fields the certified

installer shall provide direct access to trench or bed bottoms to allow accurate shooting of grade and elevation. Such direct access shall be provided through the use of ports, piping, or other methods acceptable to the certified inspector, and at such locations within the lateral field as deemed necessary.

(c) The installation inspection shall consist of examination of the following: system components, as to type, size or capacity, approved status, materials, connections; installation as to proper placement, proper grade or level; conduct "water leveling" method on equal flow distribution boxes; testing of dosing devices, low pressure systems and alarm systems; shooting of trench, bed, or lagoon bottom grade and elevation, installation of lateral lines, trench fill material depth, trench barrier material placement; and other necessary examinations and checks to determine compliance with this regulation relative to all site and system modifications required.

(d) Systems meeting approval shall be backfilled in accordance with this regulation, and it shall be the certified installer's responsibility to assure proper backfilling. Once backfilling is completed, it shall be the certified installer's responsibility to perform or supervise finish grading. Where additional fill soil over the system is required, once finish grading is completed, the certified installer shall request a final inspection. It shall then be the owner's responsibility to protect the system from damage, disruption, or unnecessary surface water drainage during subsequent occupancy and system usage.

(e) Systems not meeting approval shall be reconstructed as needed to meet compliance.

Section 12. Responsibilities. (1) The construction, operation, and maintenance of on-site sewage disposal systems, whether conventional, modified, or alternative systems, shall be the responsibility of the owner, developer, certified installer, or user of the system as applicable in the circumstances.

(2) Actions of the cabinet and certified inspectors, engaged in the evaluation and determination of measures required to effect compliance with the provisions of this regulation shall in no way be taken as a guarantee that on-site sewage disposal systems approved and permitted will function in a satisfactory manner for any given period of time, or that such agents or employees assume any liability for damages, consequential or direct which are caused, or which may be caused, by a malfunction of such systems.

Section 13. Prohibited Practices. (1) Certain practices shall be prohibited, and their use shall result in immediate voiding of permits and/or site evaluations as applicable, and are as follows:

(a) Use of unapproved system components in lieu of replacement with approved components;

(b) **Except as provided in Section 15 of this administrative regulation,** use of seepage pits, cesspools, and dry wells;

(c) Use of improperly constructed or designed systems, in lieu of redesign and/or reconstruction;

(d) Placement of lateral field within less than twelve (12) inches of, or below, the upper limits of a restrictive horizon or water table;

(e) Placement of lateral field within less than twelve (12) inches of, or into bedrock. Dynamiting, ripping, or otherwise removing bedrock to install a lateral field is expressly prohibited;

(f) Cutting, filling, or otherwise altering the original grade and/or soil characteristics of the area upon a site staked or flagged off for system installation, except when such work is a requirement of these regulations;

(g) Allowing any use of the area staked or flagged off for system installation as a material or soil stockpile, vehicle or heavy equipment parking area or roadway, or any other unauthorized use which may damage or alter the soil or site characteristics.

Section 14. Variances. (1) Any person owning a site where an on-site sewage disposal system is proposed to be installed may request, in writing, to the local board of health, or their designated agents, consideration for the granting of a variance to specific portions of this regulation.

(2) Written requests shall include all pertinent information about the site, the specific portion(s) of the regulation requested to be waivered, the specific reasons for the request, and documented evidence justifying the granting of the variance.

(3) Such requests shall be acted upon as soon as practicable by the local board of health, or their designated agents, and a written decision, either denying the variance with reasons for denial, or granting the variance with or without stipulations or restrictions, shall be presented to the person so applying within five (5) working days of the decision.

(4) Persons requesting variances shall have the right to appear in person with counsel and/or expert professional witnesses before the local board of health, or their designated agents, either to present the request, or to appeal a variance decision.

(5) If such a hearing is requested, the local board of health, or their designated agents, shall set a date and time for the hearing, as soon as practicable, and shall so notify in writing the person requesting same of such date and time. Notification shall be made within five (5) working days of receipt of the request and at least two (2) days prior to the date of the hearing.

(6) Decisions on the granting or denial of variances shall be based upon the evidence presented by the requestee; the evidence presented by the certified inspector(s) involved with the site in question; as well as supportive evidence for either side presented by expert professional witnesses.

(7) Decisions shall be influenced by the requirements of the On-site Sewage Systems Law and these regulations, and by the presence or absence of reasonable assurances, derived from evidence presented, that the granting of such variance will not result in the creation of groundwater contamination or the surfacing of effluent, and creation of a health hazard or public health nuisance.

(8) Variances shall not be granted for the following purposes:

(a) Waiver of site evaluations or system inspections;

(b) Reduction of required system size when modified or alternative systems can be used to provide an equivalent system in the available area on the site;

(c) In any instance where site and/or system modifications or alternative systems can overcome site limitations.

(9) Variances granted which may have a direct effect upon the future use or marketability of a site or subdivided parcels of that site, shall be made a permanent record, and filed at the local health department in the county where the site is located.

Section 15. Exemption. (1) On-site sewage systems **shall be governed by the provisions of KRS 211.355(3) and this section.** ~~[constructed prior to July 15, 1986 shall be governed by the provisions of this section.]~~

(2) The repair or alteration of an on-site sewage treatment system shall be permitted if:

(a) A municipal or public sewage treatment system is not available; and

(b) Repair or alteration is required because of:

1. Malfunction; or

2. Damage.

(3) In the repair or alteration of an on-site sewage system utilizing a seepage pit, an owner shall be permitted to:

(a) Clean;

(b) Service; and

(c) Repair, alter, reconstruct, or replace:

1. Any system component leading to a pit, such as pipes and septic tanks;

2. Pit rings; or

3. Any other component repair which would not require the drilling of a new pit.

(4) If a municipal or public sewage treatment system is not

available, a seepage pit may be installed as an on-site sewage disposal system in the development of a vacant lot, purchased on or before May 1, 1992 [~~the effective date of this administrative regulation~~], if bona fide construction begins within six (6) months from the effective date of this administrative regulation. This subsection shall apply only to single family dwellings. [~~The provisions of this regulation shall not apply to on-site sewage disposal systems in use or for which a valid permit has been issued prior to the effective date of this regulation, unless such system requires future repair or alteration due to malfunction, damage, or increase in waste loading due to a change in usage of the structure(s) served by the system. If such occurs, this regulation shall be enforced only as regards the specific repair or alteration work required.~~]

C. HERNANDEZ, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: March 27, 1992
FILED WITH LRC: March 31, 1992 at 1 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(As Amended)

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

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233, 250.33, 250.73, 255, PL 101-508
STATUTORY AUTHORITY: KRS 194.050, 205.200(2)
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, referred to as AFDC. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.

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

(3) "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible;

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the AFDC Standard of Need.

(4) "Certified child care providers" means a small family day care in a provider's home serving fewer than four (4) children. This provider has voluntarily registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:070.

(5) "Claimant" means the individual responsible for an overpayment.

(6) "Combination programs" means any educational program which includes as its basis literacy or GED. This program must also include life skills, skills training or job readiness training.

(7) "Component" means services and activities such as education, job skills training, job readiness, job development and placement, job search, on-the-job training, [~~work supplementation~~] or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) program. Each individual component is described in 904 KAR 2:006.

(8) "Component preparation" means the period in which assessment, testing, development of the employability plan and referrals for removal of barriers takes place.

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

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

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

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

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

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

(e) Twenty-five (25) clock hours per week in combination programs.

(11) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 of this regulation.

(12) "Licensed child care providers" means day care centers serving twelve (12) or more children, or day care in a provider's home serving four (4) to twelve (12) children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:010.

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

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

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

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

(17) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(18) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

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

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

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

(22) "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:006.

(23) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the AFDC case in which

supportive service payments may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.

(24) "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

(25) "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.

(26) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property owned in whole or in part by an applicant or recipient including a sanctioned individual and his parent, even if the parent is not an applicant or recipient, if the applicant or recipient is a dependent child living in the home of the parent, shall be considered.

(2) The amount that can be reserved by each assistance group shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:

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

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

(b) Home furnishings, including all appliances;

(c) Clothing;

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

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

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

(g) One (1) burial plot or space per family member;

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

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

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

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

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

(1) Gross income test.

(a) The total gross non-AFDC income of the assistance group, as well as income of parent, sanctioned individual and amount deemed available from the parent of a minor parent living in the home with such assistance group, and amount deemed available from a stepparent living in the home, **and the spouse of a minor dependent child living in the home**, and amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard.

(b) Disregards specified in Section 4(1) of this regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The assistance group has not received assistance during the four (4) months prior to the month of application.

(b) The total gross income after application of exclusions or disregards set forth in Section 4(1) and (2) of this regulation shall be compared to the assistance standard set forth in Section 7 of this regulation.

(c) If income exceeds this standard, the assistance group is ineligible.

(d) For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation.

(b) If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible.

(c) Amount of assistance shall be determined prospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for an applicant or recipient whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be recalculated if any of the following circumstances occur:

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

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group.

3. The assistance group incurs and pays necessary medical expenses not reimbursable by a third party.

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

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

(a) Disregards applicable to stepparent income, **income of the spouse of a minor dependent child,** or income of the parent of a minor parent in the home with the assistance unit, as set forth in Section 5 of this regulation;

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

(c) Disregards applicable to self-employment income;

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

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

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

(g) Nonemergency medical transportation payments;

(h) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

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

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grants;

(m) Home produce utilized for household consumption;

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

(o) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(p) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

(q) Benefits received from the Nutrition Program for the Elderly, under 42 USC 3001;

(r) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under 42 USC 5001 and 5011;

(s) Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

(t) The value of supplemental food assistance received under 42 USC 1771, and the special food service program for children under 42 USC 1755, as amended;

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

(v) Payments made under the Low Income Home Energy Assistance Program (LIHEAP) under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

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

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

(y) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group; and

(z) Effective January 3, 1989, loans.

(aa) Effective June 1, 1989, up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II.

(bb) Effective June 1, 1989, the essential person's portion of the SSI check.

(cc) Income of an individual receiving mandatory or optional state supplementary payments.

(dd) The advance payment or refund of earned income tax credit (EITC).

(ee) Other benefits mandated by federal regulations or legislation.

(ff) The difference between the standard of need and the payment maximum for the assistance group, as specified in Section 7 of this administrative regulation, for households in which a member receives a JTPA stipend.

(2) Applicant eligibility test. The exclusions or disregards set forth in subsection (1) of this section and those listed below shall be applied:

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

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

(c) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(d) Child care, for a child or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed $175 per month per individual for full-time employment or $150 per month per individual for part-time employment, or $200 per month per individual for child under age two (2).

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

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

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

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

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

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

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

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

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

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

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

6. Effective February 1, 1988, the available child care does not meet the needs of the child, for example, handicapped or retarded children; **or**

7. The parent is temporarily absent from work on approved educational leave.

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

(c) Fails to report changes in earnings which impact eligibility within ten (10) days of the change, unless good cause exists as follows:

1. The assistance group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child**, the spouse of a minor dependent child,** and parent living in the home with a minor parent but whose needs are not included in the grant are considered as follows:

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

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

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

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

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

(e) Income of a stepparent and parent of a minor parent receiving Supplemental Security Income (SSI).

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

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

Section 6. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien, subject to disregards as set forth below, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs.

(6) The provisions of this section shall not apply to those aliens identified in subsection (5) of this section.

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

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

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

3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or AFDC.

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

Section 7. Payment Maximum. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities.

(2) Countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, as follows:

Effective July 1, 1989

Number of Eligible Persons	Payment Maximum	Standard of Need
1 child	$162	$394
2 persons	$196	$460
3 persons	$228	$526
4 persons	$285	$592
5 persons	$333	$658
6 persons	$376	$724
7 or more persons	$419	$790

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. Job Opportunities and Basic Skills (JOBS) Child Care and Supportive Services. (1) With the exception of those in subsections (8) and (12) of this section those individuals participating in the JOBS program shall be entitled to payment of:

(a) Child care;

(b) Transportation; and

(c) Other supportive service costs necessary for participation in an approved JOBS activity, as described in subsection (10) of this section.

(2) JOBS activities are described in 904 KAR 2:006, Section 9.

(3) Child care eligibility in JOBS components. Child care shall be paid for a child meeting the criteria specified in Section 9(1) of this regulation. Child care shall be provided in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Preemployment; or

(e) On-the-job training (OJT) ~~[and work supplementation]~~ participants discontinued from AFDC, until the end of the component placement.

(4) Child care eligibility in self-initiated activities.

(a) Child care shall be provided in the same situations as in JOBS components with the following exceptions:

1. OJT participants discontinued due to increased earnings or hours of employment;

2. Component preparation; and

3. Precomponent, for persons waiting to enter self-initiated activities for the first time.

(b) Child care shall be provided only for approved self-initiated

activities.

(5) Child care limitations.

(a) Child care payments shall:

1. Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates for components which[:

~~a.~~] do not provide earned income. [~~or~~]

[~~b. Are work supplementation components.~~]

2. Be allowed as a deduction as outlined in Section 4(2)(d) of this regulation for any component yielding earned income[~~, other than work supplementation~~].

(b) Payments shall not be made to a provider if the provider is:

1. The parent;

2. The legal guardian;

3. A member of the AFDC assistance unit which includes the child needing care;

4. Not meeting applicable standards of state and local law; or

5. Not allowing parental access.

(c) Local market rates shall be determined by:

1. The type of provider;

2. The age of the child;

3. The special needs of the child. Special needs shall be verified by:

a. Entitlement to disability benefits; or

b. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;

4. The amount of time care is needed; and

5. The geographical boundaries of the fifteen (15) area development districts.

(d) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.

(e) FT and PT maximum payment levels shall be established for the following groups of dependent children:

1. "Special needs" includes children in no certain age group;

2. "Infants" includes children under age one (1);

3. "Toddlers" includes children from age one (1) up to age three (3);

4. "Preschool" includes children from age three (3) up to age (6) six [~~five (5)~~];

5. "School-age" includes children age (6) six [~~five (5)~~] and over.

(f) For needs incurred on or after April 1, 1992, child care maximum payments shall be made as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	12	9	12	9	12	9
Certified	$11	11	11	8	11	8	11	8	11	8
Unregulated	$10	10	10	7	10	7	10	7	10	7
[~~Licensed~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Certified~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Unregulated~~	~~$8~~	~~8~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~]

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	10	7	10	7	10	7
Certified	$10	10	10	7	9	6	9	6	9	6
Unregulated	$9	9	9	6	8	5	8	5	8	5
[~~Licensed~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Certified~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~
~~Unregulated~~	~~$8~~	~~8~~	~~7~~	~~4~~	~~7~~	~~4~~	~~7~~	~~4~~	~~7~~	~~4~~]

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	13	10	13	10	13	10
Certified	$12	12	12	9	12	9	12	9	12	9
Unregulated	$11	11	11	8	11	8	11	8	11	8
[~~Licensed~~	~~$10~~	~~10~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~	~~8~~	~~5~~
~~Certified~~	~~$9~~	~~9~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~	~~7~~	~~4~~
~~Unregulated~~	~~$8~~	~~8~~	~~7~~	~~4~~	~~7~~	~~4~~	~~7~~	~~4~~	~~6~~	~~3~~]

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	11	8	11	8	11	8
Certified	$12	12	12	9	10	7	10	7	10	7
Unregulated	$11	11	11	8	9	6	9	6	9	6
[~~Licensed~~	~~$12~~	~~12~~	~~12~~	~~9~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Certified~~	~~$11~~	~~11~~	~~11~~	~~8~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Unregulated~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~]

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	10	7	10	7	10	7
Certified	$10	10	10	7	9	6	9	6	9	6
Unregulated	$9	9	9	6	8	5	8	5	8	5
[~~Licensed~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~9~~	~~6~~	~~9~~	~~6~~	~~8~~	~~5~~
~~Certified~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~8~~	~~5~~	~~8~~	~~5~~	~~7~~	~~4~~
~~Unregulated~~	~~$8~~	~~8~~	~~8~~	~~5~~	~~7~~	~~4~~	~~7~~	~~4~~	~~6~~	~~3~~]

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$15	15	15	12	15	12	14	11	12	9
Certified	$14	14	14	11	14	11	13	10	11	8
Unregulated	$13	13	13	10	13	10	12	9	10	7
[~~Licensed~~	~~$13~~	~~13~~	~~13~~	~~10~~	~~13~~	~~10~~	~~11~~	~~8~~	~~11~~	~~8~~
~~Certified~~	~~$12~~	~~12~~	~~12~~	~~9~~	~~12~~	~~9~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Unregulated~~	~~$11~~	~~11~~	~~11~~	~~8~~	~~11~~	~~8~~	~~9~~	~~6~~	~~9~~	~~6~~]

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$16	16	16	13	14	11	14	11	13	10
Certified	$15	15	15	12	13	10	13	10	12	9
Unregulated	$14	14	14	11	12	9	12	9	11	8
[~~Licensed~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Certified~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Unregulated~~	~~$8~~	~~8~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~]

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT

Licensed	$12	12	12	9	11	8	9	6	9	6
Certified	$11	11	11	8	10	7	8	5	8	5
Unregulated	$10	10	10	7	9	6	7	4	7	4
[Licensed	$10	10	8	5	8	5	8	5	8	5
Certified	$9	9	7	4	7	4	7	4	7	4
Unregulated	$8	8	6	3	6	3	6	3	6	3]

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	9	6	9	6	9	6	9	6
Certified	$10	10	8	5	8	5	8	5	8	5
Unregulated	$9	9	7	4	7	4	7	4	7	4
[Licensed	$10	10	8	5	8	5	8	5	8	5
Certified	$9	9	7	4	7	4	7	4	7	4
Unregulated	$8	8	6	3	6	3	6	3	6	3]

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$14	14	14	11	13	10	13	10	13	10
Certified	$13	13	13	10	12	9	12	9	12	9
Unregulated	$12	12	12	9	11	8	11	8	11	8
[Licensed	$10	10	10	7	10	7	10	7	9	6
Certified	$9	9	9	6	9	6	9	6	8	5
Unregulated	$8	8	8	5	8	5	8	5	7	4]

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	12	9	12	9	12	9
Certified	$11	11	11	8	11	8	11	8	11	8
Unregulated	$10	10	10	7	10	7	10	7	10	7
[Licensed	$10	10	10	7	10	7	10	7	10	7
Certified	$9	9	9	6	9	6	9	6	9	6
Unregulated	$8	8	8	5	8	5	8	5	8	5]

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	13	10	11	8	11	8
Certified	$12	12	12	9	12	9	10	7	10	7
Unregulated	$11	11	11	8	11	8	9	6	9	6
[Licensed	$11	11	11	8	11	8	9	6	9	6
Certified	$10	10	10	7	10	7	8	5	8	5
Unregulated	$9	9	9	6	9	6	7	4	7	4]

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	11	8	11	8	11	8
Certified	$10	10	10	7	10	7	10	7	10	7
Unregulated	$9	9	9	6	9	6	9	6	9	6
[Licensed	$10	10	10	7	10	7	9	6	10	7
Certified	$9	9	9	6	9	6	8	5	9	6
Unregulated	$8	8	8	5	8	5	7	4	8	5]

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	10	7	10	7	10	7	10	7
Certified	$10	10	9	6	9	6	9	6	9	6
Unregulated	$9	9	8	5	8	5	8	5	8	5
[Licensed	$10	10	9	6	9	6	9	6	9	6
Certified	$9	9	8	5	8	5	8	5	8	5
Unregulated	$8	8	7	4	7	4	7	4	7	4]

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$14	14	14	11	13	10	13	10	13	10
Certified	$13	13	13	10	12	9	12	9	12	9
Unregulated	$12	12	12	9	11	8	11	8	11	8
[Licensed	$12	12	12	9	12	9	11	8	11	8
Certified	$11	11	11	8	11	8	10	7	10	7
Unregulated	$10	10	10	7	10	7	9	6	9	6]

(g) Child care payments shall be limited as follows:

1. Six (6) semesters (three (3) years) for a two (2) year post-secondary program;

2. Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program; or

3. No restrictions on other education and training activities.

(h) These limits apply to both full-time and part-time enrollment.

(i) In preemployment or precomponent, child care payments shall be limited to a period of two (2) weeks up to one (1) month if necessary to guarantee the child care arrangement shall not be lost.

(j) Child care payments shall not be made if:

1. An AFDC-UP qualifying parent is participating; and

2. The nonparticipating parent is not incapacitated.

(6) Authorization of child care payment.

(a) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(b) Departmental forms required for verification are incorporated by reference in this regulation.

(c) Payments shall be authorized in accordance with 904 KAR 2:050.

(7) Restrictions on authorization of child care payments. Payment shall not be made if:

(a) Verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(8) Transportation payments in JOBS components. Transportation reimbursement shall be paid in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation, with the exception of OJT [~~and work supplementation~~] while the AFDC case remains active;

(d) Transitional extension; or

(e) On-the-job training (OJT) [~~and work supplementation~~] participants discontinued from AFDC, until the end of the component placement.

(9) Transportation payments in self-initiated activities.

(a) Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

1. Transitional extension;

2. OJT participants discontinued due to increased earnings or

hours of employment;

3. Component preparation; and

4. Precomponent, for persons waiting to enter self-initiated activities for the first time.

(b) Reimbursement shall be paid only for approved self-initiated activities.

(10) Transportation payment amount and authorization.

(a) A standard rate of three (3) dollars per day shall be paid for individuals participating in approved JOBS activities.

(b) Transportation reimbursement shall be made after receipt of appropriate verification. Departmental forms required for verification are incorporated by reference. Payments shall be made as specified in 904 KAR 2:050.

(c) Transportation payments shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(d) In precomponent, transportation payments are limited to [~~two (2) weeks up to~~] one (1) month if necessary to guarantee that the arrangements shall not be lost.

(11) Restrictions on authorization of transportation payments. Payments shall not be made if:

(a) Appropriate verification is not returned by the end of the month following the month in which the cost was incurred;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

(12) Other supportive services in JOBS components.

(a) Nonrecurring services shall be provided if necessary for participation in the approved JOBS activities of:

1. Component preparation;

2. Component participation, except for expenses included in the work expense standard deduction for participants in OJT [~~or work supplementation~~] while the AFDC case remains active;

3. Transitional extension; **or**

[~~4. Preemployment; or~~]

4. [~~5.~~] OJT [~~and work supplementation~~] participants discontinued from AFDC, until the end of the component placement.

(b) These services shall be approved by the case manager as defined in 904 KAR 2:006.

(c) Examples of services which may be approved are the purchase of:

1. Remedial health care items or services not covered under the Medicaid program;

2. Necessary clothing; or

3. Any other item identified by a referral agency, the case manager, or the participant as being necessary for participation.

(13) Other supportive services in self-initiated activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

(a) Transitional extension;

(b) OJT participants discontinued due to increased earnings or hours of employment; or

(c) Component preparation.

(14) Limitations on other supportive services.

(a) A cumulative limit of $300 in a twelve (12) month period, beginning with the first day of the month in which the first supportive service payment is made, shall be in effect for any participant in these approved JOBS activities:

1. Component preparation;

2. Component-related;

3. Transitional extension; or

4. OJT participants discontinued due to increased earnings or hours of employment.

[~~(b) A separate $300 limit, per job, for preemployment supportive services may be paid.~~]

(b) [~~(c)~~] Other supportive services shall be limited in the same manner as child care payments, as described in subsection (4)(g) of this section.

(15) Restrictions on authorization of supportive service payments. Payments shall not be made for the period during which:

(a) Verification is not returned by the service provider;

(b) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:006; or

(c) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 9. Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

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

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

(a) The claimant;

(b) The overpaid assistance unit;

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

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

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 7 of this regulation; or

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

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

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

Section 10. Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive service payments in the JOBS program are incorporated effective October 1, 1990. These forms include the PA-33, revised 10/90, the PA-33.1, revised 10/90, and the PA-32, revised 10/90.

(2) These forms 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 26, 1992 at 11 a.m.

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

905 KAR 2:080. Child day care services.

RELATES TO: KRS 199.892 through 199.896, 45 CFR Part 98, 256, [~~257,~~] PL 99-457 Part H, 94-142.2

STATUTORY AUTHORITY: KRS 194.050, 199.892

NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt **administrative** regulations necessary to operate programs and fulfill the

responsibilities vested in the Cabinet for Human Resources. **This administrative regulation is necessary** [~~In accordance with KRS 199.892,~~] to enable the Cabinet for Human Resources to qualify to receive federal funds under the child care and development block grant. **The function of this administrative regulation is to establish procedures for the implementation of child day care services.** [~~, and pursuant to KRS 194.050, the Department for Social Services has drafted procedures that shall enable the provisions of child day care services to be implemented.~~]

Section 1. Definitions. (1) "At-risk child care (ARCC)" means child care assistance provided through the state to non-AFDC families who need care in order to work and who may otherwise be at risk of becoming dependent upon AFDC.

(2) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education, if postsecondary, consistent with employment goals.

(3) "Certificate" means a payment mechanism provided by DSS and used by a family to secure day care from the provider of choice.

(4) "Child care and development block grant (CCDBG)" means child care assistance provided to families through the state to improve the affordability, quality and availability of child care services for a low income family to work or attend training or educational programs.

(5) "Child protective cases" means cases registered for services in which the case file contains case documentation that substantiates child abuse, neglect, dependency or exploitation. This category may include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families.

(6) "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(7) "Dedicated child care workers (DCW)" means the Department for Social Services staff who work strictly with the day care program. The dedicated child care worker provides services to families through the following federally funded programs: social services block grant (SSBG), child care and development block grant (CCDBG), at-risk child care (ARCC), and transitional child care (TCC).

(8) "Dependent care disregard" means a method of providing child care for AFDC and medical assistance recipients with earned income and food stamp recipients with earned income or in training or educational programs which are preparatory to employment by deducting child care expenses from the gross income, thus allowing the AFDC recipient to retain more income to pay child care expenses. In cases where recipients are receiving assistance under more than one (1) program, the highest disregard shall be used.

(9) "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided under SSBG for child protective cases, a family shall meet both need and income status criteria.

(10) "Employment" means public or private, full- or part-time, permanent or temporary work, including self-employment.

(11) "Family" means one (1) or more adults and children related by blood or law, including stepparents, residing in the same residence.

(12) "Licensed child day care facility" means a facility as governed by KRS 199.894.

(13) "Physical or mental incapacity" means a child under the age of eighteen (18) who has multiple or severe problems diagnosed by a physician or qualified professional, that prevent the child from caring for himself or herself for a part of the day.

(14) "Priorities" mean that the client groups identified for receipt of day care are ranked in chronological order by priority.

(15) "Provider" means a person, including a volunteer, who works in a Type I or Type II day care facility, certified small family day care home, unregulated home or registered home.

(16) "Purchase of care" means the purchase of child day care services from state licensed facilities, certified registered homes or other eligible provider for authorized children.

(17) "Registered provider" means a provider that is registered with the Department for Social Services as a provider of child care services through the child care and development block grant (CCDBG) or at-risk program (ARCC)

(18) "Small family day care home (SFDCH)" means a home or dwelling unit which voluntarily meets the minimum standards set by the cabinet, with a certified provider, where care is provided for no more than three (3) children, who are unrelated by blood, marriage or adoption to the family child care provider.

(19) "Social services block grant (SSBG)" means child care assistance provided by licensed or certified providers that is reimbursed by the department for families receiving protective and preventive services, including multiproblem families, and low income working parents.

(20) "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 99-457 Part H or 94-142.2.

(21) "Transitional child care (TCC)" means child care assistance that is provided by the department to families whose eligibility for AFDC has ceased due to earnings from employment, or as a result of the loss of income disregards due to the expiration of the time limit according to the federal regulation on AFDC. The purpose of TCC is to help prevent welfare dependency or potential welfare dependency.

(22) "Type I day care facility" means a facility other than a dwelling unit which regularly receives four (4) or more children for day care; or a facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children. If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

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

(24) "Unregulated provider" means a child care provider who is not subject to be licensed, certified or registered by the state or federal government. Families receiving day care funds through the SSBG may not use unregulated care, however, unregulated care may be used by families receiving TCC or ARCC funds. Relative care as provided through the ARCC program, which is not required to be registered, shall be deemed unregulated.

(25) "Waiting list" means a list maintained by district DSS staff once funds are depleted in a district. The list is based on the availability of district day care funds. TCC families shall not be placed on a waiting list due to the uncapped funding source.

(26) "Without regard to income" means that SSBG child day care services for child protective cases shall be provided or purchased without regard to family income. In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted

Section 2. Lead Agency Responsibilities. The Department for Social Services, as the lead agency, shall administer the CCDBG program directly, or through contracts or agreements and shall retain overall responsibility for the administration of the program and shall:

(1) Determine the basic usage and priorities for expenditures;

(2) Promulgate **administrative** regulations governing the administration of the plan;

(3) Submit reports required by the federal government;

(4) Ensure the program complies with the CCDBG plan and federal requirements;

(5) Oversee the expenditure of funds;

(6) Monitor programs and services; and

(7) Comply with federal requirements in a complaint compliance

hearing or appeal hearing.

Section 3. Eligibility. A child shall be eligible for services if he:

(1) Is under the age of thirteen (13) or is under the age of eighteen (18) and:

(a) Is physically or mentally incapable of caring for himself; or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) Sixty (60) percent of the states median income for a family of the same size at time of application; or

(b) Seventy-five (75) percent of the states median income for a family of the same size at the time of reauthorization; or

(c) Receives, or needs to receive protective services under SSBG;

(3) Resides with parents who are working or attending a job training or educational program except under CCDBG;

(4) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to subsection (1) through (5) of this section and Section 5(4) of this regulation as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;
3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Handicap.

(b) Limit parental rights as governed by Section 4 of this regulation; or

(c) Violate provisions of Section 5(4) of this regulation.

(5) The DCW shall verify the client's eligibility for services and complete the DSS-1A, Application for Services, herein incorporated by reference.

Section 4. Parental Rights and Responsibilities. (1) Parents of an eligible child who receive or are offered child care services shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(b) To receive a child care certificate, the DSS-76, Day Care Services Agreement and Child Care Certificate, herein incorporated by reference, which shall:

1. Be issued to the parent;
2. Be of value commensurate with the value of child care services provided in paragraph (a) of this subsection;
3. If chosen by the parent, may be used for child care services provided by a sectarian organization or agency;
4. Not be considered a contract or grant to the provider but assistance to the parent; and
5. Allow parents to choose from a variety of child care categories in compliance with federal regulations governing child day care programs including:

a. Licensed child care facilities;
b. Certified child care facilities (SFDCH);
c. Unregulated child care facilities; or
d. Registered child care facilities.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet shall:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet shall make available to the parents and general public, consumer education about parental options relating to child care services including:

(a) Licensing and regulatory requirements; and

(b) Complaint procedures.

Section 5. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:010 and 905 KAR 2:070;

(b) That are not required to be licensed or certified as governed by 905 KAR 2:010 and 905 KAR 2:070 shall be registered with the cabinet prior to payment under the block grant using the DSS-77, Day Care Billing Statement, herein incorporated by reference except under TCC and relative provided care under AARC; and

(c) Under CCDBG, nonrelative providers registered with the cabinet shall become certified as governed by 905 KAR 2:070.

(d) Nonrelative providers providing care in the child's home shall be certified by meeting the requirements as follows:

1. The provider shall be at least eighteen (18) years of age;
2. The provider shall be physically capable of providing care to children, as stated by a qualified physician;
3. The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;
4. The provider shall not have been convicted of crimes against children, as shown by a criminal records check conducted within the past year by the Kentucky State Police; and
5. The provider shall sign an agreement not to use any form of corporal punishment on the children entrusted into their care.

(2) The cabinet has established maximum child day care payments as follows:

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	12	9	12	9	12	9
Certified	$11	11	11	8	11	8	11	8	11	8
Unregulated	$10	10	10	7	10	7	10	7	10	7
[~~Licensed~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Certified~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Unregulated~~	~~$8~~	~~8~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~]

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	10	7	10	7	10	7
Certified	$10	10	10	7	9	6	9	6	9	6
Unregulated	$9	9	9	6	8	5	8	5	8	5
[~~Licensed~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Certified~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~
~~Unregulated~~	~~$8~~	~~8~~	~~8~~	~~5~~	~~7~~	~~4~~	~~7~~	~~4~~	~~7~~	~~4~~]

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	13	10	13	10	13	10
Certified	$12	12	12	9	12	9	12	9	12	9
Unregulated	$11	11	11	8	11	8	11	8	11	8
[~~Licensed~~	~~$10~~	~~10~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~	~~8~~	~~5~~
~~Certified~~	~~$9~~	~~9~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~	~~7~~	~~4~~
~~Unregulated~~	~~$8~~	~~8~~	~~7~~	~~4~~	~~7~~	~~4~~	~~7~~	~~4~~	~~6~~	~~3~~]

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special						Pre-		School-	

	Needs		Infants		Toddlers		school		aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	11	8	11	8	11	8
Certified	$12	12	12	9	10	7	10	7	10	7
Unregulated	$11	11	11	8	9	6	9	6	9	6
~~[Licensed~~	~~$12~~	~~12~~	~~12~~	~~9~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Certified~~	~~$11~~	~~11~~	~~11~~	~~8~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Unregulated~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5]~~

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	10	7	10	7	10	7
Certified	$10	10	10	7	9	6	9	6	9	6
Unregulated	$9	9	9	6	8	5	8	5	8	5
~~[Licensed~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~9~~	~~6~~	~~9~~	~~6~~	~~8~~	~~5~~
~~Certified~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~8~~	~~5~~	~~8~~	~~5~~	~~7~~	~~4~~
~~Unregulated~~	~~$8~~	~~8~~	~~8~~	~~5~~	~~7~~	~~4~~	~~7~~	~~4~~	~~6~~	~~3]~~

KIPDA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$15	15	15	12	15	12	14	11	12	9
Certified	$14	14	14	11	14	11	13	10	11	8
Unregulated	$13	13	13	10	13	10	12	9	10	7
~~[Licensed~~	~~$13~~	~~13~~	~~13~~	~~10~~	~~13~~	~~10~~	~~11~~	~~8~~	~~11~~	~~8~~
~~Certified~~	~~$12~~	~~12~~	~~12~~	~~9~~	~~12~~	~~9~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Unregulated~~	~~$11~~	~~11~~	~~11~~	~~8~~	~~11~~	~~8~~	~~9~~	~~6~~	~~9~~	~~6]~~

NORTHERN KENTUCKY DEVELOPMENT DISTRICT #7

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$16	16	16	13	14	11	14	11	13	10
Certified	$15	15	15	12	13	10	13	10	12	9
Unregulated	$14	14	14	11	12	9	12	9	11	8
~~[Licensed~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Certified~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Unregulated~~	~~$8~~	~~8~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5]~~

BUFFALO TRACE DEVELOPMENT DISTRICT #8

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	11	8	9	6	9	6
Certified	$11	11	11	8	10	7	8	5	8	5
Unregulated	$10	10	10	7	9	6	7	4	7	4
~~[Licensed~~	~~$10~~	~~10~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~
~~Certified~~	~~$9~~	~~9~~	~~7~~	~~4~~	~~7~~	~~4~~	~~7~~	~~4~~	~~7~~	~~4~~
~~Unregulated~~	~~$8~~	~~8~~	~~6~~	~~3~~	~~6~~	~~3~~	~~6~~	~~3~~	~~6~~	~~3]~~

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	9	6	9	6	9	6	9	6
Certified	$10	10	8	5	8	5	8	5	8	5
Unregulated	$9	9	7	4	7	4	7	4	7	4
~~[Licensed~~	~~$10~~	~~10~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~
~~Certified~~	~~$9~~	~~9~~	~~7~~	~~4~~	~~7~~	~~4~~	~~7~~	~~4~~	~~7~~	~~4~~
~~Unregulated~~	~~$8~~	~~8~~	~~6~~	~~3~~	~~6~~	~~3~~	~~6~~	~~3~~	~~6~~	~~3]~~

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$14	14	14	11	13	10	13	10	13	10
Certified	$13	13	13	10	12	9	12	9	12	9
Unregulated	$12	12	12	9	11	8	11	8	11	8
~~[Licensed~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~	~~9~~	~~6~~
~~Certified~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~	~~8~~	~~5~~
~~Unregulated~~	~~$8~~	~~8~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~	~~7~~	~~4]~~

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$12	12	12	9	12	9	12	9	12	9
Certified	$11	11	11	8	11	8	11	8	11	8
Unregulated	$10	10	10	7	10	7	10	7	10	7
~~[Licensed~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Certified~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Unregulated~~	~~$8~~	~~8~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5]~~

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$13	13	13	10	13	10	11	8	11	8
Certified	$12	12	12	9	12	9	10	7	10	7
Unregulated	$11	11	11	8	11	8	9	6	9	6
~~[Licensed~~	~~$11~~	~~11~~	~~11~~	~~8~~	~~11~~	~~8~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Certified~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~10~~	~~7~~	~~8~~	~~5~~	~~8~~	~~5~~
~~Unregulated~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~9~~	~~6~~	~~7~~	~~4~~	~~7~~	~~4]~~

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	11	8	11	8	11	8	11	8
Certified	$10	10	10	7	10	7	10	7	10	7
Unregulated	$9	9	9	6	9	6	9	6	9	6
~~[Licensed~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~10~~	~~7~~	~~9~~	~~6~~	~~10~~	~~7~~
~~Certified~~	~~$9~~	~~9~~	~~9~~	~~6~~	~~9~~	~~6~~	~~8~~	~~5~~	~~9~~	~~6~~
~~Unregulated~~	~~$8~~	~~8~~	~~8~~	~~5~~	~~8~~	~~5~~	~~7~~	~~4~~	~~8~~	~~5]~~

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Licensed	$11	11	10	7	10	7	10	7	10	7
Certified	$10	10	9	6	9	6	9	6	9	6
Unregulated	$9	9	8	5	8	5	8	5	8	5
~~[Licensed~~	~~$10~~	~~10~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Certified~~	~~$9~~	~~9~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~
~~Unregulated~~	~~$8~~	~~8~~	~~7~~	~~4~~	~~7~~	~~4~~	~~7~~	~~4~~	~~7~~	~~4]~~

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers		Pre-school		School-aged	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT

Licensed	$14	14	14	11	13	10	13	10	13	10
Certified	$13	13	13	10	12	9	12	9	12	9
Unregulated	$12	12	12	9	11	8	11	8	11	8

~~[Licensed~~	~~$12~~	~~12~~	~~12~~	~~9~~	~~12~~	~~9~~	~~11~~	~~8~~	~~11~~	~~8~~
~~Certified~~	~~$11~~	~~11~~	~~11~~	~~8~~	~~11~~	~~8~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Unregulated~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~10~~	~~7~~	~~9~~	~~6~~	~~9~~	~~6]~~

(3) The cabinet shall assess a fee which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

Income Range (Monthly)		FAMILY SIZE Fee per day per family						
		2	3	4	5	6	7	8*
0	399	0.10	0.10	0.10	0.10	0.10	0.10	0.10
400	499	0.20	0.20	0.20	0.20	0.20	0.20	0.20
500	599	0.25	0.25	0.25	0.25	0.25	0.25	0.25
600	699	0.40	0.30	0.30	0.30	0.30	0.30	0.30
700	799	1.00	0.35	0.35	0.35	0.35	0.35	0.35
800	899	2.00	0.60	0.40	0.40	0.40	0.40	0.40
900	999	3.25	1.15	0.45	0.45	0.45	0.45	0.45
1,000	1,099	4.50	2.25	0.80	0.50	0.50	0.50	0.50
1,100	1,199	6.00	3.50	1.60	0.55	0.55	0.55	0.55
1,200	1,299	7.50	5.00	3.10	0.90	0.60	0.60	0.60
1,300	1,399	8.00	6.00	4.60	1.60	1.00	0.65	0.65
1,400	1,499		7.00	6.10	2.65	2.00	0.70	0.70
1,500	1,599		7.75	7.00	4.05	3.05	1.25	0.75
1,600	1,699		8.25	7.85	5.50	4.50	2.30	0.80
1,700	1,799			8.35	7.10	6.25	3.50	1.50
1,800	1,899			8.80	8.35	7.50	5.20	2.50
1,900	1,999			9.30	9.30	8.80	7.00	3.80
2,000	2,099			9.55	9.75	9.75	8.50	5.30
2,100	2,199				10.25	10.25	10.00	7.10
2,200	2,299				10.70	10.70	10.70	8.90
2,300	2,399				11.00	11.25	11.25	10.80
2,400	2,499					11.75	11.75	11.75
2,500	2,599					12.25	12.25	12.25
2,600	2,699					12.60	12.75	12.75
2,700	2,799						12.90	13.00

*For family size above eight (8), the family fee shall not increase.

(a) Except fees shall not be assessed in:

1. A child protective case under SSBG; or

2. An AFDC, medical assistance or food stamp case where clients are receiving dependent care disregard.

(b) The DCW shall determine the maximum daily reimbursement rate and parent fee, not to exceed rates as specified in subsection (2) of this section and monitor the payment to the child care provider. If the parent fails to pay the fee the DCW shall:

1. Develop a plan with the parent to pay the fee; or

2. In TCC cases report nonpayment to DSI if the client refuses to pay.

(c) The DCW shall advise the client to report family and financial changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every six (6) months; and

2. Upon receipt of reported changes.

(4) The Cabinet for Human Resources shall, except for SSBG protective service cases, establish priorities for child care services as follows with a ninety (90) day waiting list for approved clients maintained at each local office:

(a) Children with special needs;

(b) Job opportunity and basic skills program or TCC participants who have children ineligible for child care payments under the program;

(c) Families who lose eligibility in another child care program; and

(d) Other low income working parents or parents attending training or educational programs.

(5) The Department for Social Services shall exchange TCC client specific information to the Department for Social Insurance within ten (10) days of discovery.

(a) The DCW shall report the following changes in client information to the local DSI office:

1. Termination of client's job;

2. A child left home;

3. A child moved into the home or a newborn was reported;

4. Client's address changes;

5. An absent parent returns to the home;

6. Client failed to cooperate in paying the fee;

7. Case terminated; or

8. Overpayment or underpayment of TCC benefits.

(b) The DCW shall report the following changes in client information to the Division for Child Support Enforcement:

1. TCC case approval for payments;

2. A child left the home;

3. Payments cease for a child;

4. Client's address changes; or

5. Except for reapprovals for the AFDC program, discontinuances.

(6) The DCW shall terminate day care services when:

(a) DSI determines the client has lost eligibility for TCC benefits; or

(b) Due to need or income criteria, clients lose eligibility. If due to program policy changes the DCW shall:

1. Reassess the families so clients may be given ten (10) days notice of their eligibility, if they do not meet the new criteria after their authorization period expires;

2. Send written notices explaining new eligibility criteria with a notice of intended action.

(7) The day care worker shall notify the client of their rights as governed by 905 KAR 1:320, Fair hearing.

Section 6. Material Incorporated by Reference. (1) Forms necessary for the implementation of child day care services are herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: March 27, 1992
FILED WITH LRC: March 30, 1992 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(As Amended)

907 KAR 1:525. Targeted case management services for ~~[severely emotionally disturbed]~~ children with a severe emotional disability.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396 a-d, n

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by **administrative** regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This **administrative** regulation sets forth provisions relating to provision of targeted case management services

for ~~[severely emotionally disturbed]~~ children **with a severe emotional disability**.

Section 1. Definition. (1) "Case management services" means services necessary to assist the targeted recipient in gaining access to needed medical, social, educational, and other services.

(2) "~~[Severely emotionally disturbed]~~ Child **with a severe emotional disability**" means a child that meets the following conditions and circumstances:

(a) **Child with a severe emotional disability as defined in KRS 200.503(1)(2)(a) through (c). This definition excludes** ~~[The child has a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that is listed in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (excluding]~~ those children who are singularly diagnosed as chemically dependent, mentally retarded, or developmentally delay; **or** ~~[and]~~

(b)~~[1. Meets one (1) of the conditions shown in KRS 200.503(2)(a), (b), or (c); or~~

~~2.~~] The child presents impairment/behavior of short duration yet of high intensity. Included are severe emotional problems such as suicidal or psychotic trauma reactions where prognosis regarding duration of symptoms cannot be accurately assessed; and

(c) The child has been identified by a regional interagency council (RIAC) as a ~~[severely emotionally disturbed]~~ child **with a severe emotional disability** in need of case management services.

(3) "Target group" means the group of Medicaid eligible children that are **children with a severe emotional disability** ~~[severely emotionally disturbed]~~.

(4) "Targeted recipient" means a recipient within the target group of ~~[severely emotionally disturbed]~~ children **with a severe emotional disability** for whom case management services are provided.

Section 2. Case Management Services. The following services shall be covered as case management services when provided by a qualified case manager to Medicaid eligible recipients in the target group:

(1) A written comprehensive assessment of the child's needs;

(2) Arranging for the delivery of the needed services as identified in the assessment;

(3) Assisting the child and his family in accessing needed services;

(4) Monitoring the child's progress by making referrals, tracking the child's appointments, performing follow-up on services rendered, and performing periodic reassessments of the child's changing needs;

(5) Performing advocacy activities on behalf of the child and his family;

(6) Preparing and maintaining case records documenting contacts, services needed, reports, the child's progress, etc.;

(7) Providing case consultation (i.e., consulting with the service providers/collateral's in determining child's status and progress); and

(8) Performing crisis assistance (i.e., intervention on behalf of the child, making arrangements for emergency referrals, and coordinating other needed emergency services).

Section 3. Excluded Activities. The following activities shall not be considered case management activities:

(1) The actual provision of mental health or other Medicaid covered services or treatments;

(2) Outreach to potential recipients;

(3) Administrative activities related to Medicaid eligibility determinations; and

(4) Institutional discharge planning.

Section 4. Provider Qualifications. Provider participation shall be limited to the Department for Social Services and the fourteen (14) regional mental health mental retardation centers, licensed in accordance with 902 KAR 20:091.

Section 5. Case Manager Qualifications and Supervision Requirements. (1) Case manager qualifications. Each case manager shall be required to meet the following minimum requirements:

(a) Have a bachelor of arts or bachelor of science degree in any of the behavioral sciences from an accredited institution; and

(b) Have one (1) year of experience working directly with children or performing case management services (except that a master's degree in a human services field may be substituted for the one (1) year of experience); and

(c) Have received training within six (6) months designed and provided by each participating provider directed toward the provision of case management services to the targeted population; and

(d) Have supervision for a minimum of one (1) year by a mental health professional; i.e., psychiatrist, psychologist, master's level social worker (MSW), psychiatric nurse or professional equivalent (a minimum of a bachelor's degree in a human services field, with two (2) years of experience in mental health related children's services). The supervisor shall also complete the required case management certification or training course. ~~[provider staff with at least a master's degree in a human services field.]~~

(2) Case manager supervision requirement. For at least one (1) year, each case manager shall have supervision performed at least once a month for each case plan.

~~[Section 6. Implementation Date. The provisions of this regulation shall be applicable with regard to services provided on or after July 1, 1991.]~~

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: April 3, 1992
FILED WITH LRC: April 15, 1992 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JUNE 15, 1992

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:365. Appeal and hearing procedures.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings.

Section 1. General Provisions. (1) Appeals shall be filed with the Personnel Board through the office of the executive director.

(2) Appeals shall be filed within thirty (30) calendar days as specified in KRS 18A.095 and 101 KAR 1:375. When the 30th day of the filing period falls on a day when the executive director's office is closed during normal working hours, the appeal may be filed on the next regular working day.

(3) All appeals shall be heard in Frankfort, Kentucky.

(4) If the appeal form indicates that the appealing employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders regarding the appeal shall be transmitted to that attorney and all filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(5) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to each appeal. If more than one (1) hearing officer is assigned, one (1) shall be designated as chief. If the appeal is to be heard by the full board, the chairman shall serve as the chief hearing officer.

Section 2. Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause. The request shall be in writing, shall state the reason for the request and include proposed dates for rescheduling. The request shall be filed with the board, through the office of the executive director, and mailed to all parties at least ten (10) days prior to the scheduled hearing.

(2) Any party objecting to a requested continuance may file a written objection stating the reason. Any objection shall be filed with the board, through the office of the executive director, within five (5) days prior to the scheduled hearing. Copies shall be mailed to all parties.

(3) A continuance may be granted in extraordinary circumstances by the hearing officer.

(4) A request for a continuance based on a bona fide personal emergency shall be granted only upon appropriate justification and may be granted without strict compliance with the requirements of this section.

(5) All requests for continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the executive director shall execute and transmit to all parties an interim order either granting or denying the continuance. If the continuance is granted, the interim order shall indicate the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 3. Prehearing Procedures. (1) All motions, requests or filings shall be in writing, filed with the board through the office of the executive director, and served on all other parties.

(2) Any interim order by the hearing officer shall be executed and transmitted by the executive director to all parties. Interim orders are not reviewable by the board except on final review, unless otherwise provided in the interim order.

(3) If an appealing employee retains counsel subsequent to filing his appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(4) An appealing employee shall notify all parties and the board in writing of any change of address.

(5) A list of witnesses who may be called to testify shall be filed by each party at least five (5) days prior to the scheduled hearing. Failure of either party to file a witness list within the prescribed time shall restrict that party to rebuttal.

(6) Subpoena forms shall be available in the office of the executive director and shall be issued by the executive director. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.

(7) Depositions may be taken only in extraordinary circumstances and upon authorization by the hearing officer. A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing. Any objections shall be filed prior to the scheduled hearing.

(8) Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of any party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter on appeal.

(9) The hearing officer may schedule a preliminary hearing [~~prehearing conference~~] to define the issues, determine which facts, if any, can be stipulated, rule on pending motions or requests, and address any other matter which will facilitate a full evidentiary [~~the~~] hearing. The hearing officer may, among other motions, or upon his own motion, consider whether to dismiss for lack of jurisdiction or failure to state a claim upon which relief can be granted. If after the hearing officer has considered or heard relevant and material legal or factual presentations, the hearing officer concludes that the Personnel Board lacks jurisdiction to hear the appeal or the appeal fails to state a claim upon which relief can be granted, he shall make findings of fact and enter an appropriate recommendation to the Personnel Board.

(10) Any agreed settlements shall be submitted in writing for the full board's review and final action.

(11) The executive director, general counsel, and board staff may participate in ex parte communication concerning pending and impending proceedings before the board relating to:

(a) Procedural questions.

(b) Scheduling of hearings.

Section 4. Conduct of Hearing. (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal. The hearing officer shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing. He shall require an orderly and proper decorum at the hearing, and shall be authorized to require compliance with his rulings.

(2) Failure of any party to appear at the hearing may result in an adverse ruling against that party.

(3) The rules of civil procedure do not apply.

(4) The hearing officer shall direct one of the parties to present its case first, examine witnesses and submit documentation, subject to cross examination. The opposing party shall then present its case, examine witnesses and submit documentation, subject to cross examination.

(5) All parties shall provide three (3) copies of any exhibit which is to be introduced as evidence. Copies shall be prepared prior to the hearing.

(6) The proceedings and evidence presented shall be recorded

by a court reporter.

Section 5. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the hearing officer shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record.

(2) At the direction of the hearing officer, the recommended order shall be entered and transmitted by the executive director to all parties.

(3) Any party may submit written exceptions to the findings of fact and recommendations. Exceptions shall be filed with the board through the office of the executive director within ten (10) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

(4) Any party may submit a written response to exceptions filed with the board. The response shall be filed with the board through the office of the executive director within twenty (20) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

(5) Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.

(6) In appeals where the recommended order entered by the hearing officer proposes immediate reinstatement, the appointing authority objecting to such a recommendation shall file a written request that reinstatement be stayed until appeals are exhausted. Such objection and request shall completely state the grounds relied upon by the appointing authority and be filed with the board and served upon the appellant or his counsel within fifteen (15) days of date the recommended order is entered.

Section 6. Board Review and Action. (1) The board may adopt as submitted the findings and recommendations of the hearing officer, amend the findings or recommendations based on evidence or information contained in the record prior to adoption, or order the appeal remanded to the hearing officer for further action as appropriate.

(2) Following consideration by the full board, a final order shall be entered disposing of the appeal. The order shall be prepared, executed and entered at the direction of the board by the secretary to the board. Copies of the order shall be transmitted to all parties by the executive director.

JAMES M. SHAKE, Chairman

APPROVED BY AGENCY: May 8, 1992

FILED WITH LRC: May 20, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 23, 1992, at 9 a.m. at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 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: Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, (502)564-7830.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: R. Hanson Williams

(1) Type and number of entities affected: All state agencies with classified employees.

(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: Minimal

(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: 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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation must apply to all classified employees and all state agencies with classified employees. Further tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:375. Employee grievances and complaints.

RELATES TO: KRS 18A.075, 18A.0751

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY AND FUNCTION: KRS 18A.075 and 18A.0751 requires the Personnel Board to adopt comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200.

Section 1. Definitions; Grievance. A grievance is a complaint filed by an employee which concerns some aspect of his conditions of employment over which his cabinet or agency has control and which has occurred or of which the employee has become aware, through the exercise of due diligence, within thirty (30) days prior to filing.

Section 2. General Provisions. (1) Any employee in the classified service who believes that he has been subjected to unfair or unjust treatment concerning his conditions of employment may file a grievance in accordance with this procedure.

(2) Any grievance concerning an action which is appealable directly to the board pursuant to KRS 18A.095 may also be filed with the cabinet or agency. The filing of a grievance with the cabinet or agency does not prohibit the employee from also filing an appeal with the board, however it shall not extend the sixty (60) [~~thirty (30)~~] day appeal period.

(3) Employees utilizing this procedure shall be entitled to file grievances without interference, coercion, discrimination, or reprisal.

(4) Appointing authorities shall inform all employees of the provisions of this regulation, or any modifications in the levels of review which have been approved by the Personnel Board for the

employee's cabinet or agency pursuant to Section 4(7) of this regulation.

(5) The Commissioner of Personnel shall make available to the employees, through the appointing authorities, a uniform grievance form to be used for the filing a grievance. The form shall contain a notice in bold print that, if the grievance concerns an action appealable directly to the board pursuant to KRS 18A.095, the employee's right to file an appeal is not extended beyond sixty (60) [~~thirty (30)~~] days.

Section 3. Procedures. (1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) days following occurrence or the employee becoming aware, through the exercise of due diligence, of the action which is the subject of the grievance. In the event the action or conduct of the first line supervisor is the basis of the employee's grievance, the grievance shall be filed with the second line supervisor.

(2) The employee shall set forth in writing the basis of his grievance or complaint together with the corrective action desired. If the employee wishes to submit additional information or documentation, he may attach it to the grievance.

(3) When a grievance is filed that alleges discrimination on the basis of race, color, religion, national origin, sex, handicap or age forty (40) or over, the recipient shall immediately notify the cabinet or agency EEO coordinator to comply with the affirmative action plan.

(4) Interviews to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle those employees to compensatory time.

(5) Interviews to evaluate or investigate the grievance held with the grievant or other employees shall not require the use of leave time.

(6) Both parties may have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels. (1) The immediate supervisor except as set forth in Section 3(1) of this administrative regulation shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance. If the responding [~~first line~~] supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision to the next appropriate level.

(2) The next level [~~second line~~] supervisor shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance. If that [~~the second line~~] supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision to the next appropriate level.

(3) The third line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance. If the third line supervisor is unable to resolve the grievance to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision to the fourth line supervisor.

(4) The fourth line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance.

(5) If the fourth line supervisor is unable to resolve the grievance to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision to the appointing authority for a final determination. The appointing authority, upon investigation, shall issue findings and a final determination in writing to the employee within ten (10) work days.

(6) Modification of the procedures set forth in this section necessary to accommodate organizational structure within a cabinet or agency may be made only upon approval of the Personnel Board.

(7) Failure of supervisory or management personnel to respond within prescribed time limits automatically advances the grievance to the next review level, unless the time limits have been extended by agreement of the parties.

(8) Any intermediate grievance level may be waived by written agreement of the parties.

JAMES M. SHAKE, Chairman

APPROVED BY AGENCY: June 12, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 23, 1992, at 9 a.m. at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 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: Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, (502)564-7830.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: R. Hanson Williams

(1) Type and number of entities affected: All state agencies with classified and unclassified employees.

(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: 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: 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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR, Part 900, Subpart F,

Sections 900.601-900.606, (48 FR 9209, March 4, 1983).

2. State compliance standards. The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimnation laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the GA in the enactment of KRS 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:135. Fees.

RELATES TO: KRS 327.040(12), 327.050

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: The purpose of this regulation is to establish fees required of applicants for physical therapist (PT) licensure or physical therapist's assistant (PTA) certification by endorsement, examination, reinstatement, renewal or reexamination.

Section 1. An application fee, except for reexamination and renewal applicants is prorated according to the time within a biennial licensure term it is received in the office of the board. Fees submitted for applications received in the first year of a biennial licensure term shall be greater by one-half the renewal fee than a fee received in the second year of a biennial licensure term. This fee and application may result in a temporary permit and license or certificate being valid for more than one (1) year. Personal checks may be accepted only for renewal applications. Other application fees shall be paid by cashier's or certified check or money order made payable to the Kentucky State Treasurer, and delivered to the board office. These fees shall not be refundable.

Section 2. The application fees for licensure or certification in the first year of the biennial licensure term shall be:

(1) $140 for endorsement applicants;

(2) $105 for reinstatement applicants;

(3) $230 [~~220~~] for applicants seeking PT licensure or PTA certification by examination[~~; or~~

~~(4) $210 for applicants seeking PTA certification by examination~~].

Section 3. The application fees for licensure or certification in the second year of the biennial licensure term shall be:

(1) $100 for endorsement applicants;

(2) Sixty-five (65) dollars for reinstatement applicants;

(3) $190 [~~180~~] for applicants seeking PT licensure or PTA certification by examination[~~; or~~

~~(4) $170 for applicants seeking PTA certification by examination~~].

Section 4. The renewal application fee shall be eighty (80) dollars.

Section 5. The application fee for reexamination or examination if a person fails to take or complete the examination he registered to take shall be $147.50. [~~:~~

~~(1) $137.50 for the PT applicant; or~~

~~(2) $127.50 for the PTA applicant.~~]

GEORGIA KING, Chairman

APPROVED BY AGENCY: May 8, 1992

FILED WITH LRC: May 20, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1992, at 10 a.m. at the Board Office, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 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: Mrs. Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 400 Sherburn Lane, Suite 248, Louisville, Kentucky 40207-4215.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy Brinly

(1) Type and number of entities affected: 170 persons per year.

(a) Direct and indirect costs or savings to those affected:

1. First year: $10 for PT applicants, $20 for PTA applicants.

2. Continuing costs or savings: No change after application.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: No change.

(a) Direct and indirect costs or savings:

1. First year: No change, exam fees are submitted to exam company.

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: No alternatives.

(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: These increases merely reflect the increases in charges to the board for each licensure examination.

TIERING: Was tiering applied? No. All physical therapists and physical therapist's assistants are treated uniformly under the law.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

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

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3)

NECESSITY AND FUNCTION: KRS 224.46-510(3) requires the Natural Resources and Environmental Protection Cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and list hazardous waste. This regulation establishes the general provisions necessary for identification and listing of a hazardous waste.

Section 1. Purpose and Scope. (1) This chapter identifies those wastes which are subject to regulation as hazardous wastes under 401 KAR Chapters 32 through 40 and which are subject to the notification and permitting requirements of KRS 224.01, 224.40, 224.43, and 224.46. In this chapter:

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

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

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

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

(2)(a) The definition of waste contained in this chapter applies only to wastes that are also hazardous for purposes of the regulations implementing those provisions of KRS Chapter 224 relating to hazardous waste management. This chapter identifies only some of the materials which are hazardous wastes under KRS 224.01-400, 224.10-100(10), and 224.10-410. For example, it does not apply to materials (such as nonhazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled.

(b) This chapter identifies only some of the materials which are wastes and hazardous wastes for purposes of ~~[under]~~ KRS 224.01-400, 224.10-100(10), and 224.10-410. A material which is not defined as a waste in this chapter, or is not a hazardous waste identified or listed in this chapter is still a waste and a hazardous waste for purposes of this regulation if:

1. In the case of KRS 224.10-100(10), the cabinet has reason to believe that the material may be a waste within the meaning of KRS 224.10-010 and a hazardous waste within the meaning of KRS 224.10-010; or

2. In the case of KRS 224.10-410, the statutory elements are established.

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

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

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

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

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

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

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

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

(f) "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad boxcars), which when worn or superfluous can be recycled.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Disposed of; or

(b) Burned or incinerated; or

(c) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

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

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

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

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

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

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

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

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

a. Burned to recover energy;

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

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

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

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

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

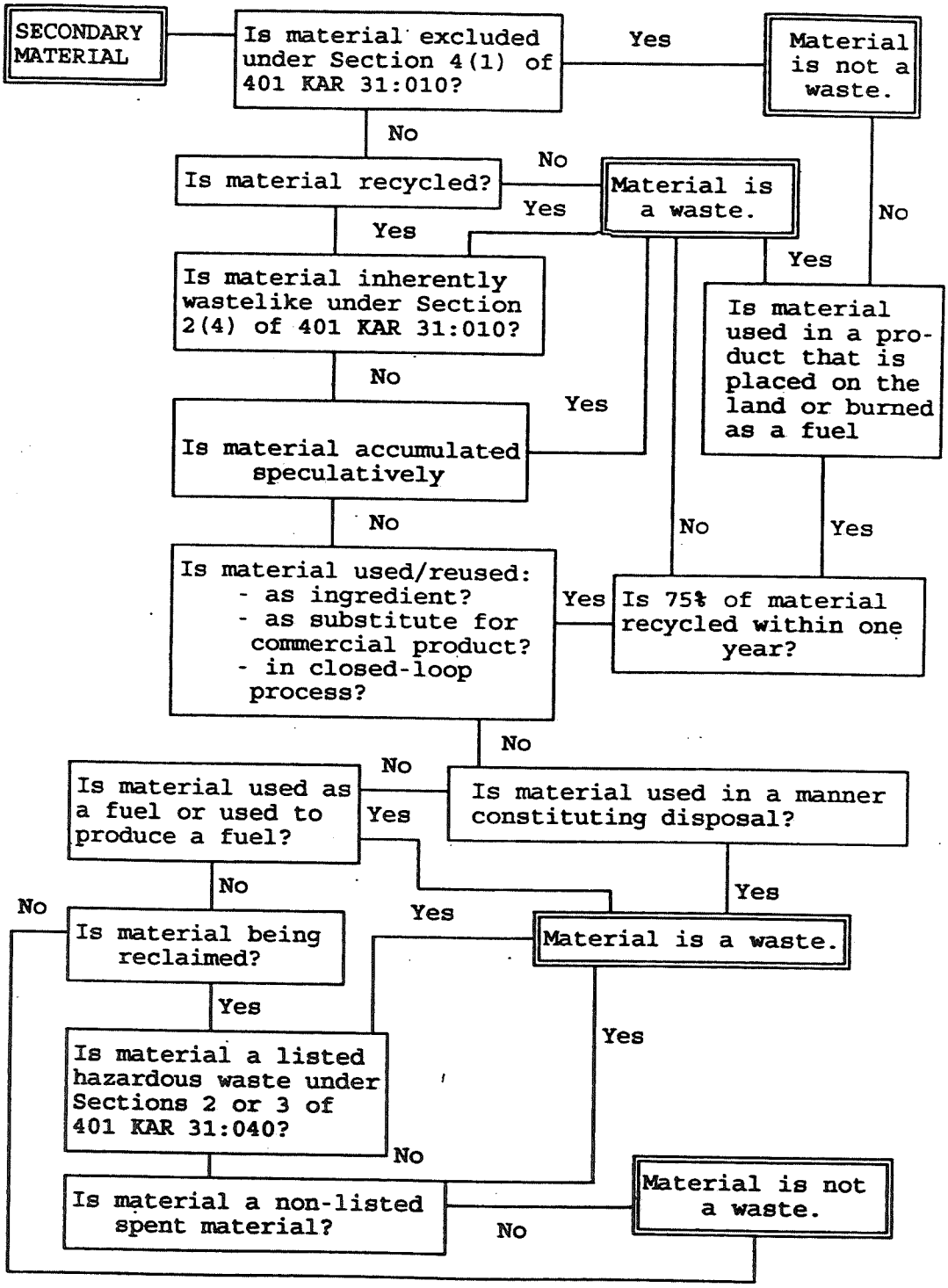
TABLE 1

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

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

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

TABLE 2. DECISION TREE FOR DECIDING WHICH SECONDARY MATERIALS ARE WASTES WHEN RECYCLED



(4) The following materials are wastes when they are recycled in any manner:

(a) Hazardous Waste Numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028 (chlorinated dioxins, chlorinated dibenzofurans and chlorinated phenols).

(b) The cabinet shall use the following criteria to add wastes to the list in paragraph (a) of this subsection:

1.a. The materials are ordinarily disposed of, burned, or incinerated; or

b. The materials contain toxic constituents listed in Section 1 of 401 KAR 31:170 and these constituents are not ordinarily found in raw materials or products for which the material substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

2. The material may pose a substantial hazard to human health and the environment when recycled.

(5) "Materials that are not wastes when recycled."

(a) Materials are not wastes when they can be shown to be recycled by being:

1. Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

2. Used or reused as effective substitutes for commercial products; or

3. Returned to the original process from which they are generated, without first being reclaimed. The material shall be returned as a substitute for raw material feedstock, and the process shall use raw materials as principal feedstocks.

(b) The following materials are wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraph (a)1 through 3 of this subsection):

1. Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

2. Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

3. Materials accumulated speculatively; or

4. Materials listed in subsection (4)(a) of this section.

(6) "Documentation of claims that materials are not wastes or are conditionally exempt from regulation." Respondents in enforcement actions pursuant to 401 KAR Chapter 40, who raise a claim that a certain material is not waste, or is conditionally exempt from regulation, shall demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they shall provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials shall show that they have the necessary equipment to do so.

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

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

(b) It meets any of the following criteria:

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

2. It is listed in 401 KAR 31:040 and has not been excluded from the lists under 401 KAR 31:060 and 401 KAR 31:070.

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

4. It is a mixture of any waste and one (1) or more hazardous wastes listed in 401 KAR 31:040 and has not been excluded from this paragraph under Sections 1 and 2 of 401 KAR 31:060; however, the following mixtures of wastes and hazardous wastes listed in 401 KAR 31:040 are not hazardous wastes (except by application of subparagraph 1 or 2 of this paragraph) if the generator can demonstrate that the mixture consists of waste water the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the CWA (including wastewater at facilities which have eliminated the discharge of wastewater) and:

a. One (1) or more of the following spent solvents listed in Section 2 of 401 KAR 31:040: carbon tetrachloride, tetrachloroethylene, or trichloroethylene provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed one (1) part per million; or

b. One (1) or more of the following spent solvents listed in Section 2 of 401 KAR 31:040; methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, or spent chlorofluorocarbon solvents provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed twenty-five (25) parts per million; or

c. One (1) of the following wastes listed in Section 3 of 401 KAR 31:040, heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050); or

d. A discarded commercial chemical product, or chemical intermediate listed in Section 4 of 401 KAR 31:040, arising from minimal losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this paragraph, minimal losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

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

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

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

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

(c) In the case of any other waste (including a waste mixture or wastes subject to the Atomic Energy Act) when the waste exhibits any of the characteristics identified in 401 KAR 31:030.

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

section:

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

(b)1. Except as otherwise provided in subparagraph 2 of this paragraph, any waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from wastes and that are used beneficially are not wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

2. The following wastes are not hazardous even though they are generated from the treatment, storage, or disposal of hazardous waste, unless they exhibit one (1) or more of the characteristics of hazardous waste:

a. Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

b. Waste from burning any of the materials exempted from regulation by Section 6(1)(c)5-9 of this regulation.

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

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

(b) In the case of a waste which is a listed waste under 401 KAR 31:040, contains a waste listed under 401 KAR 31:040 or is derived from a waste listed in 401 KAR 31:040, it also has been excluded from Section 1(3) of 401 KAR 31:060 and 401 KAR 31:070.

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

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

(b) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the CWA, as amended; however, this exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment;

(c) Irrigation return flows;

(d) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 USC 2011 et seq., except as provided in Section 3 of this regulation;

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

(f) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless they are accumulated speculatively as defined in Section 1(3) of this regulation.

(g) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Section 1(3) of this regulation.

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

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

(j) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process, provided:

1. Only tank storage is involved, and the entire process through completion of reclamation, is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

2. Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

3. The secondary materials are never accumulated in such tanks for over twelve (12) months without being reclaimed; and

4. The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal, as provided in 401 KAR Chapter 36.

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

(a) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel), or reused. "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under the waste management regulations, if the facility:

1. Receives and burns only:

a. Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

b. Waste from commercial or industrial sources that does not contain hazardous waste; and

2. The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

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

1. The growing and harvesting of agricultural crops.

2. The raising of animals, including animal manures.

(c) Mining overburden returned to the mine site.

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

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

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

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

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

c. The waste is typically and frequently managed in nonoxidizing environments.

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

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

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

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

d. Sewer screenings generated by the following subcategories of

the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam house; through-the-blue; and shearling.

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

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

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

h. Wastewater treatment sludges from the production of TiO2 pigment using chromium-bearing ores by the chloride process.

(g) Waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore. For the purpose of this paragraph, waste from the processing of ores and minerals does not include:

1. Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production;

2. Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities;

3. Sludge from treatment of process wastewater or acid plant blowdown from primary zinc production;

4. Spent potliners from primary aluminum reduction;

5. Emission control dust or sludge from ferrochromiumsilicon production;

6. Emission control dust or sludge from ferrochromium production.

(h) Cement kiln dust waste.

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

(j) Petroleum - contaminated media and debris that fail the test for the toxicity characteristic of 401 KAR 31:030 (hazardous waste codes D018 through D043 only) and are subject to the corrective action regulations under 401 KAR Chapter 42.

(3) A hazardous waste which is generated, in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste-treatment-manufacturing unit, is not subject to regulation under 401 KAR Chapters 32, 33, 34, 35, 37, 38 and 39 until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than ninety (90) days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(4) Samples.

(a) Except as provided in paragraph (b) of this subsection, a sample of waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter; 401 KAR Chapter 32, 33, 34, 35, 37, 38 and 39; or the notification requirements of 401 KAR Chapter 32 and 38 when:

1. The sample is being transported to a laboratory for the purpose of testing; or

2. The sample is being transported back to the sample collector after testing; or

3. The sample is being stored by the sample collector before transport to a laboratory for testing; or

4. The sample is being stored in a laboratory before testing; or

5. The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

6. The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

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

1. Comply with DOT, USPS, or any other applicable shipping requirements; or

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

a. Assure that the following information accompanies the sample:

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

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

(iii) The quantity of the sample;

(iv) The date of shipment; and

(v) A description of the sample.

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

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

(5) Treatability study samples.

(a) Except as provided in paragraph (b) of this subsection, persons who generate or collect samples for the purpose of conducting treatability studies shall not be subject to any requirement of 401 KAR Chapters 31 through 33 or the notification requirements of 401 KAR Chapters 32 and 38, nor shall the samples be included in the quantity determinations of Section 5 of this regulation and 401 KAR 32:030, Section 5(4) if:

1. The sample is being collected and prepared for transportation by the generator or sample collector;

2. The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

3. The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(b) The exemption in paragraph (a) of this subsection shall be applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies if:

1. The generator or sample collector uses (in " treatability studies") no more than 1000 kg of any nonacute hazardous waste; one (1) kg of acute hazardous waste; or 250 kg of soil, water, or debris contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

2. The mass of each sample shipment does not exceed 1000 kg of nonacute hazardous waste; one (1) kg of acute hazardous waste; or 250 kg of soils, water, or debris contaminated with acute hazardous waste;

3. The sample is packaged so that it does not leak, spill, or vaporize from its packaging during shipment;

4. The requirements of subparagraph a or b of this paragraph are met:

a. The transportation of each sample shipment complies with USPS or any other applicable shipping requirements; or

b. If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(i) The name, mailing address, and telephone number of the originator of the sample;

(ii) The name, address, and telephone number of the facility that will perform the treatability study;

(iii) The quantity of the sample;

(iv) The date of shipment; and

(v) A description of the sample, including its EPA hazardous waste number;

5. The sample is shipped to a laboratory or testing facility which is exempt under Section 4(6) of this regulation or has an appropriate RCRA permit or interim status;

6. The generator or sample collector maintains the following records for a period ending three (3) years after completion of the treatability study:

a. Copies of the shipping documents;

b. A copy of the contract with the facility conducting the treatability study;

c. Documentation showing:

(i) The amount of waste shipped under this exemption;

(ii) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(iii) The date the shipment was made; and

(iv) Whether or not unused samples and residues were returned to the generator; and

7. The generator reports the information required under Section 4(5)(b)6c of this regulation in its annual report required under 401 KAR 32:040.

(c)1. The cabinet may grant requests, on a case-by-case basis, for quantity limits in excess of those specified in Section 4(5)(b)1 of this regulation for up to an additional 500 kg of nonacute hazardous waste; one (1) kg of acute hazardous waste and 250 kg of soil, water, or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation when:

a. There has been an equipment or mechanical failure during the conduct of a treatability study;

b. There is a need to verify the results of a previously conducted treatability study;

c. There is a need to study and analyze alternative techniques within a previously evaluated treatment process; or

d. There is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

2. The additional quantities allowed pursuant to subparagraph 1 of this paragraph shall be subject to all provisions in paragraph (a) and (b)2 through 7 of this subsection. The generator or sample collector shall apply to the cabinet and provide in writing the following information:

a. The reason why the generator or sample collector requires additional quantity of sample for the treatability study evaluation, and the additional quantity needed;

b. Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

c. A description of the technical modification or change in specification which shall be evaluated and the expected results;

d. If further study is being required due to equipment or mechanical failure, information regarding the reason for the failure or breakdown and what procedures or equipment improvements have been made to protect against further breakdowns; and

e. Any other information that the cabinet deems necessary.

3. Samples undergoing treatability studies at laboratories and testing facilities. Samples undergoing treatability studies and laboratories and testing facilities conducting treatability studies (to the extent the facilities are not otherwise subject to the requirements of 401 KAR Chapters 31 through 38) shall not be subject to any requirements of 401 KAR Chapters 31 through 38 provided that the conditions of Section 4(5)(c)6a through k of this regulation are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to Section 4(5)(c)6a through k of this regulation. Where a group of MTUs are located at the same site, the limitations specified in Section 4(5)(c)6 a through k of this regulation shall apply to the entire group of MTUs collectively, as if the group were one (1) MTU.

(d) The conditions for exemption are:

1. No less than forty-five (45) days before conducting treatability studies, the facility shall notify the cabinet in writing that it intends to conduct treatability studies under this subsection;

2. The laboratory or testing facility conducting the treatability study shall have an EPA identification number;

3. No more than 250 kg of "as received" hazardous waste shall be subjected to initiation of treatment in all treatability studies in a single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector;

4. The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies shall not exceed 1000 kg, the total of which may include 500 kg of soils, water, or debris contaminated with acute hazardous waste or one (1) kg of acute hazardous waste. This quantity of limitation shall not include:

a. Treatability study residues; or

b. Treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste;

5. No more than ninety (90) days shall elapse since the treatability study for the sample was completed, or no more than one (1) year shall elapse since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs;

6. The treatability study shall not involve the placement of hazardous waste on the land or open burning of hazardous waste;

7. The facility shall maintain records for three (3) years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

a. The name, address, and EPA identification number of the generator or sample collector of each waste sample;

b. The date the shipment was received;

c. The quantity of waste accepted;

d. The quantity of "as received" waste in storage each day;

e. The date the treatment was initiated and the amount of "as received" waste introduced to treatment each day;

f. The date the treatability study was concluded; and

g. The date any unused sample or residue generated from the treatability study was returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number;

8. The facility shall keep on site a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for at least three (3) years from the completion date of each treatability study;

9. The facility shall prepare and submit a report to the cabinet by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current calendar year. The report shall also contain following information for the previous calendar year:

a. The name, address, and EPA identification number of the facility conducting the treatability studies;

b. The types (by process) of treatability studies conducted;

c. The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

d. The total quantity of waste in storage each day;

e. The quantity and types of waste subjected to treatability studies;

f. The data on which each treatability study was conducted; and

g. The final disposition of residues and unused samples from each treatability study;

10. The facility shall determine whether any unused samples or residues generated by the treatability study are hazardous wastes under Section 3 of this regulation and, if so, are subject to 401 KAR

Chapters 31 through 38, unless the residues and unused samples are returned to the sample originator under the exemption in Section 4(5) of this regulation;

11. The facility shall notify the cabinet by letter when the facility is no longer planning to conduct any treatability studies at the site.

Section 5. Special Requirements for Hazardous Waste Generated by Limited Quantity Generators. (1) A generator is a limited quantity generator in a calendar month if he generates less than 100 kilograms of hazardous waste in that month, except as specified in subsection (5) of this section.

(2) Except for those wastes identified in subsections (5), (6), (7), and (10) of this section, a limited quantity generator's hazardous wastes are not subject to regulation under 401 KAR Chapters 32 through 39 and the notification requirements of KRS 224.46-510(3), provided the generator complies with the regulations of subsections (6), (7), and (10) of this section.

(3) Hazardous waste that is not subject to regulation or that is subject only to Sections 2 and 3 of 401 KAR 32:010 and Sections 1(3) and 2 of 401 KAR 32:040 is not included in the quantity determinations of this chapter and 401 KAR Chapters 32 through 40 and is not subject to any requirements of those regulations. Hazardous waste that is subject to the requirements of Section 6(2) and (3) of this regulation and 401 KAR 36:030, 401 KAR 36:040, and 401 KAR 36:060 is included in the quantity determination of this chapter, and is subject to the requirements of 401 KAR Chapters 32 through 40.

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

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

(b) Hazardous waste produced by on-site treatment (including reclamation) of his hazardous waste, so long as the hazardous waste that is treated was counted once; or

(c) Spent materials that are generated, reclaimed, and subsequently reused on site, so long as spent materials have been counted once.

(5) If a generator generates acutely hazardous waste in a calendar month in quantities greater than set forth in this subsection, all quantities of that acutely hazardous waste are subject to regulations applicable to generators of greater than 1,000 kilograms of nonacutely hazardous waste in a calendar month under 401 KAR Chapters 32 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:

(a) A total of one (1) kilogram of acute hazardous wastes listed in Section 2, 3, or 4(5) of 401 KAR 31:040.

(b) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous wastes listed in Section 2, 3 or 4(5) of 401 KAR 31:040.

(6) A limited quantity generator may accumulate hazardous waste on site in tanks or containers. If he accumulates at any time more than 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than set forth in subsection (5)(a) or (b) of this section, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under 401 KAR Chapters 32 through 39 and the notification and permitting requirements of KRS 224.01, 224.40, 224.43, and 224.46. The time period set out in Section 5 of 401 KAR 32:030 [~~, Section 5~~] for accumulation of wastes on-site begins for a limited quantity generator when the accumulated wastes exceed the applicable exclusion level.

(7) In order for a limited quantity generator to be excluded from full regulations under this section, the generator shall:

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

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

(c) Either treat or dispose of hazardous waste in an on-site facility, or ensure direct delivery to an off-site storage, treatment, or disposal facility, either of which if located in the U.S. is:

1. Permitted under 401 KAR Chapter 38;

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

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

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

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

6. A facility which:

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

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

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

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

(10) If a limited quantity generator's hazardous wastes are mixed with used oil, the mixture shall be subject to Sections 1 through 5 of 401 KAR 36:050, if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment shall also be so regulated if it is destined to be burned for energy recovery.

Section 6. Requirements for Recyclable Materials. (1)(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (2) and (3) of this section, except for the materials listed in paragraphs (b) and (c) of this subsection. Hazardous wastes that are recycled shall be known as "recyclable materials."

(b) The following recyclable materials are not subject to the requirements of this section, but are regulated under 401 KAR Chapter 36 and all applicable provisions of 401 KAR Chapters 38 and 39:

1. Recyclable materials used in a manner constituting disposal (see 401 KAR 36:030);

2. Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under 401 KAR 34:240 or 401 KAR 35:240 (see 401 KAR 36:040);

3. Used oil that exhibits one (1) or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under 401 KAR 34:240 and 35:240 (see 401 KAR 36:040);

4. Recyclable materials from which precious metals are reclaimed (see 401 KAR 36:060); and

5. Spent lead-acid batteries that are being reclaimed (see 401 KAR 36:070).

(c) The following recyclable materials are not subject to regulation under 401 KAR Chapters 32 through 38, and are not subject to the notification requirements of KRS 224.46-510(3):

1. Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in 401 KAR 32:050:

a. A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, shall comply with the requirements applicable to a primary exporter in Sections 4, 7(1)(a) through (d), (f), [~~and~~] (2) and [~~Section~~] 8 of 401 KAR 32:050, export these materials only upon consent of the

receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 401 KAR 32:050, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

b. Transporters transporting a shipment for export shall not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, shall ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment, and shall ensure that it is delivered to the facility designated by the person initiating the shipment.

2. Used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

3. Used oil that exhibits one (1) or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery;

4. Scrap metal;

5. Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if the wastes result from normal petroleum refining, production, and transportation practices;

6. Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;

7. Coke and coal tar from the iron and steel industry that contains EPA Hazardous Waste No. K087 (Decanter tank tar sludge from coking operations) from the iron and steel production process;

8.a. Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under Section 1(5) of 401 KAR 35:050 [~~36:050~~] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

b. Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under Section 1(5) of 401 KAR 36:050; and

c. Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under Section 1(5) of 401 KAR 36:050; and

9. Petroleum coke produced from petroleum refinery hazardous wastes containing oil at the same facility at which the wastes were generated, unless the resulting coke product exceeds one (1) or more of the characteristics of hazardous waste in 401 KAR 31:030.

(2) Generators and transporters of recyclable materials are subject to the applicable requirements of 401 KAR Chapters 32 and 33 and the notification requirements under KRS 224.46-510(3) and 224.46-560, except as provided in subsection (1) of this section.

(3)(a) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of 401 KAR 34:010 through 34:210, 401 KAR 35:010 through 35:210, 401 KAR Chapters 36 through 38, and the notification requirements under KRS 224.46-510(3) and 224.46-520, except as provided in subsection (1) of this section. (The recycling process itself is exempt from regulation.)

(b) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsection (1) of this section:

1. The owner or operator shall submit an annual notification to the cabinet. After the date of promulgation of this regulation, the owner or operator shall submit an initial notification on a schedule determined by the cabinet. Subsequent annual notifications shall be submitted to the cabinet at least thirty (30) days before the expiration date shown on the notification; and

2. Sections 2 and 3 of 401 KAR 35:050 (dealing with the use of the manifest and manifest discrepancies).

Section 7. Residues of Hazardous Waste in Empty Containers. (1)(a) Any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in subsection (2) of this section, is not subject to 401 KAR Chapters 32, 33, 34, 35, 37, 38, and 39 but is subject to 401 KAR Chapter 47.

(b) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in subsection (2) of this section is subject to 401 KAR Chapters 32, 33, 34, 35, 37, 38, and 39; 401 KAR 30:020; and 401 KAR 30:030.

(2)(a) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in Section 2, 3, or 4(5) of 401 KAR 31:040, is empty if:

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

2. No more than two and five-tenths (2.5) centimeters (one (1) inch) of residue remain on the bottom of the container or inner liner; or

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

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

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

(c) A container or an inner liner removed from a container that has held an acute hazardous waste listed in Section 2, 3, or 4(5) of 401 KAR 31:040 is empty if:

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

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

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

Section 8. PCB Wastes Regulated Under the Toxic Substance Control Act. The disposal of PCB - containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under 40 CFR Part 761 (1990) and that are hazardous only because they fail the test for the toxicity characteristic (hazardous waste codes D018 through D043 only) are exempt from 401 KAR Chapters 31 through 35, 37, and 38, including the notification requirements of these chapters.

Section 9. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-case Basis. (1) The cabinet may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in Section 6(1)(b)3 of this regulation shall be regulated under Section 6(2) and (3) of this regulation. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained or because the materials being accumu-

lated or stored together are incompatible. In making this decision, the cabinet shall consider the following factors:

(a) The types of materials accumulated or stored and the amounts accumulated or stored;

(b) The method of accumulation or storage;

(c) The length of time the materials have been accumulated or stored before being reclaimed;

(d) Whether any contaminants are being released into the environment, or are likely to be so released; and

(e) Other relevant factors.

(2) The procedures for this decision are set forth in Section 9 of this regulation.

Section 10. Procedures for Case-by-case Regulation of Hazardous Waste Recycling Activities. The cabinet shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in Section 6(1)(b)4 of this regulation under the provisions of Section 6(2) and (3) of this regulation rather than under the provisions of 401 KAR 36:060 (precious metals being reclaimed).

(1) If a generator is accumulating the waste, the cabinet shall issue a notice setting forth the factual basis for the decision and stating that the person shall comply with the applicable requirements of 401 KAR 32:010, 32:030, 32:040, and 32:050. The notice shall become final within thirty (30) days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the cabinet shall hold a public hearing. The cabinet shall provide notice of the hearing to the public and allow public participation at the hearing. The cabinet shall issue a determination after the hearing stating whether or not compliance with 401 KAR Chapter 32 is required. The order shall become effective thirty (30) days after service of the determination, unless the cabinet specifies a later date.

(2) If the person is accumulating the recyclable material as a storage facility, the notice shall state that the person shall obtain a permit in accordance with all applicable provisions of 401 KAR Chapter 38. The owner or operator of the facility shall apply for a permit within no more than six (6) months of notice. If the owner or operator of the facility wishes to challenge the cabinet's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit shall specify the reasons for the cabinet's determination. The question of whether the cabinet's decision was proper shall remain open for consideration during the public comment period discussed under Section 8 of 401 KAR 38:050 and in any subsequent hearing.

Section 11. Regulation of Mixed Radioactive Hazardous Wastes. Radioactive mixed wastes are wastes that contain both hazardous wastes subject to KRS Chapter 224 and radioactive wastes subject to the Atomic Energy Act (AEA). Radioactive mixed wastes are subject to all the requirements of 401 KAR Chapters 30 through 40 and the Atomic Energy Act.

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

APPROVED BY AGENCY: June 15, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: This proposed amendment affects generators, laboratories, or testing facilities that collect samples from waste to determine the characteristic of composition of the waste.

(a) Direct and indirect costs or savings to those affected:

1. First year: The affected entities will experience savings because the proposed amendment exempts from the RCRA regulation waste samples used in small scale treatability studies.

2. Continuing costs or savings: First year savings will continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): It has been determined that waste used in small scale treatability studies can be exempt from hazardous waste regulations because a number of factors combine to ensure minimal risk to human health and the environment. These factors include limited sample size, the high cost of collecting and shipping the sample, quantity limitation on shipping, applicability of DOT and U.S. Postal Service regulations, storage limitations at laboratories, and the cost of treatability studies.

(b) Reporting and paperwork requirements: The recordkeeping and the reporting requirements have been initiated so that appropriate documentation is available to ensure the conditions of the exemptions for waste samples used in small scale treatability studies are met.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Although the affected entities will experience savings, the cabinet will still be required to monitor the exemption, issue EPA identification numbers, and review records and reports.

2. Continuing costs or savings: First year costs will continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Recordkeeping and reporting requirements have been initiated to ensure appropriate documentation is available to verify the conditions of the exemptions from RCRA are met.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment conditionally exempts waste samples used in small scale treatability studies from RCRA regulations. These waste samples are collected solely for the purpose of monitoring or testing a waste to determine its characteristic or composition.

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 261.4(e) and (f) as published in the Federal Register on July 19, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to hazardous waste generators and owners and operators of hazardous waste facilities.

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 July 19, 1988, at 40 CFR 261.4(e) and (f).

2. State compliance standards. The proposed amendment conditionally exempts waste samples used in small scale treatability studies from RCRA regulation. These waste samples are collected solely for the purpose of monitoring or testing a waste to determine its characteristics or composition. Generators, laboratories, or testing facilities conducting the treatability studies will be exempt from hazardous waste regulations including permitting requirements when certain conditions are met.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations conditionally exempt waste samples used in small scale treatability studies from RCRA regulation. These waste samples are collected solely for the purpose of monitoring or testing a waste to determine its characteristics or composition. Generators, laboratories, or testing facilities conducting the treatability studies will be exempt from hazardous waste regulations including permitting requirements when certain conditions are met.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendment is identical to 40 CFR 261.4(e) and (f) as published in the July 19, 1988, Federal Register. The proposed changes do 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 Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 31:040. Lists of hazardous wastes.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3), 224.46-530, 224.50-100

NECESSITY AND FUNCTION: KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This regulation establishes the lists of hazardous wastes.

Section 1. General Applicability and Delisting Procedures. (1) A waste is a hazardous waste if it is listed in any section of this regulation unless it has been excluded from that list under 401 KAR 31:060 and 31:070.

(2) The cabinet shall indicate the basis for listing the classes or types of wastes listed in this regulation by employing one (1) or more of the following Hazard Codes:

Hazard Code	Class or Type of Waste
(I)	Ignitable waste
(C)	Corrosive waste
(R)	Reactive waste
(E)	Toxicity characteristic waste
(H)	Acute hazardous waste
(T)	Toxic waste

401 KAR 31:160 identifies the constituent which caused the cabinet to list the waste as a toxicity characteristic waste (E) or toxic waste (T) in Sections 2 and 3 of this regulation.

(3) Each hazardous waste listed in this regulation is assigned an EPA Hazardous Waste Number, which precedes the name of the waste. This number shall be used in complying with the notification requirements of KRS 224.46-510 and the recordkeeping and reporting requirements under 401 KAR Chapters 32 through 40.

(4) The following hazardous wastes listed in Section 2 or 3 of this regulation are subject to the exclusion limits for acutely hazardous wastes established in Section 5 of 401 KAR 31:010: EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

Section 2. Hazardous Wastes from Nonspecific Sources. Hazardous wastes from nonspecific sources are:

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
Generic:		
F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, orthodichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F003	The following spent nonhalogenated	(I)*

	solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all spent solvent mixtures/blends containing, before use, one (1) or more of the above nonhalogenated solvents, and, a total of ten (10) percent or more (by volume) of one (1) or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	
F004	The following spent nonhalogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F005	The following spent nonhalogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents, or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I,T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)
F007	Spent cyanide plating bath solutions from electroplating operations.	(R,T)
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	(R,T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	(R,T)
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	(R,T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	(R,T)
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	(T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum.	(T)
F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol or of intermediates used to produce its derivatives.	(H)
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)
F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)
F024	Wastes, including but not limited	(T)

	to distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one (1) to five (5), utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent desiccants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 3 of this regulation.)	
F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.	(H)
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.)	(H)
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.	(T)

* (I,T) shall be used to specify mixtures containing ignitable and toxic constituents.

Section 3. Hazardous Wastes from Specific Sources. Hazardous wastes from specific sources are:

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
Wood Preservation:		
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote or pentachlorophenol.	(T)
Inorganic Pigments:		
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	(T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments.	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments.	(T)
K008	Oven residue from the production chrome oxide green pigments.	(T)
Organic Chemicals:		
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	(R,T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	(R,T)
K014	Bottoms from the acetoniltrile purification column in the production of acrylonitrile.	(T)
K015	Still bottoms from the distillation of benzyl chloride.	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	(T)
K018	Heavy ends from the fractionation column in ethyl chloride production.	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	(T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	(T)
K093	Distillation light ends from the production of phthalic anhydride from orthoxylene.	(T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	(T)

K026	Stripping still tails from the production of methy ethyl pyridines.	(T)
K027	Centrifuge and distillation residues from toluene diisocyanate production.	(R,T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	(T)
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	(T)
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	(T)
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	(T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloro-ethylene.	(T)
K083	Distillation bottoms from aniline production.	(T)
K103	Process residues from aniline extraction from the production of aniline.	(T)
K104	Combined wastewater streams generated from nitrobenzene/ aniline production.	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	(T)
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(T)
K111	Product wash waters from the production of dinitrotoluene via nitration of toluene.	(C,T)
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	(T)
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	(T)
K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)

Inorganic Chemicals:

K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)
K106	Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)

Pesticides:

K031	By-product salts generated in the production of MSMA and cacodylic acid.	(T)
K032	Wastewater treatment sludge from the production of chlordane.	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)
K035	Wastewater treatment sludges generated in the production of creosote.	(T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)
K037	Wastewater treatment sludges from the production of disulfoton.	(T)
K038	Wastewater from the washing and stripping of phorate production.	(T)
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)
K040	Wastewater treatment sludge from the production of phorate.	(T)
K041	Wastewater treatment sludge from the production of toxaphene.	(T)
K098	Untreated process wastewater from the production of toxaphene.	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	(T)
K099	Untreated wastewater from the production of 2,4-D.	(T)
K123	Process wastewater (including supernates, filtrates, and	(T)

	washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	(C,T)
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	(T)
Explosives:		
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	(R)
K045	Spent carbon from the treatment of wastewater containing explosives.	(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	(T)
K047	Pink/red water from TNT operations.	(T)
Petroleum Refining:		
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	(T)
K049	Slop oil emulsion solids from the petroleum refining industry.	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)
K051	API separator sludge from the petroleum refining industry.	(T)
K052	Tank bottoms (leaded) from the petroleum refining industry.	(T)
Iron and Steel:		
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	(T)
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	(C,T)
Primary Copper:		
K064	Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.	(T)
Primary Lead:		
K065	Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.	(T)
Primary Zinc:		
K066	Sludge from treatment of process wastewater or acid plant blowdown from primary zinc production.	(T)
Primary Aluminum:		
K088	Spent potliners from primary aluminum reduction.	(T)
Ferroalloys:		
K090	Emission control dust or sludge from ferrochromiumsilicon production.	(T)
K091	Emission control dust or sludge from ferrochromium production.	(T)

The listing of wastes K064, K065, K066, K088, K090 and K091 as hazardous wastes shall become applicable to persons who generate or manage such wastes six (6) months after the effective date of this regulation.

Secondary Lead:		
K069	Emission control dust/sludge from secondary lead smelting.	(T)
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	(T)
Veterinary Pharmaceuticals:		
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds.	(T)
Ink Formulation:		
K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	(T)
Coking:		
K060	Ammonia still lime sludge from coking operations.	(T)
K087	Decanter tank tar sludge from coking operations.	(T)

Section 4. Discarded Commercial Chemical Products, Off-specification Species, Container Residues, and Spill Residues Thereof. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Section 2(1)(b)1 of 401 KAR 31:010; when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment; when they are otherwise applied to the land in lieu

of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use; when in lieu of their original intended use; they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel:

(1) Any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section.

(2) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) or (6) of this section.

(3) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) of this section, unless the container is empty as defined in Section 7(2)(c) of 401 KAR 31:010.

(4) Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of
this section, or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical intermediate which, if it met specification, would have the generic name listed in subsection (5) or (6) of this section.

(5) The commercial chemical products, manufacturing chemical intermediate or off-specification commercial chemical products referred to in subsections (1) through (4) of this section, are identified as acute hazardous wastes (H) and are subject to the limited quantity generator exclusion in Section 5 of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound is only listed for acute toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance	Chemical Abstracts No.
P023	Acetaldehyde, chloro-	107-20-0
P002	Acetamide, N-(aminothioxomethyl)-	591-08-2
P057	Acetamide, 2-fluoro-	640-19-7
P058	Acetic acid; fluoro-, sodium salt	62-74-8
P002	1-Acetyl-2-thiourea	591-08-2
P003	Acrolein	107-02-8
P070	Aldicarb	116-06-3
P004	Aldrin	309-00-2
P005	Allyl alcohol	107-18-6
P006	Aluminum phosphide (R,T)	20859-73-8
P007	5-(Aminomethyl)-3-isoxazolol	2763-96-4
P008	4-Aminopyridine	504-24-5
P009	Ammonium picrate (R)	131-74-8
P119	Ammonium vanadate	7803-55-6
P099	Argentate (1-), bis(cyano-C)-, potassium	506-61-6
P010	Arsenic acid H_3AsO_4	7778-39-4
P012	Arsenic oxide As_2O_3	1327-53-3
P011	Arsenic oxide As_2O_5	1303-28-2
P011	Arsenic pentoxide	1303-28-2
P012	Arsenic trioxide	1327-53-3
P038	Arsine, diethyl-	692-42-2
P036	Arsonous dichloride, phenyl-	696-28-6
P054	Aziridine	151-56-4
P067	Aziridine, 2-methyl-	75-55-8
P013	Barium cyanide	542-62-1
P024	Benzenamine, 4-chloro-	106-47-8
P077	Benzenamine, 4-nitro-	100-01-6
P028	Benzene, (chloromethyl)-	100-44-7
P042	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-	51-43-4
P046	Benzeneethanamine, alpha, alpha-dimethyl-	122-09-8
P014	Benzenethiol	108-98-5
P001	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3%	*81-81-2
P028	Benzyl chloride	100-44-7
P015	Beryllium	7440-41-7
P017	Bromoacetone	598-31-2
P018	Brucine	357-57-3
P045	2-Butanone, 3,3-dimethyl-1-(methylthio)-,O-(methylamino) carbonyl) oxime	39196-18-4
P021	Calcium cyanide	592-01-8
P021	Calcium cyanide $Ca(CN)_2$	592-01-8
P022	Carbon disulfide	75-15-0
P095	Carbonic dichloride	75-44-5
P023	Chloroacetaldehyde	107-20-0
P024	p-Chloroaniline	106-47-8
P026	1-(o-Chlorophenyl)thiourea	5344-82-1
P027	3-Chloropropionitrile	542-76-7
P029	Copper cyanide	544-92-3
P029	Copper cyanide Cu(CN)	544-92-3
P030	Cyanides (soluble cyanide salts), not otherwise specified	--------
P031	Cyanogen	460-19-5
P033	Cyanogen chloride	506-77-4
P033	Cyanogen chloride (CN)Cl	506-77-4
P034	2-Cyclohexyl-4,6-dinitrophenol	131-89-5
P016	Dichloromethyl ether	542-88-1
P036	Dichlorophenylarsine	696-28-6
P037	Dieldrin	60-57-1
P038	Diethylarsine	692-42-2
P041	Diethyl-p-nitrophenyl phosphate	311-45-5
P040	O,O-Diethyl O-pyrazinyl phosphorothioate	297-97-2
P043	Diisopropylfluorophosphate (DFP)	55-91-4
P004	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4, 4a,5,8,8a,- hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha, 8abeta)-	309-00-2
P060	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4, 4a,5,8,8a- hexahydro-, (1alpha, 4alpha, 4abeta, 5beta, 8beta, 8abeta)-	465-73-6
P037	2,7:3,6-Dimethanonaphth(2,3-b) oxirene,3,4,5,6,9,9-hexa-chloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha, 2beta, 2aalpha, 3beta, 6beta, 6aalpha, 7beta, 7aalpha)-	60-57-1
P051	2,7:3,6-Dimethanonaphth(2,3-b),oxirene, 3,4,5,6,9,9-hexa-chloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha, 2beta, 2abeta,3alpha, 6alpha, 6abeta,7beta, 7aalpha)-, and metabolites	*72-20-8
P044	Dimethoate	60-51-5

P046	alpha, alpha-Dimethylphenethy lamine	122-09-8
P047	4,6-Dinitro-o-cresol, and salts	*534-52-1
P048	2,4-Dinitrophenol	51-28-5
P020	Dinoseb	88-85-7
P085	Diphosphoramide, octamethyl-	152-16-9
P111	Diphosphoric acid, tetraethyl ester	107-49-3
P039	Disulfoton	298-04-4
P049	Dithiobiuret	541-53-7
P050	Endosulfan	115-29-7
P088	Endothal	145-73-3
P051	Endrin	72-20-8
P051	Endrin, and metabolites	72-20-8
P042	Epinephrine	51-43-4
P031	Ethanedinitrile	460-19-5
P066	Ethanimidothioic acid, N-(((methylamino)carbonyl) oxy)-,methyl ester	16752-77-5
P101	Ethyl cyanide	107-12-0
P054	Ethyleneimine	151-56-4
P097	Famphur	52-85-7
P056	Fluorine	7782-41-4
P057	Fluoroacetamide	640-19-7
P058	Fluoroacetic acid, sodium salt	62-74-8
P065	Fulminic acid, mercury (2+) salt (R,T)	628-86-4
P059	Heptachlor	76-44-8
P062	Hexaethyl tetraphosphate	757-58-4
P116	Hydrazinecarbothioamide	79-19-6
P068	Hydrazine, methyl-	60-34-4
P063	Hydrocyanic acid	74-90-8
P063	Hydrogen cyanide	74-90-8
P096	Hydrogen phosphide	7803-51-2
P060	Isodrin	465-73-6
P007	3(2H)-Isoxazolone,5-(aminomethyl)-	2763-96-4
P092	Mercury, (acetato-O) phenyl-	62-38-4
P065	Mercury fulminate (R,T)	628-86-4
P082	Methanamine,N-methyl-N-nitroso-	62-75-9
P064	Methane, isocyanato-	624-83-9
P016	Methane, oxybis (chloro-	542-88-1
P112	Methane, tetranitro-(R)	509-14-8
P118	Methanethiol, trichloro-	75-70-7
P050	6,9-Methano-2,4,3-benzodio-xathiepen, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-,3-oxide	115-29-7
P059	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8
P066	Methomyl	16752-77-5
P068	Methyl hydrazine	60-34-4
P064	Methyl isocyanate	624-83-9
P069	2-Methyllactonitrile	75-86-5
P071	Methyl parathion	298-00-0
P072	alpha-Naphthylthiourea	86-88-4
P073	Nickel carbonyl	13463-39-3
P073	Nickel carbonyl $Ni(CO)_4$, (T-4)-	13463-39-3
P074	Nickel cyanide	557-19-7
P074	Nickel cyanide $Ni(CN)_2$	557-19-7
P075	Nicotine, and salts	*54-11-5
P076	Nitric oxide	10102-43-9
P077	p-Nitroaniline	100-01-6
P078	Nitrogen dioxide	10102-44-0
P076	Nitrogen oxide NO	10102-43-9
P078	Nitrogen oxide NO_2	10102-44-0
P081	Nitroglycerine (R)	55-63-0
P082	N-Nitrosodimethylamine	62-75-9
P084	N-Nitrosomethylvinylamine	4549-40-0
P085	Octamethylpyrophosphoramide	152-16-9
P087	Osmium oxide OsO_4, (T-4)-	20816-12-0
P087	Osmium tetroxide	20816-12-0
P088	7-Oxabicyclo (2.2.1)heptane-2,3-dicarboxylic acid	145-73-3
P089	Parathion	56-38-2
P034	Phenol, 2-cyclohexyl-4, 6-dinitro-	131-89-5
P048	Phenol, 2, 4-dinitro	51-28-5
P047	Phenol, 2-methyl-4,6-dinitro-, and salts	*534-52-1
P020	Phenol, 2-(1-methylpropyl)-4, 6-dinitro-	88-85-7
P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)	131-74-8
P092	Phenylmercury acetate	62-38-4
P093	Phenylthiourea	103-85-5
P094	Phorate	298-02-2
P095	Phosgene	75-44-5
P096	Phosphine	7803-51-2
P041	Phosphoric acid, diethyl 4 -nitrophenyl ester	311-45-5
P039	Phosphorodithioic acid, 0,0-diethyl S-(2-(ethylthio)ethyl) ester	298-04-4
P094	Phosphorodithioic acid, 0,0-diethyl S-((ethylthio)methyl) ester	298-02-2
P044	Phosphorodithioic acid, O, O-dimethyl S-(2-(methylamino)-2-oxoethyl) ester	60-51-5
P043	Phosphorofluoridic acid, bis (1-methylethyl) ester	55-91-4
P089	Phosphorothioic acid, O, O-diethyl O-(4-nitrophenyl) ester	56-38-2
P040	Phosphorothioic acid, O, O-diethyl O-pyrazinyl ester	297-97-2
P097	Phosphorothioic acid, O-(4-((dimethylamino) sulfonyl) phenyl) 0,0-dimethyl ester	52-85-7
P071	Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	298-00-0
P110	Plumbane, tetraethyl-	78-00-2
P098	Potassium cyanide	151-50-8
P098	Potassium cyanide K(CN)	151-50-8
P099	Potassium silver cyanide	506-61-6
P070	Propanal, 2-methyl-2-(methyl-thio)-,O-((methylamino)car-bonyl)oxime	116-06-3
P101	Propanenitrile	107-12-0
P027	Propanenitrile, 3-chloro-	542-76-7
P069	Propanenitrile, 2-hydroxy-2-methyl-	75-86-5
P081	1,2,3-Propanetriol, trinitrate (R)	55-63-0
P017	2-Propanone, 1-bromo-	598-31-2
P102	Propargyl alcohol	107-19-7
P003	2-Propenal	107-02-8
P005	2-Propen-1-o1	107-18-6
P067	1,2-Propylenimine	75-55-8
P102	2-Propyn-1-ol	107-19-7
P008	4-Pyridinamine	504-24-5
P075	Pyridine,3-(1-methyl-2-pyrrolidinyl)-,(S)-, and salts	*54-11-5
P114	Selenious acid, dithalium(1+)salt	12039-52-0
P103	Selenourea	630-10-4
P104	Silver cyanide	506-64-9
P104	Silver cyanide Ag(CN)	506-64-9
P105	Sodium azide	26628-22-8
P106	Sodium cyanide	143-33-9
P106	Sodium cyanide Na(CN)	143-33-9

~~[P107~~	~~Strontium sulfide~~	~~1314-96-1~~
~~P107~~	~~Strontium sulfide SrS~~	~~1314-96-1]~~
P108	Strychnidin-10-one, and salts	*57-24-9
P018	Strychnidin-10-one, 2, 3-dimethoxy-	357-57-3
P108	Strychnine, and salts	*57-24-9
P115	Sulfuric acid, dithallium (1+)salt	7446-18-6
P109	Tetraethyldithiopyrophosphate	3689-24-5
P110	Tetraethyl lead	78-00-2
P111	Tetraethyl pyrophosphate	107-49-3
P112	Tetranitromethane (R)	509-14-8
P062	Tetraphosphoric acid, hexa-ethyl ester	757-58-4
P113	Thallic oxide	1314-32-5
P113	Thallium oxide $T1_20_3$	1314-32-5
P114	Thallium (I) selenite	12039-52-0
P115	Thallium (I) sulfate	7446-18-6
P109	Thiodiphosphoric acid, tetra-ethyl ester	3689-24-5
P045	Thiofanox	39196-18-4
P049	Thioimidodicarbonic diamide $((H_2N)C(S))_2NH$	541-53-7
P014	Thiophenol	108-98-5
P116	Thiosemicarbazide	79-19-6
P026	Thiourea, (2-chlorophenyl)-	5344-82-1
P072	Thiourea, 1-naphthalenyl-	86-88-4
P093	Thiourea, phenyl-	103-85-5
P123	Toxaphene	8001-35-2
P118	Trichloromethanethiol	75-70-7
P119	Vanadic acid, ammonium salt	7803-55-6
P120	Vanadium oxide V_20_5	1314-62-1
P120	Vanadium pentoxide	1314-62-1
P084	Vinylamine, N-methyl-N-nitroso-	4549-40-0
P001	Warfarin, and salts, when present at concentrations greater than 0.3%	*81-81-2
P121	Zinc cyanide	557-21-1
P121	Zinc cyanide $Zn(CN)_2$	557-21-1
P122	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10% (R,T)	1314-84-7

*CAS number given for parent compound only

(6) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in subsections (1) through (4) of this section, are identified as toxic wastes (T), unless otherwise designated, and are subject to the limited quantity generator exclusion in Section 5(1), (6), and (7) of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance	Chemical Abstracts No.
U001	Acetaldehyde (I)	75-07-0
U034	Acetaldehyde, trichloro-	75-87-6
U187	Acetamide, N-(4-ethoxyphenyl)-	62-44-2
U005	Acetamide, N-9H-fluoren-2-yl-	53-96-3
U240	Acetic acid, (2,4-dichloro-phenoxy)-, salts and esters	*94-75-7
U112	Acetic acid ethyl ester (I)	141-78-6
U144	Acetic acid, lead (2+) salt	301-04-2
U214	Acetic acid, thallium (1+) salt	563-68-8
See F027	Acetic acid, (2,4,5-trichlorophenoxy)-	93-76-5
U002	Acetone (I)	67-64-1
U003	Acetonitrile (I,T)	75-05-8
U004	Acetophenone	98-86-2
U005	2-Acetylaminofluorene	53-96-3
U006	Acetyl chloride (C,R,T)	75-36-5
U007	Acrylamide	79-06-1
U008	Acrylic acid (I)	79-10-7
U009	Acrylonitrile	107-13-1
U011	Amitrole	61-82-5
U012	Aniline (I,T)	62-53-3
U136	Arsinic acid, dimethyl-	75-60-5
U014	Auramine	492-80-8
U015	Azaserine	115-02-6
U010	Azirino (2',3':3,4) pyrrolo (1,2-a) indole-4, 7-dione, 6-amino-8-(((aminocarbonyl) oxy) methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, (1aS- (1aalpha, 8beta, 8aalpha, 8balpha))-	50-07-7
U157	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-	56-49-5
U016	Benz(c)acridine	225-51-4
U017	Benzal chloride	98-87-3
U192	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5
U018	Benz(a)anthracene	56-55-3
U094	Benz(a)anthracene, 7,12-dimethyl-	57-97-6
U012	Benzenamine (I,T)	62-53-3
U014	Benzenamine, 4,4'-carbon-imidoylbis (N,N-dimethyl-	492-80-8
U049	Benzenamine, 4-chloro-2-methyl-,hydrochloride	3165-93-3
U093	Benzenamine, N, N-dimethyl-4-(phenylazo)-	60-11-7
U328	Benzenamine, 2-methyl-	95-53-4
U353	Benzenamine, 4-methyl-	106-49-0
U158	Benzenamine, 4,4'-methylenebis (2-chloro-	101-14-4
U222	Benzenamine, 2-methyl-, hydrochloride	636-21-5
U181	Benzenamine, 2-methyl-5-nitro	99-55-8
U019	Benzene (I,T)	71-43-2
U038	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510-15-6
U030	Benzene, 1-bromo-4-phenoxy-	101-55-3
U035	Benzenebutanoic acid, 4-(bis (2-chloroethyl)amino)-	305-03-3
U037	Benzene, chloro-	108-90-7
U221	Benzenediamine, ar-methyl-	25376-45-8
U028	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7
U069	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2
U088	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2
U102	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3
U107	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0
U070	Benzene, 1,2-dichloro-	95-50-1
U071	Benzene, 1,3-dichloro-	541-73-1
U072	Benzene, 1,4-dichloro-	106-46-7
U060	Benzene, 1,1'-(2,2-dichloro-ethylidene)bis(4-chloro-	72-54-8

U017	Benzene, (dichloromethyl)-	98-87-3
U223	Benzene, 1,3-diisocyanatomethyl- (R,T)	26471-62-5
U239	Benzene, dimethyl- (I,T)	1330-20-7
U201	1,3-Benzenediol	108-46-3
U127	Benzene, hexachloro-	118-74-1
U056	Benzene, hexahydro-(I)	110-82-7
U220	Benzene, methyl-	108-88-3
U105	Benzene, 1-methyl-2, 4-dinitro-	121-14-2
U106	Benzene, 2-methyl-1,3-dinitro-	606-20-2
U055	Benzene, (1-methylethyl)-(I)	98-82-8
U169	Benzene, nitro-	98-95-3
U183	Benzene, pentachloro-	608-93-5
U185	Benzene, pentachloronitro-	82-68-8
U020	Benzenesulfonic acid chloride (C,R)	98-09-9
U020	Benzenesulfonyl chloride (C,R)	98-09-9
U207	Benzene, 1,2,4,5-tetrachloro-	95-94-3
U061	Benzene),1,1'-(2,2,2-trichloroethylidene)bis(4-chloro-	50-29-3
U247	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-methoxy-	72-43-5
U023	Benzene, (trichloromethyl)-	98-07-7
U234	Benzene, 1,3,5-trinitro-	99-35-4
U021	Benzidine	92-87-5
U202	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, and salts	*81-07-02
U203	1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7
U141	1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1
U090	1,3-Benzodioxole, 5-propyl-	94-58-6
U064	Benzo(rst)pentaphene	189-55-9
U248	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl[~~phenel~~]butyl)-, and salts, when present at concentrations of 0.3% or less	*81-81-2
U022	Benzo(a)pyrene	50-32-8
U197	p-Benzoquinone	106-51-4
U023	Benzotrichloride (C,R,T)	98-07-7
U085	2,2'-Bioxirane	1464-53-5
U021	(1,1'-Biphenyl)-4,4'-diamine	92-87-5
U073	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-	91-94-1
U091	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy-	119-90-4
U095	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-	119-93-7
U225	Bromoform	75-25-2
U030	4-Bromophenyl phenyl ether	101-55-3
U128	1,3-Butadiene,1,1,2,3,4,4-hexachloro-	87-68-3
U172	1-Butanamine, N-butyl-N-nitroso-	924-16-3
U031	1-Butanol (I)	71-36-3
U159	2-Butanone (I,T)	78-93-3
U160	2-Butanone, peroxide (R,T)	1338-23-4
U053	2-Butenal	4170-30-3
U074	2-Butene,1,4-dichloro- (I,T)	764-41-0
U143	2-Butenoic acid, 2-methyl-,7-((2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, (1S-(1alpha(Z), 7(2S*,3R*),7aalpha))-	303-34-4
U031	n-Butyl alcohol (I)	71-36-3
U136	Cacodylic acid	75-60-5
U032	Calcium chromate	13765-19-0
U238	Carbamic acid, ethyl ester	51-79-6
U178	Carbamic acid, methylnitroso-, ethyl ester	615-53-2
U097	Carbamic chloride, dimethyl-	79-44-7
U114	Carbamodithioic acid, 1,2-ethanediylbis-, salts and esters	*111-54-6
U062	Carbamothioic acid, bis(1-methylethyl)-,S-(2,3-dichloro-2-propenyl) ester	2303-16-4
U215	Carbonic acid, dithallium (1+) salt	6533-73-9
U033	Carbonic difluoride	353-50-4
U156	Carbonochloridic acid, methyl ester (I,T)	79-22-1
U033	Carbon oxyfluoride (R,T)	353-50-4
U211	Carbon tetrachloride	56-23-5
U034	Chloral	75-87-6
U035	Chlorambucil	305-03-3
U036	Chlordane, alpha and gamma isomers	57-74-9
U026	Chlornaphazin	494-03-1
U037	Chlorobenzene	108-90-7
U038	Chlorobenzilate	510-15-6
U039	p-Chloro-m-cresol	59-50-7
U042	2-Chloroethyl vinyl ether	110-75-8
U044	Chloroform	67-66-3
U046	Chloromethyl methyl ether	107-30-2
U047	beta-Chloronaphthalene	91-58-7
U048	o-Chlorophenol	95-57-8
U049	4-Chloro-o-toluidine, hydrochloride	3165-93-3
U032	Chromic acid H_2CrO_4, calcium salt	13765-19-0
U050	Chrysene	218-01-9
U051	Creosote	--------
U052	Cresol (Cresylic acid)	1319-77-3
U053	Crotonaldehyde	4170-30-3
U055	Cumene (I)	98-82-8
U246	Cyanogen bromide (CN) Br	506-68-3
U197	2,5-Cyclohexadiene-1,4-dione	106-51-4
U056	Cyclohexane (I)	110-82-7
U129	Cyclohexane,1,2,3,4,5,6-hexachloro-(1alpha, 2alpha, 3beta, 4alpha, 5alpha, 6beta)-	58-89-9
U057	Cyclohexanone (I)	108-94-1
U130	1,3-Cyclopentadiene,1,2,3,4,5,5-hexachloro-	77-47-4
U058	Cyclophosphamide	50-18-0
U240	2,4-D, salts and esters	*94-75-7
U059	Daunomycin	20830-81-3
U060	DDD	72-54-8
U061	DDT	50-29-3
U062	Diallate	2303-16-4
U063	Dibenz(a,h) anthracene	53-70-3
U064	Dibenzo(a,i) pyrene	189-55-9
U066	1,2-Dibromo-3-chloropropane	96-12-8
U069	Dibutyl phthalate	84-74-2
U070	o-Dichlorobenzene	95-50-1
U071	m-Dichlorobenzene	541-73-1
U072	p-Dichlorobenzene	106-46-7
U073	3,3'-Dichlorobenzidine	91-94-1
U074	1,4-Dichloro-2-butene (I,T)	764-41-0
U075	Dichlorodifluoromethane	75-71-8
U078	1,1-Dichloroethylene	75-35-4
U079	1,2-Dichloroethylene	156-60-5
U025	Dichloroethyl ether	111-44-4
U027	Dichloroisoprophyl ether	108-60-1
U024	Dichloromethoxy ethane	111-91-1
U081	2,4-Dichlorophenol	120-83-2
U082	2,6-Dichlorophenol	87-65-0
U084	1,3-Dichloropropene	542-75-6
U085	1,2:3,4-Diepoxybutane (I,T)	1464-53-5
U108	1,4-Diethyleneoxide	123-91-1
U028	Diethylhexyl phthalate	117-81-7

U086	N, N'-Diethylhydrazine	1615-80-1
U087	O, O-Diethyl S-methyl dithio-phosphate	3288-58-2
U088	Diethyl phthalate	84-66-2
U089	Diethylstilbesterol	56-53-1
U090	Dihydrosafrole	94-58-6
U091	3,3'-Dimethoxybenzidine	119-90-4
U092	Dimethylamine (I)	124-40-3
U093	p-Dimethylaminoazobenzene	60-11-7
U094	7,12-Dimethylbenz(a)anthracene	57-97-6
U095	3,3'-Dimethylbenzidine	119-93-7
U096	alpha, alpha-Dimethylbenzyl-hydroperoxide (R)	80-15-9
U097	Dimethylcarbamoyl chloride	79-44-7
U098	1,1-Dimethylhydrazine	57-14-7
U099	1,2-Dimethylhydrazine	540-73-8
U101	2,4-Dimethylphenol	105-67-9
U102	Dimethyl phthalate	131-11-3
U103	Dimethyl sulfate	77-78-1
U105	2,4-Dinitrotoluene	121-14-2
U106	2,6-Dinitrotoluene	606-20-2
U107	Di-n-octyl phthalate	117-84-0
U108	1,4-Dioxane	123-91-1
U109	1,2-Diphenylhydrazine	122-66-7
U110	Dipropylamine (I)	142-84-7
U111	Di-n-propylnitrosamine	621-64-7
U041	Epichlorohydrin	106-89-8
U001	Ethanal (I)	75-07-0
U174	Ethanamine, N-ethyl-N-nitroso-	55-18-5
U155	1,2-Ethanediamine, N,N-di-methyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5
U067	Ethane, 1,2-dibromo-	106-93-4
U076	Ethane, 1,1-dichloro-	75-34-3
U077	Ethane, 1,2-dichloro-	107-06-2
U131	Ethane, hexachloro-	67-72-1
U024	Ethane, 1,1'-(methylenebis (oxy))bis(2-chloro-)	111-91-1
U117	Ethane, 1,1'-oxybis- (I)	60-29-7
U025	Ethane, 1,1'-oxybis(2-chloro-)	111-44-4
U184	Ethane, pentachloro-	76-01-7
U208	Ethane, 1,1,1,2-tetrachloro-	630-20-6
U209	Ethane, 1,1,2,2-tetrachloro-	79-34-5
U218	Ethanethioamide	62-55-5
U226	Ethane, 1,1,1-trichloro	71-55-6
U227	Ethane, 1,1,2-trichloro-	79-00-5
U359	Ethanol, 2-ethoxy-	110-80-5
U173	Ethanol, 2,2'-(nitrosoimino)bis-	1116-54-7
U004	Ethanone, 1-phenyl	98-86-2
U043	Ethene, chloro-	75-01-4
U042	Ethene, (2-chloroethoxy)-	110-75-8
U078	Ethene, 1,1-dichloro-	75-35-4
U079	Ethene, 1,2-dichloro-,(E)	156-60-5
U210	Ethene, tetrachloro-	127-18-4
U228	Ethene, trichloro-	79-01-6
U112	Ethyl acetate (I)	141-78-6
U113	Ethyl acrylate (I)	140-88-5
U238	Ethyl carbamate (urethane)	51-79-6
U114	Ethylenebisdithiocarbamic acid, salts and esters	*111-54-6
U067	Ethylene dibromide	106-93-4
U077	Ethylene dichloride	107-06-2
U359	Ethylene glycol monoethyl ether	110-80-5
U115	Ethylene oxide (1,T)	75-21-8
U116	Ethylenethiourea	96-45-7
U117	Ethyl ether (I)	60-29-7
U076	Ethylidene dichloride	75-34-3
U118	Ethyl methacrylate	97-63-2
U119	Ethyl methanesulfonate	62-50-0
U120	Fluoranthene	206-44-0
U122	Formaldehyde	50-00-0
U123	Formic acid (C,T)	64-18-6
U124	Furan (I)	110-00-9
U125	2-Furancarboxaldehyde (I)	98-01-1
U147	2,5-Furandione	108-31-6
U213	Furan, tetrahydro- (I)	109-99-9
U125	Furfural (I)	98-01-1
U124	Furfuran (I)	110-00-9
U206	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-,D-	18883-66-4
U206	D-Glucose, 2-deoxy-2-(((methylnitrosoamino)-carbonyl(amino)-	18883-66-4
U126	Glycidylaldehyde	765-34-4
U163	Guanidine, N-methyl-N'-nitro-N-nitroso-	70-25-7
U127	Hexachlorobenzene	118-74-1
U128	Hexachlorobutadiene	87-68-3
U130	Hexachlorocyclopentadiene	77-47-4
U131	Hexachloroethane	67-72-1
U132	Hexachlorophene	70-30-4
U243	Hexachloropropene	1888-71-7
U133	Hydrazine (R,T)	302-01-2
U086	Hydrazine,1,2-diethyl-	1615-80-1
U098	Hydrazine,1,1-dimethyl-	57-14-7
U099	Hydrazine,1,2-dimethyl-	540-73-8
U109	Hydrazine,1,2-diphenyl-	122-66-7
U134	Hydrofluoric acid (C,T)	7664-39-3
U134	Hydrogen fluoride (C,T)	7664-39-3
U135	Hydrogen sulfide	7783-06-4
U135	Hydrogen sulfide H_2S	7783-06-4
U096	Hydroperoxide, 1-methyl-1-phenylethyl-(R)	80-15-9
U116	2-Imidazolidinethione	96-45-7
U137	Indeno(1,2,3-cd) pyrene	193-39-5
~~[U139~~	~~Iron dextran~~	~~9004-66-4]~~
U190	1,3-Isobenzofurandione	85-44-9
U140	Isobutyl alcohol (I,T)	78-83-1
U141	Isosafrole	120-58-1
U142	Kepone	143-50-0
U143	Lasiocarpine	303-34-4
U144	Lead acetate	301-04-2
U146	Lead, bis(acetato-0)tetrahydroxytri-	1335-32-6
U145	Lead phosphate	7446-27-7
U146	Lead subacetate	1335-32-6
U129	Lindane	58-89-9
U163	MNNG	70-25-7
U147	Maleic anhydride	108-31-6
U148	Maleic hydrazide	123-33-1
U149	Malononitrile	109-77-3
U150	Melphalan	148-82-3
U151	Mercury	7439-97-6
U152	Methacrylonitrile (I,T)	126-98-7
U092	Methanamine, N-methyl- (I)	124-40-3
U029	Methane, bromo-	74-83-9
U045	Methane, chloro- (I,T)	74-87-3
U046	Methane, chloromethoxy-	107-30-2
U068	Methane, dibromo-	74-95-3
U080	Methane, dichloro-	75-09-2
U075	Methane, dichlorodifluoro-	75-71-8
U138	Methane, iodo-	74-88-4
U119	Methanesulfonic acid, ethyl ester	62-50-0
U211	Methane, tetrachloro-	56-23-5
U153	Methanethiol (I,T)	74-93-1

U225	Methane, tribromo-	75-25-2
U044	Methane, trichloro-	67-66-3
U121	Methane, trichlorofluoro-	75-69-4
U036	4,7-Methano-1H-indene, 1,2, 4,5,6,7,8,8-octachloro-2,3, 3a,4,7,7a-hexahydro-	57-74-9
U154	Methanol (I)	67-56-1
U155	Methapyrilene	91-80-5
U142	1,3,4-Metheno-2H-cyclobuta (cd)pentalen-2-one, 1,1a,3, 3a,4,5,5,5a,5b,6-decachloro-octahydro-	143-50-0
U247	Methoxychlor	72-43-5
U154	Methyl alcohol (I)	67-56-1
U029	Methyl bromide	74-83-9
U186	1-Methylbutadiene (I)	504-60-9
U045	Methyl chloride (I,T)	74-87-3
U156	Methyl chlorocarbonate (I,T)	79-22-1
U226	Methyl chloroform	71-55-6
U157	3-Methylcholanthrene	56-49-5
U158	4,4'-Methylenebis (2-chloro-aniline)	101-14-4
U068	Methylene bromide	74-95-3
U080	Methylene chloride	75-09-2
U159	Methyl ethyl ketone (MEK) (I,T)	78-93-3
U160	Methyl ethyl ketone peroxide (R,T)	1338-23-4
U138	Methyl iodide	74-88-4
U161	Methyl isobutyl ketone (I)	108-10-1
U162	Methyl methacrylate (I,T)	80-62-6
U161	4-Methyl-2-pentanone (I)	108-10-1
U164	Methylthiouracil	56-04-2
U010	Mitomycin C	50-07-7
U059	5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6 -trideoxy)-alpha-L-lyxo-hexopyranosyl)oxyl)-7,8, 9,10,tetrahydro-6,8,11-tri-hydroxy-1-methoxy-, (8S-cis)-	20830-81-3
U167	1-Naphthalenamine	134-32-7
U168	2-Naphthalenamine	91-59-8
U026	Naphthalenamine,N,N'-bis (2-chloroethyl)-	494-03-1
U165	Naphthalene	91-20-3
U047	Naphthalene, 2-chloro-	91-58-7
U166	1,4-Naphthalenedione	130-15-4
U236	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethyl (1,1'-biphenyl)-4,4'-diyl) bis(azo)bis(5-amino-4-hydroxy)-,tetrasodium salt	72-57-1
U166	1,4-Naphthoquinone	130-15-4
U167	alpha-Naphthylamine	134-32-7
U168	beta-Naphthylamine	91-59-8
U217	Nitric acid, thallium(1+) salt	10102-45-1
U169	Nitrobenzene (I,T)	98-95-3
U170	p-Nitrophenol	100-02-7
U171	2-Nitropropane (I,T)	79-46-9
U172	N-Nitrosodi-n-butylamine	924-16-3
U173	N-Nitrosodiethanolamine	1116-54-7
U174	N-Nitrosodiethylamine	55-18-5
U176	N-Nitroso-N-ethylurea	759-73-9
U177	N-Nitroso-N-methylurea	684-93-5
U178	N-Nitroso-N-methylurethane	615-53-2
U179	N-Nitrosopiperidine	100-75-4
U180	N-Nitrosopyrrolidine	930-55-2
U181	5-Nitro-o-toluidine	99-55-8
U193	1,2-Oxathiolane,2,2-dioxide	1120-71-4
U058	2H-1,3,2-Oxazaphosphorin-2-amine,N,N-bis(2-chloroethyl) tetrahydro-, 2-oxide	50-18-0
U115	Oxirane (I,T)	75-21-8
U126	Oxiranecarboxyaldehyde	765-34-4
U041	Oxirane,(chloromethyl)-	106-89-8
U182	Paraldehyde	123-63-7
U183	Pentachlorobenzene	608-93-5
U184	Pentachloroethane	76-01-7
U185	Pentachloronitrobenzene (PCNB)	82-68-8
See F027	Pentachlorophenol	87-86-5
U161	Pentanol, 4-methyl-	108-10-1
U186	1,3-Pentadiene (I)	504-60-9
U187	Phenacetin	62-44-2
U188	Phenol	108-95-2
U048	Phenol,2-chloro-	95-57-8
U039	Phenol,4-chloro-3-methyl-	59-50-7
U081	Phenol,2,4-dichloro-	120-83-2
U082	Phenol,2,6-dichloro-	87-65-0
U089	Phenol,4,4'-(1,2-diethyl-1,2-ethenediyl)bis-,(E)-	56-53-1
U101	Phenol,2,4-dimethyl-	105-67-9
U052	Phenol, methyl-	1319-77-3
U132	Phenol,2,2'-methylenebis (3,4,6-trichloro-	70-30-4
U170	Phenol,4-nitro-	100-02-7
See F027	Phenol, pentachloro-	87-86-5
See F027	Phenol,2,3,4,6-tetrachloro-	58-90-2
See F027	Phenol,2,4,5-trichloro-	95-95-4
See F027	Phenol,2,4,6-trichloro	88-06-2
U150	L-Phenylalanine, 4-(bis(2-chloroethyl)amino)-	148-82-3
U145	Phosphoric acid, lead (2+) salt (2:3)	7446-27-7
U087	Phosphorodithioic acid,0,0-diethyl S-methyl ester	3288-58-2
U189	Phosphorus sulfide (R)	1314-80-3
U190	Phthalic anhydride	85-44-9
U191	2-Picoline	109-06-8
U179	Piperidine, 1-nitroso-	100-75-4
U192	Pronamide	23950-58-5
U194	1-Propanamine (I,T)	107-10-8
U111	1-Propanamine, N-nitroso-N-propyl-	621-64-7
U110	1-Propanamine, N-propyl- (I)	142-84-7
U066	Propane, 1,2-dibromo-3-chloro-	96-12-8
U083	Propane, 1,2-dichloro-	78-87-5
U149	Propanedinitrile	109-77-3
U171	Propane, 2-nitro- (I,T)	79-46-9
U027	Propane,2,2'-oxybis (2-chloro-	108-60-1
U193	1,3-Propane sultone	1120-71-4
See F027	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	93-72-1
U235	1-Propanol,2,3-dibromo-, phosphate (3:1)	126-72-7
U140	1-Propanol, 2-methyl- (I,T)	78-83-1
U002	2-Propanone (I)	67-64-1
U007	2-Propenamide	79-06-1
U084	1-Propene, 1,3-dichloro-	542-75-6
U243	1-Propene, 1,1,2,3,3,3-hexachloro-	1888-71-7
U009	2-Propenenitrile	107-13-1
U152	2-Propenenitrile, 2-methyl- (I,T)	126-98-7
U008	2-Propenoic acid (I)	79-10-7
U113	2-Propenoic acid, ethyl ester (I)	140-88-5
U118	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2
U162	2-Propenoic acid, 2-methyl-, methyl ester (I,T)	80-62-6
U194	n-Propylamine (I,T)	107-10-8

U083	Propylene dichloride	78-87-5
U148	3,6-Pyridazinedione,1,2-dihydro-	123-33-1
U196	Pyridine	110-86-1
U191	Pyridine, 2-methyl-	109-06-8
U237	2,4(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)-	66-75-1
U164	4(1H)-Pyrimidinone,2,3-dihydro-6-methyl-2-thioxo-	56-04-2
U180	Pyrrolidine, 1-nitroso-	930-55-2
U200	Reserpine	50-55-5
U201	Resorcinol	108-46-3
U202	Saccharin, and salts	*81-07-2
U203	Safrole	94-59-7
U204	Selenious acid	7783-00-8
U204	Selenium dioxide	7783-00-8
U205	Selenium sulfide	7488-56-4
U205	Selenium sulfide SeS_2 (R,T)	7488-56-4
U015	L-Serine, diazoacetate (ester)	115-02-6
See F027	Silvex (2,4,5,-TP)	93-72-1
U206	Streptozotocin	18883-66-4
U103	Sulfuric acid, dimethyl ester	77-78-1
U189	Sulfur phosphide (R)	1314-80-3
See F027	2,4,5-T	93-76-5
U207	1,2,4,5,-Tetrachlorobenzene	95-94-3
U208	1,1,1,2-Tetrachloroethane	630-20-6
U209	1,1,2,2-Tetrachloroethane	79-34-5
U210	Tetrachloroethylene	127-18-4
See F027	2,3,4,6-Tetrachlorophenol	58-90-2
U213	Tetrahydrofuran (I)	109-99-9
U214	Thallium (I) acetate	563-68-8 ~~[15843-14-8]~~
U215	Thallium (I) carbonate	6533-73-9
U216	Thallium (I) chloride	7791-12-0
U216	Thallium chloride Tlcl	7791-12-0
U217	Thallium (I) nitrate	10102-45-1
U218	Thioacetamide	62-55-5
U153	Thiomethanol (I,T)	74-93-1
U244	Thioperoxydicarbonic diamide $((H_2N)C(S))_2S_2$, tetramethyl-	137-26-8
U219	Thiourea	62-56-6
U244	Thiram	137-26-8
U220	Toluene	108-88-3
U221	Toluenediamine	25376-45-8
U223	Toluene diisocyantate (R,T)	26471-62-5
U328	o-Toluidine	95-53-4
U353	p-Toluidine	106-49-0
U222	o-Toluidine hydrochloride	636-21-5
U011	1H-1,2,4-Triazol-3-amine	61-82-5
U227	1,1,2-Trichloroethane	79-00-5
U228	Trichloroethylene	79-01-6
U121	Trichloromonofluoromethane	75-69-4
See F027	2,4,5-Trichlorophenol	95-95-4
See F027	2,4,6-Trichlorophenol	88-06-2
U234	1,3,5-Trinitrobenzene (R,T)	99-35-4
U182	1,3,5-Trioxane,2,4,6-trimethyl-	123-63-7
U235	Tris(2,3-dibromopropyl) phosphate	126-72-7
U236	Trypan blue	72-57-1
U237	Uracil mustard	66-75-1
U176	Urea, N-ethyl-N-nitroso-	759-73-9
U177	Urea, N-methyl-N-nitroso-	684-93-5
U043	Vinyl chloride	75-01-4
U248	Warfarin, and salts, when present at concentrations of 0.3% or less	*81-81-2
U239	Xylene (I)	1330-20-7
U200	Yohimban-16-carboxylic acid, 11, 17-dimethoxy-18((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester, (3beta,16beta, 17alpha,18beta,20alpha)-	50-55-5
U249	Zinc phosphide Zn_3P_2, when present at concentrations of 10% or less	1314-84-7

*CAS number given for parent compound only.

Section 5. Nerve and Blister Agents. The following substances are listed as hazardous wastes:

Kentucky Waste Number	Substance	Chemical Abstracts Number
N001	GB (isopropyl methyl phosphonoflouridate) (H)	107-44-8
N002	VX (0-ethyl-S-(2-diisopropyl-aminoethyl) -methyl phosphonothiolate) (H)	50782-69-9
N003	H (bis(2-chloroethyl) sulfide) and related compounds (H)	505-60-2

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: This proposed amendment will affect those generators, transporters, and treatment and storage disposal facilities which had previously generated, transported, or treated strontium sulfide wastes, iron dextran wastes and ferric dextran, CAS# 9004-66-4 wastes. There are approximately 2,200 generators, 150 transporters, and 90 treatment, storage and disposal facilities in the Commonwealth of Kentucky, a portion of which will be affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: All entities which have previously generated, transported, or treated strontium sulfide wastes, iron dextran wastes, or ferric dextran, CAS# 9004-66-4 wastes may experience first year savings as a result of the proposed amendment.

2. Continuing costs or savings: The same entities shall continue to experience savings as a result of the proposed amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The promulgating administrative body may experience collectively minor savings, since it will no longer be obligated to monitor strontium sulfide wastes, iron dextran wastes, or ferric dextran, CAS# 9004-66-4, wastes as hazardous wastes.

2. Continuing costs or savings: The promulgating administrative body may experience continuing savings as a result of the proposed amendment.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. First year costs shall continue.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements that affect the promulgating administrative body.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment removes iron dextran, CAS# 9004-66-4 and strontium sulfide from the lists of hazardous wastes in 401 KAR 31:040, Sections 4(5) and 4(6).

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 261.33 as published in the Federal Register on October 31, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information or comments.

Tiering: Was tiering applied? Yes. This regulation applies to hazardous waste generators, as well as owners and operators of hazardous waste treatment, storage, or disposal facilities.

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 October 31, 1988, at 40 CFR 261.33.

2. State compliance standards. The proposed amendment removes iron dextran (ferric dextran), CAS# 9004-66-4, and strontium sulfide from the lists of hazardous wastes in 401 KAR 31:040, Sections 4(5) and 4(6).

3. Minimum or uniform standards contained in the federal mandate. The regulation removes iron dextran (ferric dextran) CAS# 9004-66-4, and strontium sulfide from the lists of hazardous wastes as in 40 CFR 261.33.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendment is identical to 40 CFR 261.33 as published in the October 31, 1988, Federal Register. The proposed changes do 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 Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 31:060. Rule-making petitions for hazardous waste.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.50, 224.99, 40 CFR 261.11(a)(3)

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3), 40 CFR 261.11(e)(3)

NECESSITY AND FUNCTION: KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous wastes. This regulation establishes the procedures to add a testing or analytical method to 401 KAR Chapters 31, 34, 35, or 37, or to exclude a waste at a particular site or facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040.

Section 1. General Procedures. (1) This regulation sets forth requirements for petitions to add a testing or analytical method to 401 KAR Chapters 31, 34, 35, or 37, or to exclude a waste at a particular facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040.

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

(a) The petitioner's name and address;

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

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

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

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

(3) The cabinet shall make a tentative decision to grant or deny a petition. If the tentative decision is to deny, the cabinet shall notify the petitioner. If the tentative decision is to grant the petition, the cabinet shall propose an amendment to 401 KAR 31:070, and file the proposed amendment with the Legislative Research Commission pursuant to KRS Chapter 13A.

Section 2. Petitions to Amend 401 KAR Chapter 31 to Exclude a Waste Produced at a Particular Facility. (1) Any person seeking to exclude a waste at a particular generating facility from the lists in 401 KAR 31:040 may petition for an amendment to the regulation under this section and Section 1 of this regulation. To be successful:

(a) The petitioner shall demonstrate to the satisfaction of the cabinet that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste or an acutely hazardous waste; and

(b) Based on a complete application the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed shall cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(2) The procedures in this section and Section 1 of this regulation may also be used to petition the cabinet for a regulatory amendment to exclude from Section 3(1)(b)2 or (3) of 401 KAR 31:010, a waste which is described in that section and is either a waste listed in 401 KAR 31:040, [~~contains a waste listed in 401 KAR 31:040,~~] or is

derived from a waste listed in 401 KAR 31:040. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner shall make the same demonstration as required by subsection (1) of this section, except that where the waste is a mixture of solid waste and one (1) or more listed hazardous wastes or is derived from one (1) or more hazardous wastes, his demonstration shall [~~may~~] be made with respect to the waste mixture as a whole; analysis shall be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste in accordance with 401 KAR 31:030. [~~each constituent listed waste or the waste mixture as a whole. A waste which is so excluded may still be a hazardous waste in accordance with 401 KAR 31:030.~~]

(3) If the waste is listed with codes "I," "C," "R," or "E" in 401 KAR 31:040:

(a) The petitioner shall show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in Sections 2, 3, 4, or 5 of 401 KAR 31:030 using any applicable methods prescribed therein. The petitioner also shall show that the waste does not exhibit any of the other characteristics defined in Sections 2, 3, 4, or 5 of 401 KAR 31:030 using any applicable methods prescribed therein; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed shall cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(4) If the waste is listed with code "T" in 401 KAR 31:040:

(a) The petitioner shall demonstrate that the waste:

1. Does not contain the constituent or constituents (as defined in 401 KAR 31:160) that caused the cabinet to list the waste, using the appropriate test methods prescribed in 401 KAR 31:120; or

2. Although containing one (1) or more of the hazardous constituents (as defined in 401 KAR 31:160) that caused the cabinet to list the waste, does not meet the criterion of 40 CFR 261.11(a)(3), (1990) when considering the factors used by the cabinet in 40 CFR 261.11(a)(3)(i) through (xi), (1990) under which the waste was listed as hazardous; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(c) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections 2, 3, 4 and 5 of 401 KAR 31:030 using any applicable methods prescribed therein;

(d) A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(5) If the waste is listed with the code "H" in 401 KAR 31:040:

(a) The petitioner shall demonstrate that the waste does not meet criterion of subsection (1)(b) of 401 KAR 31:020; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed shall cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(c) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections 2, 3, 4, and 5 of 401 KAR 31:030 using any applicable methods prescribed therein;

(d) A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

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

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

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

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

(c) The dates of sampling and testing;

(d) The location of the generating facility;

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Requirements for Excluded Wastes. Upon approval by the cabinet of a petition to exclude waste from a particular facility, the excluded waste shall thereby be listed as a solid waste and be subject to the requirements for solid waste disposal in 401 KAR Chapter 47 and the conditions as specified in the approved exclusion.

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

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

(a) Was erroneously excluded from regulation in accordance with Section 2 of this regulation;

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

facility; or

(c) Shall be regulated as a hazardous waste because new studies or analysis have been performed which indicate the waste meets the definition of a hazardous waste in KRS 224.01-010.

(2) The cabinet has obtained information, which was not available at the time the petition for an equivalent testing or analytical method was granted, which leaves the cabinet to believe that reasonable probability exists that the equivalent testing or analytical method was erroneously approved in accordance with Section 6 of this regulation.

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

(4) The cabinet has obtained information from any other agency of state or federal government, including the EPA, that the waste shall be regulated as a hazardous waste consistent with the Resource Conservation and Recovery Act (PL 94-580), as amended (including PL 98-616, the 1984 Hazardous and Solid Waste Amendments), and pursuant to KRS Chapter 224.

(5) The cabinet has obtained information from any other agency of a state or the federal government, including the EPA, that the testing or analytical method is not equal to or superior to the corresponding method prescribed in 401 KAR Chapter 31, 34, 35, or 37 in terms of its sensitivity, accuracy, and precision.

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

(1) Exclusion of the waste is consistent with the requirements in KRS 224.46-510(3);

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

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

Section 6. Petitions for Equivalent Testing or Analytical Methods. (1) Any person seeking to add a testing or analytical method to 401 KAR Chapter 31, 34, 35, or 37 may petition for a regulatory amendment under this section and Section 1 of this regulation. To be successful, the person shall demonstrate to the satisfaction of the cabinet that the proposed method is equal to or superior to the corresponding method prescribed in 401 KAR Chapter 31, 34, 35, or 37 in terms of its sensitivity, accuracy, and precision (i.e., reproducibility).

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

(a) A full description of the proposed method, including all procedural steps and equipment used in the method;

(b) A description of the types of wastes or waste matrices for which the proposed method may be used;

(c) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in 401 KAR Chapter 31, 34, 35, or 37;

(d) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(e) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(3) After receiving a petition for an equivalent method, the cabinet may request any additional information on the proposed method which is reasonably required to evaluate the method.

(4) If the cabinet amends the hazardous waste regulations to permit use of a new testing method, the method shall be referenced in Section 3 of 401 KAR 30:010.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment to the regulation will not affect any type or number of entities, since it will merely eliminate potential confusion in existing regulatory requirements.

(a) Direct and indirect costs or savings to those affected:

1. First year: There should be no direct or indirect costs or savings to those affected since this amendment merely clarifies existing requirements.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(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 on the promulgating administrative body, since the amendment merely clarifies an ambiguity in the original wording of this regulation.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: 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 promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment clarifies procedures required to exclude a waste produced at a particular facility from the lists of hazardous wastes contained in Sections 2, 3 and 4 of 401 KAR 31:040.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 260.22 as published in the Federal Register on June 27, 1989.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional information or comments.

Tiering: Was tiering applied? Yes. This regulation applies to generators of hazardous waste, as well as owners and operators of hazardous waste treatment, storage, or disposal facilities.

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 June 27, 1989, at 40 CFR 260.22.

2. State compliance standards. The proposed amendment clarifies procedures required to exclude a waste produced at a particular facility from the lists of hazardous wastes contained in Sections 2, 3, and 4 of 401 KAR 31:040.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate clarifies procedures required to exclude a waste produced at a particular facility from the lists of hazardous wastes contained in 40 CFR 261.31, 261.32, and 261.33.

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 standards in this administrative regulation are identical to those in the federal regulations. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 31:170. Appendix on hazardous waste constituents.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 224.99
STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3)
NECESSITY AND FUNCTION: KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous wastes. This regulation contains the appendix to this chapter concerning the hazardous waste constituents.

Section 1. Hazardous Waste Constituents. The list of hazardous waste constituents for use in interpreting any requirement in this chapter or any other hazardous waste regulation is:

COMMON NAME	CHEMICAL ABSTRACTS NAME	CHEMICAL ABSTRACTS NO (HAZARDOUS WASTE NO.)
Acetonitrile	Same	75-05-8 (U003)
Acetophenone	Ethanone, 1-phenyl-	98-86-2 (U004)
2-Acetylaminefluarone	Acetamide, N-9H-fluoren-2-yl-	53-96-3 (U005)
Acetyl chloride	Same	75-36-5 (U006)
1-Acetyl-2-thiourea	Acetamide, N-(aminothioxomethyl)-	591-08-2 (P002)
Acrolein	2-Propenal	107-02-8 (P003)
Acrylamide	2-Propenamide	79-06-1 (U007)
Acrylonitrile	2-Propenenitrile	107-13-1 (U009)
Aflatoxins	Same	1402-68-2 (----)
Aldicarb	Propanal, 2-methyl-2-(methylthio)-,0-((methylamino) carbonyl)oxime	116-06-3 (P070)
Aldrin	1,4,5,8-Dimethanonaphthalene,1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8, 8a-hexahydro-,(1alpha, 4alpha,4abeta, 5alpha, 8alpha, 8abeta)-	309-00-02 (P004)
Allyl alcohol	2-Propen-1-ol	107-18-6 (P005)
Aluminum phosphide	Same	20859-73-8 (P006)
4-Aminobiphenyl	(1,1'-Biphenyl)-4-amine	92-67-1 (----)
5-(Aminomethyl)-3-isoxazolol	3(2H)-Isoxazolone,5-(aminomethyl)-	2763-96-4 (P007)
4-Aminopyridine	4-Pyridinamine	504-24-5 (P008)
Amitrole	1H-1,2,4-Triazol-3-amine	61-82-5 (U011)
Ammonium vanadate	Vanadic acid, ammonium salt	7803-55-6 (P119)
Aniline	Benzenamine	62-53-3 (U012)
Antimony	Same	7440-36-0 (----)
Antimony compounds, N.O.S.*	----------	----
Aramite	Sulfurous acid, 2-chloroethyl 2-(4-(1,1-dimethylethyl)phenoxy)-1-methylethyl ester	140-57-8 (----)
Arsenic	Same	7440-38-2 (----)
Arsenic compounds, N.O.S.*	----------	---- (----)
Arsenic acid	Arsenic acid H_3AsO_4	7778-39-4 (P010)
Arsenic pentoxide	Arsenic oxide As_2O_5	1303-28-2 (P011)
Arsenic trioxide	Arsenic oxide As_2O_3	1327-53-3 (P012)
Auramine	Benzenamine, 4,4'-carbonimidoylbis(N,N-Dimethyl)	492-80-8 (U01)4
Azaserine	L-Serine, diazoacetate (ester)	115-02-6 (U015)
Barium	Same	7440-39-3 (----)

Barium compounds, N.O.S.*	----------	---- (----)
Barium cyanide	Same	542-62-1 (P013)
Benz(c)acridine	Same	225-51-4 (U016)
Benz(a)anthracene	Same	56-55-3 (U018)
Benzal chloride	Benzene, (dichloromethyl)-	98-87-3 (U017)
Benzene	Same	71-43-2 (U019)
Benzenearsonic acid	Arsonic acid, phenyl-	98-05-5 (----)
Benzidine	(1,1'-Biphenyl)-4,4'diamine	92-87-5 (U021)
Benzo(b)fluoranthene	Benz(e)acephenanthrylene	205-99-2 (----)
Benzo(j)fluoranthene	Same	205-82-3 (----)
Benzo(a)pyrene	Same	50-32-8 (U022)
p-Benzoquinone	2,5-Cyclohexadiene-1,4-dione	106-51-4 (U197)
Benzotrichloride	Benzene, (trichloromethyl)-	98-07-7 (U023)
Benzyl chloride	Benzene, (chloromethyl)-	100-44-7 (P028)
Beryllium	Same	7440-41-7 (P015)
Beryllium compounds, N.O.S.*	----------	---- (----)
Bromoacetone	2-Propanone, 1-bromo-	598-31-2 (P017)
Bromoform	Methane, tribromo-	75-25-2 (U225)
4-Bromophenyl phenyl ether	Benzene, 1-bromo-4-phenoxy-	101-55-3 (U030)
Brucine	Strychnidin-10-one,2,3-dimethoxy-	357-57-3 (P018)
Butyl benzyl phthalate	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	85-68-7 (----)
Cacodylic acid	Arsinic acid, dimethyl-	75-60-5 (U136)
Cadmium	Same	7440-43-9 (----)
Cadmium compounds, N.O.S.*	----------	---- (----)
Calcium chromate	Chromic acid H_2CrO_4, calcium salt	13765-19-0 (U032)
Calcium cyanide	Calcium cyanide Ca $(CN)_2$	592-01-8 (P021)
Carbon disulfide	Same	75-15-0 (P022)
Carbon oxyfluoride	Carbonic difluoride	353-50-4 (U033)
Carbon tetrachloride	Methane,tetrachloro-	56-23-5 (U211)
Chloral	Acetaldehyde, trichloro-	75-87-6 (U034)
Chlorambucil	Benzene butanoic acid, 4-(bis(2-chloroethyl)amino)-	305-03-3 (U035)
Chlordane	4,7-Methano-1H-indene,1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57-74-9 (U036) U036
Chlordane (alpha and gamma isomers)	----------	---- (U036)
Chlorinated benzenes, N.O.S.*	----------	---- (----)
Chlorinated ethane, N.O.S.*	----------	---- (----)
Chlorinated fluorocarbons, N.O.S.*	----------	---- (----)
Chlorinated naphthalene, N.O.S.*	----------	---- (----)
Chlorinated phenol, N.O.S.*	----------	---- (----)
Chlornaphazin	Naphthalenamine,N,N'-bis(2-chloroethyl)-	494-03-1 (U026)
Chloroacetaldehyde	Acetaldehyde, chloro-	107-20-0 (P023)
Chloroalkyl ethers, N.O.S.*	----------	---- (----)
p-Chloroaniline	Benzenamine,4-chloro-	106-47-8 (P024)
Chlorobenzene	Benzene, chloro-	108-90-7 (U037)
Chlorobenzilate	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510-15-6 (U038)
p-Chloro-m-cresol	Phenol, 4-chloro-3-methyl-	59-50-7 (U039)
2-Chloroethyl vinyl ether	Ethene, (2-chloroethoxy)-	110-75-8 (U042)
Chloroform	Methane, trichloro-	67-66-3 (U044)
Chloromethyl methyl ether	Methane, chloromethoxy-	107-30-2 (U046)
beta-Chloronaphthalene	Naphthalene,2-chloro-	91-58-7 (U047)
o-Chlorophenol	Phenol, 2-chloro-	95-57-8 (U048)
1-(o-Chlorophenyl)thiourea	Thiourea, (2-chlorophenyl)-	5344-82-1 (P026)
Chloroprene	1,3-Butadiene,2-chloro-	126-99-8 (----)
3-Chloropropionitrile	Propanenitrile, 3-chloro-	542-76-7 (P027)
Chromium	Same	7440-47-3 (----)
Chromium compounds, N.O.S.*	----------	---- (----)
Chrysene	Same	218-01-9 (U050)
Citrus red No. 2	2-Naphthalenol, 1-((2,5-dimethoxyphenyl)azo)-	6358-53-8 (----)
Coal tar creosote	Same	8007-45-2 (----)
Copper cyanide	Copper cyanide CuCN	544-92-3 (P029)
Creosote	Same	---- (U051)
Cresol (Cresylic acid)	Phenol, methyl-	1319-77-3 (U052)
Crotonaldehyde	2-Butenal	4170-30-3 (U053)
Cyanides (soluble salts and complexes), N.O.S.*	----------	---- (P030)

Cyanogen	Ethanedinitrile	460-19-5 (P031)
Cyanogen bromide	Cyanogen bromide (CN) Br	506-68-3 (U246)
Cyanogen chloride	Cyanogen chloride (CN) Cl	506-77-4 (P033)
Cycasin	beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl	14901-08-7 (----)
2-Cyclohexyl-4,6-dinitrophenol	Phenol, 2-cyclohexyl-4,6-dinitro-	131-89-5 (P034)
Cyclophosphamide	2H-1,3,2,-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide	50-18-0 (U058)
2,4-D	Acetic acid, (2,4-dichlorophenoxy)-	94-75-7 (U240)
2,4-D, salts, esters	----------	---- (U240)
Daunomycin	5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6,trideoxy-alpha-L-lyxo-hexopyranosyl)oxy)-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methosy-(8S-cis)-	20830-81-3 (U059)
DDD	Benzene,1,1'-(2,2-dichloroethylidene)bis(4-chloro-	72-54-8 (U060)
DDE	Benzene,1,1'-(dichloroethenylidene)bis(4-chloro-	72-55-9 (----)
DDT	Benzene,1,1'-(2,2,2-trichloroethylidene)(bis(4-chloro-	50-29-3 (U061)
Diallate	Carbamothioic acid, bis(1-methylethyl)-,S-(2,3-dichloro-2-propenyl) ester	2303-16-4 (U062)
Dibenz(a,h)acridine	Same	226-36-8 (----)
Dibenz(a,j)acridine	Same	224-42-0 (----)
Dibenz(a,h)anthracene	Same	53-70-3 (U063)
7H-Dibenzo(c,g)carbazole	Same	194-59-2 (----)
Dibenzo(a,e)pyrene	Naphtho(1,2,3,4-def)chrysene	192-65-4 (----)
Dibenzo(a,h)pyrene	Dibenzo(b,def)chrysene	189-64-0 (----)
Dibenzo(a,i)pyrene	Benzo(rst)pentaphene	189-55-9 (U064)
1,2-Dibromo-3-chloropropane	Propane,1,2-dibromo-3-chloro-	96-12-8 (U066)
Dibutyl phthalate	1,2-Benzenedicarboxylic acid,dibutyl ester	84-74-2 (U069)
o-Dichlorobenzene	Benzene, 1,2-dichloro-	95-50-1 (U070)
m-Dichlorobenzene	Benzene, 1,3-dichloro-	541-73-1 (U071)
p-Dichlorobenzene	Benzene, 1,4-dichloro-	106-46-7 (U072)
Dichlorobenzene, N.O.S.*	Benzene, dichloro-	25321-22-6 (----)
3,3'-Dichlorobenzidine	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dichloro-	91-94-1 (U073)
1,4-Dichloro-2-butene	2-Butene,1,4-dichloro-	764-41-0 (U074)
Dichlorodifluoromethane	Methane, dichlorodifluoro-	75-71-8 (U075)
Dichloroethylene, N.O.S.*	Dichloroethylene	25323-30-2 (----)
1,1-Dichloroethylene	Ethene, 1,1-dichloro-	75-35-4 (U078)
1,2-Dichloroethylene	Ethene, 1,2-dichloro-,(E)-	156-60-5 (U079)
Dichloroethyl ether	Ethane, 1,1' oxybis (2-chloro-	111-44-4 (U025)
Dichloroisopropyl ether	Propane, 2,2'-oxybis (2-chloro-	108-60-1 (U027)
Dichloromethoxy ethane	Ethane, 1,1'-(methylenebis (oxy)) bis (2-chloro-	111-91-1 (U024)
Dichloromethyl ether	Methane, oxybis (chloro-	542-88-1 (P016)
2,4-Dichlorophenol	Phenol, 2,4-dichloro-	120-83-2 (U081)
2,6-Dichlorophenol	Phenol, 2,6-dichloro-	87-65-0 (U082)
Dichlorophenylarsine	Arsonous dichloride, phenyl-	696-28-6 (P036)
Dichloropropane, N.O.S.*	Propane, dichloro-	26638-19-7 (----)
Dichloropropanol, N.O.S.*	Propanol, dichloro-,	26545-73-3 (----)
Dichloropropene, N.O.S.*	1-Propene, dichloro-	26952-23-8 (----)
1,3-Dichloropropene	1-Propene, 1,3-dichloro-	542-75-6 (U084)
Dieldrin	2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a, 3,6,6a,7,7a-octahydro-,(1aalpha,2beta,2aalpha,3beta,6beta,6aalpha, 7beta,7aalpha)-	60-57-1 (P037)
1,2:3,4-Diepoxybutane	2,2'-Bioxirane	1464-53-5 (U085)
Diethylarsine	Arsine, diethyl-	692-42-2 (P038)
1,4-Diethyleneoxide	1,4-Dioxane	123-91-1 (U108)
Diethylhexyl phthalate	1,2-Benzenedicarboxylic acid,bis(2-ethylhexyl)ester	117-81-7 (U028)
N,N'-Diethylhydrazine	Hydrazine, 1,2-diethyl-	1615-80-1 (U086)
O,O-Diethyl S-methyl dithiophosphate	Phosphorodithioic acid, O,O-diethyl S-methyl ester	3288-58-2 (U087)
Diethyl-p-nitrophenyl phosphate	Phosphoric acid, diethyl 4-nitrophenyl ester	311-45-5 (P041)
Diethyl phthlate	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2 (U088)
O,O-Diethyl O-pyrazinyl phosphorothioate	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	297-97-2 (P040)
Diethylstilbesterol	Phenol,4, 4'-(1,2-diethyl-1,2-ethenediyl) bis-,(E)-	56-53-1 (U089)
Dihydrosafrole	1,3-Benzodioxole, 5-propyl-	94-58-6 (U090)
Diisopropylfluorophosphate (DFP)	Phosphorofluoridic acid, bis(1-methylethyl) ester	55-91-4 (P043)
Dimethoate	Phosphorodithioic acid, O,O-dimethyl S-(2-(methylamino)-2-oxoethyl)ester	60-51-5 (P044)
3,3'-Dimethoxybenzidine	(1,1'-Biphenyl)-4,4'diamine, 3,3'-dimethoxy-	119-90-4 (U091)
p-Dimethylaminoazobenzene	Benzenamine, N,N-dimethyl-4-(phenylazo)-	60-11-7 (U093)

7,12-Dimethylbenz(a)anthracene	Benz(a)anthracene, 7,12-dimethyl-	57-97-6 (U094)
3,3'-Dimethylbenzidine	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-	119-93-7 (U095)
Dimethylcarbamoyl chloride	Carbamic chloride, dimethyl-	79-44-7 (U097)
1,1-Dimethylhydrazine	Hydrazine, 1,1-dimethyl-	57-14-7 (U098)
1,2-Dimethylhydrazine	Hydrazine, 1,2-dimethyl-	540-73-8 (U099)
alpha, alpha-Dimethylphene-thylamine	Benzeneethanamine, alpha, alpha-dimethyl-	122-09-8 (P046)
2,4-Dimethylphenol	Phenol,2,4-dimethyl-	105-67-9 (U101)
Dimethyl phthalate	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3 (U102)
Dimethyl sulfate	Sulfuric acid, dimethyl ester	77-78-1 (U103)
Dinitrobenzene, N.O.S.*	Benzene, dinitro-	25154-54-5 (----)
4,6-Dinitro-o-cresol	Phenol, 2-methyl-4,6 -dinitro-	534-52-1 (P047)
4,6-Dinitro-o-cresol salts	----------	---- (P047)
2,4-Dinitrophenol	Phenol, 2,4-dinitro-	51-28-5 (P048)
2,4-Dinitrotoluene	Benzene, 1-methyl-2,4-dinitro-	121-14-2 (U105)
2,6-Dinitrotoluene	Benzene, 2-methyl-1,3 -dinitro-	606-20-2 (U106)
Dinoseb	Phenol,2-(1-methylpropyl)-4,6-dinitro-	88-85-7 (P020)
Di-n-octyl phthalate	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0 (U017)
Diphenylamine	Benzenamine, N-phenyl-	122-39-4 (----)
1,2-Diphenylhydrazine	Hydrazine, 1,2-diphenyl-	122-66-7 (U109)
Di-n-propylnitrosamine	1-Propanamine, N-nitroso-N-propyl-	621-64-7 (U111)
Disulfoton	Phosphorodithioic acid, O,O-diethyl S-(2-(ethylthio)ethyl)ester)	298-04-4 (P039)
Dithiobiuret	Thioimidodicarbonic diamide $((H_2N)C(S))_2NH$	541-53-7 (P049)
Endosulfan	6,9-Methano-2,4,3-benzodioxathiepen,6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	115-29-7 (P050)
Endothall	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid	145-73-3 (P088)
Endrin	2,7:3,6-Dimethanonaphth(2,3-b)oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha, 2beta, 2abeta, 3alpha, 6alpha, 6abeta, 7beta,7aalpha)-	72-20-8 (P051)
Endrin metabolites	----------	---- (P051)
Epichlorohydrin	Oxirane,(chloromethyl)-	106-89-8 (U041)
Epinephrine	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-.(R)-	51-43-4 (P042)
Ethyl carbamate (urethane)	Carbamic acid, ethyl ester	51-79-6 (U238)
Ethyl cyanide	Propanenitrile	107-12-0 (P101)
Ethylenebisdithiocarbamic acid	Carbamodithioic acid, 1,2-Ethanediylbis-	111-54-6 (U114)
Ethylenebisdithiocarbamic acid, salts and esters	----------	---- (U114)
Ethylene dibromide	Ethane, 1,2-dibromo-	106-93-4 (U067)
Ethylene dichloride	Ethane, 1,2-dichloro-	107-06-2 (U077)
Ethylene glycol monoethyl ether	Ethanol, 2-ethoxy-	110-80-5 (U359)
Ethyleneimine	Aziridine	151-56-4 (P054)
Ethylene oxide	Oxirane	75-21-8 (U115)
Ethylenethiourea	2-Imidazolidinethione	96-45-7 (U116)
Ethylidene dichloride	Ethane, 1,1-dichloro-	75-34-3 (U076)
Ethyl methacrylate	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2 (U118)
Ethyl methane sulfonate	Methanesulfonic acid, ethyl ester	62-50-0 (U119)
Famphur	Phosphorothioic acid,O-(4-((dimethylamino))sulfonyl)phenyl)0,0-dimethyl ester	52-85-7 (P097)
Fluoranthene	Same	206-44-0 (U120)
Fluorine	Same	7782-41-4 (P056)
Fluoroacetamide	Acetamide, 2-fluoro-	640-19-7 (P057)
Fluoroacetic acid, sodium salt	Acetic acid, fluoro-, sodium salt	62-74-8 (P058)
Formaldehyde	Same	50-00-0 (U122)
Formic acid	Same	64-18-6 (U123)
Glycidylaldehyde	Oxiranecarboxyaldehyde	765-34-4 (U126)
Halomethanes, N.O.S.*	----------	---- (----)
Heptachlor	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8 (P059)
Heptachlor epoxide	2,5-Methano-2H-indeno(1,2b) oxirene,2,3,4,5,6,7,7-heptachloro-1a,1b,5, 5a, 6, 6a-hexa-hydro-,(1aalpha,1bbeta,2alpha,5alpha,5abeta,6beta, 6aalpha)-	1024-57-3 (----)
Heptachlor epoxide (alpha, beta, and gamma isomers	----------	---- (----)
Hexachlorobenzene	Benzene, hexachloro-	118-74-1 (U127)
Hexachlorobutadiene	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3 (U128)
Hexachlorocyclopentadiene	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4 (U130)
Hexachlorodibenzo-p-dioxins	----------	---- (----)
Hexachlorodibenzofurans	----------	---- (----)

Hexachloroethane	Ethane, hexachloro-	67-72-1 (U131)
Hexachlorophene	Phenol,2,2'-Methylenebis(3,4,6-trichloro-	70-30-4 (U132)
Hexachloropropene	1-Propene, 1,1,2,3,3,3,-hexachloro-	1888-71-7 (U243)
Hexaethyl tetraphosphate	Tetraphosphoric acid, hexaethyl ester	757-58-4 (P062)
Hydrazine	Same	302-01-2 (U133)
Hydrogen cyanide	Hydrocyanic acid	74-90-8 (P063)
Hydrogen fluoride	Hydrofluoric acid	7664-39-3 (U134)
Hydrogen sulfide	Hydrogen sulfide H_2S	7783-06-4 (U135)
Indeno(1,2,3-cd)pyrene	Same	193-39-5 (U137)
~~[Iron dextran~~	~~Same~~	~~9004-66-4 (U139)]~~
Isobutyl alcohol	1-Propanol, 2-methyl-	78-83-1 (U140)
Isodrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-,(1alpha,4alpha,4abeta,5beta,8beta,8abeta)-4abeta,5beta,8beta,8abeta)-	465-73-6 (P060)
Isosafrole	1,3-Benzodioxole,5-(1-propenyl)-	120-58-1 (U141)
Kepone	1,3,4-Metheno-2H-cyclobuta-(cd)pentalen-2-one,1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	143-50-0 (U142)
Lasiocarpine	2-Butenoic acid, 2-methyl-,7-((2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, (1S-(1alpha(Z),7(2S*,3R*),7aalpha))-	303-34-1 (U143)
Lead	Same	7439-92-1 (----)
Lead compounds, N.O.S.*	----------	---- (----)
Lead acetate	Acetic acid, lead (2+) salt	301-04-2 (U144)
Lead phosphate	Phosphoric acid, lead (2+) salt (2:3)	7446-27-7 (U145)
Lead subacetate	Lead, bis(acetato-O)tetrahydroxytri-	1335-32-6 (U146)
Lindane	Cyclohexane, 1, 2, 3, 4, 5, 6-hexachloro-,(1alpha, 2alpha, 3beta, 4alpha, 5alpha, 6beta)	58-89-9 (U129)
Maleic anhydride	2,5-Furandione	108-31-6 (U147)
Maleic hydrazide	3,6-Pyridazinedione-1,2-dihydro-	123-33-1 (U148)
Malononitrile	Propanedinitrile	109-77-3 (U149)
Melphalan	L-Phenylalanine, 4-(bis(2-chloroethyl)amino)-	148-82-3 (U150)
Mercury	Same	7439-97-6 (U151)
Mercury compounds, N.O.S.*	----------	---- (----)
Mercury fulminate	Fulminic acid, mercury (2+) salt	628-86-4 (P065)
Methacrylonitrile	2-Propenenitrile, 2-methyl-	126-98-7 (U152)
Methapyrilene	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5 (U155)
Methomyl	Ethanimidothioic acid, N-(((methylamino)carbonyl)oxy)-,methyl ester	16752-77-5 (P066)
Methoxychlor	Benzene, 1, 1'-(2,2,2-trichloroethylidene)bis(4-methoxy-	72-43-5 (U247)
Methyl bromide	Methane, bromo-	74-83-9 (U029)
Methyl chloride	Methane, chloro-	74-87-3 (U045)
Methyl chlorocarbonate	Carbonochloridic acid, methyl ester	79-22-1 (U156)
Methyl chloroform	Ethane,1,1,1-trichloro-	71-55-6 (U226)
3-Methylcholanthrene	Benz(j)aceanthrylene,1,2-dihydro-3-methyl-	56-49-5 (U157)
4,4'-Methylenebis(2-chloroaniline)	Benzenamine, 4,4'-methylenebis(2-chloro-	101-14-4 (U158)
Methylene bromide	Methane,dibromo-	74-95-3 (U068)
Methylene chloride	Methane, dichloro-	75-09-2 (U080)
Methyl ethyl ketone (MEK)	2-Butanone	78-93-3 (U159)
Methyl ethyl ketone peroxide	2-Butanone, peroxide	1338-23-4 (U160)
Methyl hydrazine	Hydrazine, methyl-	60-34-4 (P068)
Methyl iodide	Methane, iodo-	74-88-4 (U138)
Methyl isocyanate	Methane, isocyanato-	624-83-9 (P064)
2-Methyllactonitrile	Propanenitrile, 2-hydroxy-2-methyl-	75-86-5 (P069)
Methyl methacrylate	2-Propenoic acid, 2-methyl-, methyl ester	80-62-6 (U162)
Methyl methanesulfonate	Methanesulfonic acid, methyl ester	66-27-3 (----)
Methyl parathion	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl)ester	298-00-0 (P071)
Methylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56-04-2 (U164)
Mitomycin C	Azirino(2', 3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-(((aminocarbonyl)oxy)methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-(1aS-(1aalpha,8beta,8aalpha,8balpha))-	50-07-7 (U010)
MNNG	Guanidine,N-methyl-N'-nitro-N-nitroso-	70-25-7 (U163)
Mustard gas	Ethane,1,1'-thiobis(2-chloro-	505-60-2 (----)
Naphthalene	Same	91-20-3 (U165)
1,4-Naphthoquinone	1,4-Naphthalenedione	130-15-4 (U166)
alpha-Naphthylamine	1-Naphthalenamine	134-32-7 (U167)
beta-Naphthylamine	2-Naphthalenamine	91-59-8 (U168)
alpha-Naphthylthiourea	Thiourea,1-naphthalenyl-	86-88-4 (P072)
Nickel	Same	7440-02-0 (----)

Nickel compounds, N.O.S.*	----------	---- (----)
Nickel carbonyl	Nickel carbonyl $Ni(CO)_4$,(T-4)-	13463-39-3 (P073)
Nickel cyanide	Nickel cyanide $Ni(CN)_2$	557-19-7 (P074)
Nicotine	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-	54-11-5 (P075)
Nicotine salts	----------	---- (P075)
Nitric oxide	Nitrogen oxide NO	10102-43-9 (P076)
p-Nitroaniline	Benzenamine, 4-nitro-	100-01-6 (P077)
Nitrobenzene	Benzene, nitro-	98-95-3 (U169)
Nitrogen dioxide	Nitrogen oxide NO_2	10102-44-0 (P078)
Nitrogen mustard	Ethanamine,2-chloro-N-(2-chloroethyl)-N-methyl-	51-75-2 (----)
Nitrogen mustard, hydrochloride salt	----------	---- (----)
Nitrogen mustard N-oxide	Ethanamine, 2-chloro-N-(2-chloroethyl)-N-methyl-,N-oxide	126-85-2 (----)
Nitrogen mustard, N-oxide, hydrochloride salt	----------	---- (----)
Nitroglycerin	1,2,3-Propanetriol, trinitrate	55-63-0 (P081)
p-Nitrophenol	Phenol, 4-nitro-	100-02-7 (U170)
2-Nitropropane	Propane, 2-nitro	79-46-9 (U171)
Nitrosamines, N.O.S.*	----------	35576-91-1D (----)
N-Nitrosodi-n-butylamine	1-Butanamine, N-butyl-N-nitroso-	924-16-3 (U172)
N-Nitrosodiethanolamine	Ethanol, 2,2'-(nitrosoimino)bis-	1116-54-7 (U173)
N-Nitrosodiethylamine	Ethanamine, N-ethyl-N-nitroso-	55-18-5 (U174)
N-Nitrosodimethylamine	Methanamine, N-methyl-N-nitroso-	62-75-9 (P082)
N-Nitroso-N-ethylurea	Urea, N-ethyl-N-nitroso-	759-73-9 (U176)
N-Nitrosomethylethylamine	Ethanamine, N-methyl- N-nitroso-	10595-95-6 (----)
N-Nitroso-N-methylurea	Urea, N-methyl-N-nitroso-	684-93-5 (U177)
N-Nitroso-N-methylurethane	Carbamic acid, methylnitroso-, ethyl ester	615-53-2 (U178)
N-Nitrosomethylvinylamine	Vinylamine, N-methyl-N-nitroso-	4549-40-0 (P084)
N-Nitrosomorpholine	Morpholine, 4-nitroso-	59-89-2 (----)
N-Nitrosonornicotine	Pyridine, 3-(1-nitroso-2-pyrrolidinyl)-,(S)-	16543-55-8 (----)
N-Nitrosopiperidine	Piperidine, 1-nitroso-	100-75-4 (U179)
N-Nitrosopyrrolidine	Pyrrolidine,1-nitroso-	930-55-2 (U180)
N-Nitrososarcosine	Glycine, N-methyl-N-nitroso-	13256-22-9 (----)
5-Nitro-o-toluidine	Benzenamine, 2-methyl-5-nitro-	99-55-8 (U181)
Octamethylpyrophosphoramide	Diphosphoramide, octamethyl-	152-16-9 (P085)
Osmium tetroxide	Osmium oxide O_sO_4,(T-4)-	20816-12-0 (P087)
Paraldehyde	1,3,5-Trioxane, 2,4,6-trimethyl-	123-63-7 (U182)
Parathion	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	56-38-2 (P089)
Pentachlorobenzene	Benzene, pentachloro-	608-93-5 (U183)
Pentachlorodibenzo-p-dioxins	----------	---- (----)
Pentachlorodibenzofurans	----------	---- (----)
Pentachloroethane	Ethane, pentachloro-	76-01-7 (U184)
Pentachloronitrobenzene (PCNB)	Benzene, pentachloronitro-	82-68-8 (U185)
Pentachlorophenol	Phenol, pentachloro-	87-86-5 (See F027)
Phenacetin	Acetamide, N-(4-ethoxyphenyl)-	62-44-2 (U187)
Phenol	Same	108-95-2 (U188)
Phenylenediamine	Benzenediamine	25265-76-3 (----)
Phenylmercury acetate	Mercury, (acetato-O)phenyl-	62-38-4 (P092)
Phenylthiourea	Thiourea, phenyl-	103-85-5 (P093)
Phorate	Phosphorodithioic acid, O,O-diethyl S-((ethylthio)methyl)ester	298-02-2 (P094)
Phosgene	Carbonic dichloride	75-44-5 (P095)
Phosphine	Same	7803-51-2 (P096)
Phthalic acid esters, N.O.S.*	----------	---- (----)
Phthalic anhydride	1,3-Isobenzofurandione	85-44-9 (U190)
2-Picoline	Pyridine,2-methyl-	109-06-8 (U191)
Polychlorinated biphenyls, N.O.S.*	----------	---- (----)
Potassium cyanide	Potassium cyanide K(CN)	151-50-8 (P098)
Potassium silver cyanide	Argentate(1-),bis(cyano-C)-,potassium	506-61-6 (P099)
Pronamide	Benzamide,3,5-dichloro-N-(1,1-dimethyl-2-propynyl)	23950-58-5 (U192)
1,3-Propane sultone	1,2-Oxathiolane, 2,2-dioxide	1120-71-4 (U193)
Propargyl alcohol	2-Propyn-1-ol	107-19-7 (P102)
n-Propylamine	1-Propanamine	107-10-8 (U194)
Propylene dichloride	Propane,1,2-dichloro-	78-87-5 (U083)
1,2-Propylenimine	Aziridine, 2-methyl-	75-55-8 (P067)
Propylthiouracil	4(1H)-Pyrimidinone,2,3-dihydro-6-propyl-2-thioxo-	51-52-5 (----)
Pyridine	Same	110-86-1 (U196)
Reserpine	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyl)oxy)-smethyl ester,(3beta,16beta,17alpha,18beta,20alpha)-	50-55-5 (U200)

Resorcinol	1,3-Benzenediol	108-46-3 (U201)
Saccharin	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	81-07-2 (U202)
Saccharin salts	----------	---- (U202)
Safrole	1,3-Benzodioxole,5-(2-propenyl)-	94-59-7 (U203)
Selenium	Same	7782-49-2 (----)
Selenium compounds, N.O.S.*	----------	---- (----)
Selenium dioxide	Selenious acid	7783-00-8 (U204)
Selenium sulfide	Selenium sulphide SeS_2	7488-56-4 (U205)
Selenourea	Same	630-10-4 (P103)
Silver	Same	7440-22-4 (----)
Silver compounds, N.O.S.*	----------	---- (----)
Silver cyanide	Silver cyanide Ag (CN)	506-64-9 (P104)
Silvex (2,4,5-TP)	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	93-72-1 (See F027)
Sodium cyanide	Sodium cyanide Na(CN)	143-33-9 (P106)
Streptozotocin	D-Glucose, 2-deoxy-2-(((Methylnitrosoamino)carbonyl)amino)-	18883-66-4 (U206)
~~[Strontium sulfide~~	~~Strontium sulfide SrS~~	~~1314-96-1 (P107)]~~
Strychnine	Strychnidin-10-one	57-24-9 (P108)
Strychnine salts	----------	---- (P108)
TCDD	Dibenzo(b,e)(1,4)dioxin,2,3,7,8-tetrachloro-	1746-01-6 (----)
1,2,4,5-Tetrachlorobenzene	Benzene, 1,2,4,5-tetrachloro-	95-94-3 (U207)
Tetrachlorodibenzo-p-dioxins	----------	---- (----)
Tetrachlorodibenzofurans	----------	---- (----)
Tetrachloroethane, N.O.S.*	Ethane, tetrachloro-, N.O.S.*	25322-20-7 (----)
1,1,1,2-Tetrachloroethane	Ethane, 1,1,1,2-tetrachloro-	630-20-6 (U208)
1,1,2,2-Tetrachloroethane	Ethane, 1,1,2,2-tetrachloro-	79-34-5 (U209)
Tetrachloroethylene	Ethene, tetrachloro-	127-18-4 (U210)
2,3,4,6-Tetrachlorophenol	Phenol, 2,3,4,6-tetrachloro-	58-90-2 (See F027)
Tetraethyldithiopyrophosphate	Thiodiphosphoric acid, tetraethyl ester	3689-24-5 (P109)
Tetraethyl lead	Plumbane, tetraethyl-	78-00-2 (P110)
Tetraethyl pyrophosphate	Diphosphoric acid, tetraethyl ester	107-49-3 (P111)
Tetranitromethane	Methane, tetranitro-	509-14-8 (P112)
Thallium	Same	7440-28-0 (----)
Thallium compounds, N.O.S.*	----------	---- (----)
Thallic oxide	Thallium oxide $T1_2O_3$	1314-32-5 (P113)
Thallium (I) acetate	Acetic acid, thallium (1+) salt	563-68-8 (U214)
Thallium (I) carbonate	Carbonic acid, dithallium (1+) salt	6533-73-9 (U215)
Thallium (I) chloride	Thallium chloride T1C1	7791-12-0 (U216)
Thallium (I) nitrate	Nitric acid, thallium (1+) salt	10102-45-1 (U217)
Thallium selenite	Selenious acid, dithallium (1+) salt	12039-52-0 (P114)
Thallium (I) sulfate	Sulfuric acid, dithallium (1+) salt	7446-18-6 (P115)
Thioacetamide	Ethanethioamide	62-55-5 (U218)
Thiofanox	2-Butanone,3,3-dimethyl-1-(methylthio)-,0-((methylamino)carbonyl)oxime	39196-18-4 (P045)
Thiomethanol	Methanethiol	74-93-1 (U153)
Thiophenol	Benzenethiol	108-98-5 (P014)
Thiosemicarbazide	Hydrazinecarbothioamide	79-19-6 (P116)
Thiourea	Same	62-56-6 (U219)
Thiram	Thioperoxydicarbonic diamide$((H_2N)C(S))_2S_2$,Tetramethyl	137-26-8 (U244)
Toluene	Benzene, methyl-	108-88-3 (U220)
Toluenediamine	Benzenediamine,ar-methyl-	25376-45-8 (U221)
Toluene-2,4-diamine	1,3-Benzenediamine,4-methyl-	95-80-7 (----)
Toluene-2,6-diamine	1,3-Benzenediamine, 2-methyl-	823-40-5 (----)
Toluene-3,4-diamine	1,2-Benzenediamine,4-methyl-	496-72-0 (----)
Toluene diisocyanate	Benzene,1,3-diisocyanatomethyl-	26471-62-5 (U223)
o-Toluidine	Benzenamine, 2-methyl-	95-53-4 (U328)
p-Toluidine	Benzenamine,4-methyl-	106-49-0 (U353)
o-Toluidine hydrochloride	Benzenamine, 2-methyl-, hydrochloride	636-21-5 (U222)
Toxaphene	Same	8001-35-2 (P123)
1,2,4-Trichlorobenzene	Benzene,1,2,4-trichloro-	120-82-1 (----)
1,1,2-Trichloroethane	Ethane, 1,1,2-trichloro-	79-00-5 (U227)
Trichloroethylene	Ethene, trichloro-	79-01-6 (U228)
Trichloromethanethiol	Methanethiol, trichloro-	75-70-7 (P118)
Trichloromonofluoromethane	Methane, trichlorofluoro-	75-69-4 (U121)
2,4,5-Trichlorophenol	Phenol, 2,4,5-trichloro-	95-95-4 (See F027)
2,4,6-Trichlorophenol	Phenol, 2,4,6-trichloro-	88-06-2 (See F027)
2,4,5-T	Acetic acid(,2,4,5-trichlorophenoxy)-	93-76-5 (See F027)
Trichloropropane, N.O.S.*	----------	25735-29-9 (----)
1,2,3-Trichloropropane	Propane, 1,2,3-trichloro-	96-18-4 (----)

O,O,O-Triethyl phosphorothioate	Phosphorothioic acid, O,O,O-triethyl ester	126-68-1 (----)
1,3,5-Trinitrobenzene	Benzene,1,3,5-trinitro	99-35-4 (U234)
Tris(1-aziridinyl)-phosphine sulfide	Aziridine,1,1',1"-phosphinothioylidynetris-	52-24-4 (----)
Tris(2,3-dibromopropyl) phosphate	1-Propanol, 2,3-dibromo-, phosphate (3:1)	126-72-7 (U235)
Trypan blue	2,7-Naphthalenedisulfonic acid, 3,3'-(3,3'-dimethyl)1,1'-biphenyl)-4,4'-diyl)bis(azo))bis(5-amino-4-hydroxy-, tetrasodium salt	72-57-1 (U236)
Uracil mustard	2,4-(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)-	66-75-1 (U237)
Vanadium pentoxide	Vanadium oxide V_2O_5	1314-62-1 (P120)
Vinyl chloride	Ethene, chloro-	75-01-4 (U043)
Warfarin	2H-1-Benzopyran-2-one,4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations less than 0.3%	81-81-2 (U248)
Warfarin	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations greater than 0.3%	81-81-2 (P001)
Warfarin salts, when present at concentrations less than 0.3%	----------	---- (U248)
Warfarin salts, when present at concentrations greater than 0.3%	----------	---- P001
Zinc cyanide	Zinc cyanide $Zn(CN)_2$	557-21-1 (P121)
Zinc phosphide	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10%	1314-84-7 (P122)
Zinc phosphide	Zinc phosphide Zn_3P_2, when present at concentrations of 10% or less	1314-84-7 (U249) U249

*The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed regulation will affect hazardous waste generators and owners and operators of treatment, storage, and disposal facilities. There are approximately 2,200 hazardous waste generators and 90 facilities regulated in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: All entities which had previously generated, transported, or treated strontium sulfide wastes, iron dextran wastes, or ferric dextran, CAS# 9004-6604 wastes may experience first year savings as a result of the proposed amendment.

2. Continuing costs or savings: First year costs shall continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The promulgating administrative body may experience collectively minor savings, since it will no longer be obligated to monitor strontium sulfide wastes, iron dextran wastes, or ferric dextran, CAS# 9004-6604 wastes as hazardous wastes.

2. Continuing costs or savings: The promulgating administrative body may experience continuing savings as a result of the proposed amendment.

3. Additional factors increasing or decreasing costs: There are no additional 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 promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment removes iron dextran and strontium from the list of hazardous constituents regulated under the hazardous waste program. Kentucky is required by KRS Chapter 224 to list hazardous waste identically to the federal list.

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 261 Appendix VIII as published in the Federal Register on October 31, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional information or comments.

Tiering: Was tiering applied? Yes. This regulation applies to generators of hazardous waste, as well as owners and operators of hazardous waste treatment, storage, or disposal facilities.

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 October 31, 1988, at 40 CFR 261, Appendix VIII.

2. State compliance standards. The proposed amendment removes iron dextran and strontium sulfide from the list of hazardous constituents regulated under the hazardous waste program. Kentucky is required by KRS Chapter 224 to list hazardous waste identically to the federal list.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate removes iron dextran and strontium sulfide from the list of hazardous constituents regulated under the hazardous waste program.

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 standards in this administrative regulation are identical to those in the federal regulations. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 34:020. General facility standards.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes the general standards for facilities.

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

(2) Section 9(2) of this regulation applies only to facilities subject to regulation under 401 KAR 34:180, 34:190, 34:200, 34:210, 34:220, 34:230, 34:240, and 34:250.

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

Section 3. Required Notices. (1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the cabinet in writing at least four (4) weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(2) The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator is also the generator) shall inform the generator in writing that he has the appropriate permit(s) for, and shall accept, the waste the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

(3) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the postclosure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of this chapter and 401 KAR Chapter 38.

Section 4. General Waste Analysis. (1)(a) Before an owner or operator treats, stores, or disposes of any hazardous waste, he shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis shall contain all the information which shall be known to treat, store, or dispose of the waste in accordance with the requirements of this chapter and 401 KAR Chapter 37 or with the conditions of a permit issued under 401 KAR Chapter 38.

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

(c) The analysis shall be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis shall be repeated:

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

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

(d) The owner or operator of an off-site facility shall inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(2) The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which he shall carry out to comply with subsection (1) of this section. He shall keep this plan at the facility. At a minimum, the plan shall specify:

(a) The parameters for which each hazardous waste shall be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters shall provide sufficient information on the waste's properties to comply with subsection (1) of this section);

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

(c) The sampling method which shall be used to obtain a representative sample of the waste to be analyzed. A representative sample
may be obtained using one (1) of the sampling methods described in 401 KAR 31:100.

(d) The frequency with which the initial analysis of the waste shall be reviewed or repeated to ensure that the analysis is accurate and up to date;

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

(f) Where applicable, the methods which shall be used to meet the additional waste analysis requirements for specific waste management methods as specified in Section 8 of this regulation, Section 9 of 401 KAR 34:230, in Section 2 of 401 KAR 34:240 and Section 7 of 401 KAR 37:010; and

(g) For surface impoundments exempted from land disposal restrictions under Section 4(1) of 401 KAR 37:010, the procedures and schedules for:

1. The sampling of impoundment contents;

2. The analysis of test data; and

3. The annual removal of residues which are not delisted under Section 2 of 401 KAR 31:060 or which [~~and do not~~] exhibit a characteristic of hazardous waste and either:

a. Do not meet applicable treatment standards of 401 KAR 37:040; or

b. Where no treatment standards have been established;

(i) The residues are prohibited from land disposal under 401 KAR 37:030, Section 4, or KRS 224.46-520; or

(ii) The residues are prohibited from land disposal under 401 KAR 37:030, Section 5(6). [~~which do not meet the treatment standards of 401 KAR 37:040 or, where no treatment standards have been established, the annual removal of residues which do not meet the applicable prohibition levels in 401 KAR 37:030 or KRS 224.46-520.~~]

(3) For off-site facilities, the waste analysis plan required in subsection (2) of this section shall also specify the procedures which shall be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan shall describe:

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

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

Section 5. Security. (1) The owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, unless he can demonstrate to the cabinet that:

(a) Physical contact with the waste, structures, or equipment within the active portion of the facility shall not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(b) Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, shall not cause a violation of the requirements of this chapter.

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

(a) A twenty-four (24) hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(b)1. An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

2. A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(3) Unless the owner or operator has made a successful demonstration under subsection (1) of this section, a sign with the legend, "Danger - Unauthorized Personnel Keep Out," shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient number to be seen from any approach to this active portion. The legend shall be written in English and in any other language predominant in the area surrounding the facility and shall be legible from a distance of at least twenty-five (25) feet. Existing signs with a legend other than "Danger - Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

Section 6. General Inspection Requirements. (1) The owner or operator shall inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to: release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(2)(a) The owner or operator shall develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

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

(c) The schedule shall identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

(d) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the terms and frequencies called for in Section 5 of 401 KAR 34:180, Section 5 of 401 KAR 34:190, Section 4 of 401 KAR 34:200, Sections 4 and 5 of 401 KAR 34:210, Section 4 of 401 KAR 34:230, Section 7 of 401 KAR 34:240, and Section 3 of 401 KAR 34:250, where applicable.

(3) The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(4) The owner or operator shall record inspections in an inspection log or summary. He shall keep these records for at least three (3) years from the date of inspection. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

Section 7. Personnel Training. (1)(a) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this chapter. The owner or operator shall ensure that this program includes all the elements described in the document required under subsection (4)(c) of this section.

(b) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

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

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

2. Key parameters for automatic waste feed cutoff systems;

3. Communications or alarm systems;

4. Response to fires or explosions;

5. Response to groundwater contamination incidents; and

6. Shutdown of operations.

(2) Facility personnel shall successfully complete the program required in subsection (1) of this section within six (6) months after the effective date of these regulations or six (6) months after the date of their employment or assignment to a facility, or to a new positior at a facility, whichever is later. Employees hired after the effective

date of these regulations shall not work in unsupervised positions until they have completed the training requirements of subsection (1) of this section.

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

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

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

(b) A written job description for each position listed under paragraph (a) of this subsection. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

(c) A written description of the type and amount of both introductory and continuing training that shall be given to each person filling a position listed under paragraph (a) of this subsection; and

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

(5) Training records on current personnel shall be kept until closure of the facility; training records on former employees shall be kept for at least three (3) years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

Section 8. General Requirements for Ignitable, Reactive, or Incompatible Wastes. (1) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

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

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

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

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

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

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

(3) When required to comply with subsection (1) or (2) of this section, the owner or operator shall document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests (e.g., bench scale or pilot scale tests), waste analyses (as specified in Section 4 of this regulation), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

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

[~~(e)~~] Portions of new facilities where treatment, storage, or disposal of hazardous waste shall be conducted shall not be located within sixty-one (61) meters (approximately 200 feet) of a fault which had displacement in Holocene time.

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

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

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

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

(2) Flood plains. (a) Except as paragraph (c) of this subsection applies, a facility located in a 100-year flood plain shall be designed, constructed, operated, maintained, and refitted if necessary, to prevent washout of any hazardous waste and to protect the facility from inundation by waters of the 100-year flood plain throughout the active life of the facility, throughout the closure phase of the facility, [~~closure~~] and for disposal facilities only, throughout the postclosure phase[~~, postclosure~~]. Facilities that have closed and removed all hazardous waste, waste constituents, contaminated soil, debris or other material contaminated with hazardous constituents, are not required to protect the closed portion of the facility from washout of waste or inundation by waters of the 100-year flood. Prevention of washout and protection from inundation shall be accomplished by one (1) of the following:

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

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

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

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

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

3. Demonstrating to the satisfaction of the cabinet that alternate devices or measures, with the exception of covering the waste, shall provide protection which meets the requirements of this paragraph.

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

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

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

[~~(e) As used in paragraphs (a) through (c) of this subsection:~~

~~1. "100 year flood plain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.~~

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

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

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

(3) Salt dome formations, salt bed formations, underground mines and caves. The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment affects the owners and operators of hazardous waste treatment, storage, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment may not provide direct or indirect costs or savings for the affected entities. The U.S. EPA established identical standards on August 17, 1988. The affected entities have been required to follow those federal guidelines since that date. Related costs have been incurred since that time.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment may result in minor direct costs for the promulgating administrative body.

2. Continuing costs or savings: First year costs may continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing costs.

(b) Reporting and paperwork requirements: There are no additional 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 promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) This amendment proposes to make slight wording changes to correct deficiencies in the regulation as noted by the U.S. EPA.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 264.13 as published in the Federal Register on August 17, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional information or comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of treatment, storage, and disposal facilities.

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 August 17, 1988, at 40 CFR 265.13.

2. State compliance standards. This amendment proposes to make slight wording changes to correct deficiencies in the regulation as noted by the U.S. EPA.

3. Minimum or uniform standards contained in the federal mandate. The federal counterparts to 401 KAR 34:020 have slight wording differences from existing 401 KAR 34:020. The U.S. EPA has cited these wording differences as deficiencies in the Kentucky hazardous waste program.

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 standards in this administrative regulation are identical to those in the federal regulations. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 34:050. Manifest system, recordkeeping and reporting.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes manifest system, recordkeeping and reporting requirements for facilities.

Section 1. Applicability. This regulation applies to owners and operators of both on-site and off-site hazardous waste sites or facilities, except as Section 1 of 401 KAR 34:010 provides otherwise. Sections 2, 3 and 7 of this regulation do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

Section 2. Use of Manifest System. (1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, shall:

(a) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(b) Note any significant discrepancies in the manifest (as defined in Section 3(1) of this regulation) on each copy of the manifest;

(c) Immediately give the transporter at least one (1) copy of the signed manifest;

(d) Within thirty (30) days after the delivery, send a copy of the manifest to the generator; and

(e) Retain at the facility a copy of each manifest for at least three (3) years after the date of delivery.

(2) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, shall:

(a) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(b) Note any significant discrepancies (as defined in Section 3(1) of this regulation) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

(c) Immediately give the rail or water (bulk shipment) transporter at least one (1) copy of the manifest (or shipping paper if the manifest has not been received);

(d) Within thirty (30) days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within thirty (30) days after delivery, the owner or operator, or his agent, shall send a copy of the shipping paper signed and dated to the generator; and

(e) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three (3) years from the date of delivery.

(3) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of 401 KAR Chapter 32.

Section 3. Manifest Discrepancies. (1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(a) For bulk waste, variations greater than ten (10) percent in weight; and

(b) For batch waste, any variation in piece count, such as a discrepancy of one (1) drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(2) Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within fifteen (15) days after receiving the waste, the owner or operator shall immediately submit to the cabinet a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

Section 4. Operating Record. (1) The owner or operator shall keep a written operating record at his facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(a) A description and the quantity of each hazardous waste received, and the method and date of its treatment, storage, or disposal at the facility as described in 401 KAR 34:290;

(b) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste shall be recorded on a map or diagram of each cell or disposal area. For all facilities, this information shall include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest;

(c) Records and results of waste analyses performed as specified in Sections 4 and 8 of 401 KAR 34:020, Section 9 of 401 KAR 34:230, Section 2 of 401 KAR 34:240, and Sections 4(1) and 7 of 401 KAR 37:010;

(d) Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 7(10) of 401 KAR 34:040;

(e) Records and results of inspections as required by Section 6(4) of 401 KAR 34:020 (except these data need be kept only three (3) years);

(f) Monitoring, testing or analytical data, and corrective action where required by 401 KAR 34:060, Sections 2, 4 and 6 of 401 KAR 34:190, Section 4 of 401 KAR 34:200, Sections 4 and 5 of 401 KAR 34:210, Sections 5, 6 and 8 of 401 KAR 34:220, Sections 4 and 5 of 401 KAR 34:230, Section 7 of 401 KAR 34:240 and Section 3 of 401 KAR 34:250;

(g) For off-site facilities, notices to generators as specified in Section 3(2) of 401 KAR 34:020;

(h) All closure cost estimates under Section 1 of 401 KAR 34:090 and, for disposal facilities, postclosure cost estimates under Section 1 of 401 KAR 34:100;

(i) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and environment;

(j) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Section 5 of 401 KAR 37:010, [~~or~~] a petition pursuant to Section 6 of 401 KAR 37:010, or a certification under 401 KAR 37:010, Section 8, and the applicable notice required of [~~by~~] a generator under Section 7(1)[~~(c)~~] of 401 KAR 37:010;

(k) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required of [~~by~~] a generator or the owner or operator under Section 7 or 8 [~~(1)(a)~~] of 401 KAR 37:010;

(l) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of [~~by~~] a generator or the owner or operator under Section 7 or 8 [~~(1)(a)~~] of 401 KAR 37:010[~~, except for the manifest number~~];

(m) For an off-site land disposal facility, a copy of the notice and certification and demonstration if applicable required of [~~by~~] the generator or the owner or operator of a treatment facility under Section 7 or 8 [~~(2)(a) and (b)~~] of 401 KAR 37:010, [~~or a copy of the notice and certification required by the generator under Section 7(1)(b) of 401 KAR 37:010,~~] whichever is applicable;

(n) For an on-site land disposal facility, the information contained in the notice required of the generator or owner or operator of a treatment facility under 401 KAR 37:010, Section 7, except for the manifest number, and the certification and demonstration if required under 401 KAR 37:010, Section 8, whichever is applicable; [~~under Section 7(1)(b) of 401 KAR 37:010, except for the manifest number, or the information contained in the notice required by a treator under Section 7(2)(a) of 401 KAR 37:010 except for the manifest number, whichever is applicable; and~~]

(o) For surface impoundments, water balance calculations as required in 401 KAR 34:200, Section 4;

(p) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or the owner or operator under 401 KAR 37:010, Section 7 or 8; and

(q) For an on-site storage facility, the information contained in the

notice (except the manifest number), and the certification and demonstration if applicable, required of the generator or the owner or operator under 401 KAR 37:010, Section 7 or 8.

Section 5. Availability, Retention, and Disposition of Records. (1) All records, including plans, required under this chapter shall be furnished upon request, and made available at all reasonable times for inspection by any officer, employee, or representative of the cabinet who is duly designated by the secretary of the cabinet.

(2) The retention period for all records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the cabinet.

(3) A copy of records of waste disposal locations and quantities under Section 4(2)(b) of this regulation shall be submitted to the cabinet and local land authority upon closure of the facility.

Section 6. Annual Report. The owner or operator shall prepare and submit a single copy of an annual report to the cabinet by March 1 of each year. The report form designated by the secretary shall be used for this report. The annual report shall cover facility activities during the previous calendar year and shall include at a minimum the following information:

(1) The EPA identification number, name, and address of the facility;

(2) The calendar year covered by the report;

(3) For off-site facilities, the name and EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator;

(4) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) Information on transportation, the use of the manifest, and other information from the manifest, as applicable;

(7) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(8) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for the years prior to 1984; and

(9) The certification signed by the owner or operator of the facility or his authorized representative.

Section 7. Unmanifested Waste Report. If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in 401 KAR 33:020, Section 1(5)(b), and if the waste is not excluded from the manifest requirement by Section 5 of 401 KAR 31:010, then the owner or operator shall prepare and submit a single copy of a report to the secretary within fifteen (15) days after receiving the waste. The unmanifested waste report shall be submitted on a form approved by the cabinet. The report shall be designated "Unmanifested Waste Report" and include the following information:

(1) The EPA identification number, name, and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name, and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

Section 8. Additional Reports. In addition to submitting the annual report and unmanifested waste reports described in Sections 6 and 7 of this regulation the owner or operator shall also report to the secretary:

(1) Releases, fires, and explosions as specified in Section 7(10) of 401 KAR 34:040;

(2) Facility closure as specified in Section 6 of 401 KAR 34:070; and

(3) As otherwise required by 401 KAR 34:060, 34:200, 34:210, 34:220 and 34:230.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment shall affect all owners and operators of hazardous waste treatment, storage, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendments shall result in increased costs for the affected entities.

2. Continuing costs or savings: First year costs shall continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There may be additional factors increasing or decreasing costs.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment shall result in direct costs for the promulgating administrative body due to additional requirements in the areas of certification and demonstration.

2. Continuing costs or savings: First year costs shall continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There may be new 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 promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) This proposed amendment outlines land disposal

for those first third treatment standards that are not established.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 265.13 as published in the Federal Register on August 17, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information or comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of both on-site and off-site hazardous waste sites or facilities.

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 August 17, 1988, at 40 CFR 265.13.
2. State compliance standards. This proposed amendment outlines land disposal restrictions for those first third wastes treatment standards that are not established.
3. Minimum or uniform standards contained in the federal mandate. The federal mandate outlines land disposal restrictions for those first third wastes treatment standards that are not established.
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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 34:060. Groundwater protection.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities. This regulation establishes the minimum groundwater protection standards for new hazardous waste sites or facilities.

Section 1. Applicability. (1)(a) Except as provided in subsection (2) of this section, the requirement in this regulation apply to owners and operators of facilities that treat, store, or dispose of hazardous waste. The owner or operator shall satisfy the requirements of paragraph (b) of this subsection for all wastes (or constituents thereof) contained in waste management units at the facility regardless of the time at which waste was placed in such units.

(b) All waste management units shall comply with the requirements in Section 12 of this regulation. A surface impoundment, waste pile, land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a "regulated unit") shall comply with the requirements of Sections 2 through 11 of this regulation in lieu of Section 12 of this regulation for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of Section 12 of this regulation apply to regulated units.

(2) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this regulation if:

(a) The owner or operator is exempted under Section 1 of 401 KAR 34:010; or

(b) He operates a unit which the cabinet finds:

1. Is an engineered structure;

2. Does not receive or contain liquid waste or wastes containing free liquids;

3. Is designed and operated to exclude liquid, precipitation, and other run-on and run-off;

4. Has both inner and outer layers of containment enclosing the waste;

5. Has a leak detection system built into each containment layer;

6. The owner or operator shall provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and postclosure care periods; and

7. To a reasonable degree of certainty, shall not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the postclosure care period.

(c) The cabinet finds pursuant to 401 KAR 34:220, Section 8(4) that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of 401 KAR 34:220, Section 6, has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this subsection can only relieve an owner or operator of responsibility to meet the requirements of this regulation during the postclosure care period; or

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

(e) He designs and operates a pile in compliance with 401 KAR 34:210, Section 1(3).

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

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

(b) Applies during the postclosure care period under Section 8 of 401 KAR 34:070 if the owner or operator is conducting a detection monitoring program under Section 9 of this regulation; or

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

(4) This regulation may apply to miscellaneous units when necessary to comply with Sections 2 through 4 of 401 KAR 34:250.

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

(a) Whenever hazardous constituents under Section 4 of this regulation from a regulated unit are detected at the compliance point under Section 6 of this regulation, the owner or operator shall institute a compliance monitoring program under Section 10 of this regulation. Detected means statistically significant evidence of contamination as described in Section 9(6) of this regulation;

(b) Whenever the groundwater protection standard under Section 3 of this regulation is exceeded, the owner or operator shall institute a corrective action program under Section 11 of this regulation. Exceeded means statistically significant evidence of increased contamination as described in Section 10(4) of this regulation;

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

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

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

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

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

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

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

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

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

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

4. The proximity and withdrawal rates of groundwater users;

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

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

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

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

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

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

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

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

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

4. The patterns of rainfall in the region;

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

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

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

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

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

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

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

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

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

(b) For any of the constituents listed in Table I, shall not exceed the respective value given in that Table if the background level of the constituent is below the value given in Table I; or

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

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

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

TABLE I

MAXIMUM CONCENTRATION OF CONSTITUENTS FOR GROUNDWATER PROTECTION

Constituent	Maximum Concentration
Arsenic	0.05 mg/l
Barium	1.0 mg/l
Cadmium	0.01 mg/l
Chromium	0.05 mg/l
Lead	0.05 mg/l
Mercury	0.002 mg/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,9a-octahydro-1,4-endo, endo-5,8-dimethanonaphthalene)	0.0002 mg/l
Lindane (1,2,3,4,5,6,-hexachloro-cyclohexane, gamma isomer)	0.004 mg/l
Methoxychlor (1,1,1-Trichloro-2, 2,-bis (p-methoxyphenyl-ethane))	0.1 mg/l
Toxaphene ($C_{10}H_{10}Cl_8$, Technical chlorinated camphene, 67-69 percent chlorine)	0.005 mg/l
2,4-D(2,4-Dichlorophenoxyacetic acid)	0.1 mg/l
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01 mg/l

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

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

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

4. The proximity and withdrawal rates of groundwater users;

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

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

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

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

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

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

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

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

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

4. The patterns of rainfall in the region;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Represents the quality of back groundwater that has not been affected by leakage from a regulated unit. [~~;and~~]

1. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

a. Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

b. Sampling at other wells shall provide an indication of background groundwater quality that is representative of more representative than that provided by the upgradient wells;

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

(c) Allows for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

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

that have entered the groundwater in the uppermost aquifer.

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

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

(a) Sample collection;

(b) Sample preservation and shipment;

(c) Analytical procedures; and

(d) Chain of custody control.

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

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

(7) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit shall be collected from background wells and wells at the compliance point. The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility shall be detected. The owner or operator shall determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which shall be specified in the unit permit upon approval by the cabinet. This sampling procedure shall be:

(a) A sequence of at least four (4) samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

(b) An alternate sampling procedure proposed by the owner or operator and approved by the cabinet.

(8) The owner or operator shall specify one (1) of the statistical methods listed in paragraphs (a) through (e) of this subsection to be used in evaluating groundwater monitoring data for each hazardous constituent. The statistical method which the owner or operator specifies, if approved by the cabinet, shall be included in the unit permit. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits (pql's) are used in any of the following statistical procedures to comply with subsection (9)(e) of this section, the pql shall be proposed by the owner or operator and approved by the cabinet. Use of any of the following statistical methods shall be protective of human health and the environment and shall comply with the performance standards outlined in subsection (9) of this section. The statistical methods which an owner or operator may specify are:

(a) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(b) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(c) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance of prediction limit.

(d) A control chart approach that gives control limits for each constituent.

(e) Another statistical test method submitted by the owner or operator and approved by the cabinet.

(9) Any statistical method chosen under subsection (8) of this section for specification in the unit permit shall comply with the following performance standards, as appropriate:

(a) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one (1) statistical method may be needed.

(b) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(c) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and shall be approved by the cabinet if it is protective of human health and the environment.

(d) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be proposed by the owner or operator and shall be approved by the cabinet if it finds these parameters to be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of concentration values for each constituent of concern.

(e) The statistical method shall account for data below the limit of detection with one (1) or more statistical procedures that are protective of human health and the environment. Any practical qualification limit (pql) approved by the cabinet under subsection (8) of this section that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operation conditions that are available to the facility.

(f) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(10) Groundwater monitoring data collected in accordance with subsection (7) of this section, including actual levels of constituents, shall be maintained in the facility operating record. The cabinet shall specify in the permit when the data shall be submitted for review.

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

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

~~one (1) year.~~

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

~~1. Is available before the permit is issued;~~

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

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

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

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

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

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

~~1. The owner or operator shall take at least four (4) portions from a sample at each well at the compliance point and determine whether the difference between the mean of the constituent at each well (using all portions taken) and the background value for the constituent is significant at the 0.05 level using the Cochran's Approximation to the Behrens Fisher Students' t test as described in 401 KAR 34:320. If the test indicates that the difference is significant, the owner or operator 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~~

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

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

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

~~2. Provides a reasonable balance between the probability of falsely identifying a noncontaminating regulated unit and the probability of failing to identify a contaminating regulated unit.]~~

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

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

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

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

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

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

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

(3) The owner or operator shall conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to subsection (1) of this section in accordance with Section 8(7) of this regulation. The owner or operator shall maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under Section 8(8) of this regulation.

(4) The cabinet shall specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under subsection (1) of this section in accordance with Section 8(7) of this regulation. A sequence of at least four (4) samples from each well (background and compliance wells) shall be collected at least semiannually during detection monitoring.

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

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

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

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

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

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

(6) The owner or operator shall determine whether there is

statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the permit pursuant to subsection (1) of this section at a frequency specified under subsection (4) of this section.

(a) In determining whether statistically evidence of contamination exists, the owner or operator shall use the method specified in the permit under Section 8(8) of this regulation. This method shall compare data collected at the compliance point to the background groundwater quality data.

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

(7) If the owner or operator determines pursuant to subsection (6) of this section that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to subsection (1) of this section at any monitoring well at the compliance point, he or she shall:

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

(b) Immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of 401 KAR 34:360 are present, and if so, in what concentration;

(c) For any 401 KAR 34:360 compounds found in the analysis pursuant to subsection (7)(b) of this section, the owner or operator may resample within one (1) month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents shall form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to subsection (7)(b) of this section, the hazardous constituents found during this initial 401 KAR 34:360 analysis shall form the basis for compliance monitoring;

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

1. An identification of the concentration of any 401 KAR 34:360 constituent detected in the groundwater at each monitoring well at the compliance point;

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

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

4. For each hazardous constituent detected at the compliance point, a proposed concentration limit under Section 5(1)(a) or (b) of this regulation, or a notice of intent to seek an alternate concentration limit under Section 5(2) of this regulation; and

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

1. All data necessary to justify an alternate concentration limit sought under Section 5(2) of this regulation; and

2. An engineering feasibility plan for a corrective action program necessary to meet the requirement of Section 11 of this regulation, unless:

a. All hazardous constituents identified under subsection (7)(b) of this section are listed in Table 1 of Section 5 of this regulation and their concentrations do not exceed the respective values given in that table; or

b. The owner or operator has sought an alternative concentration limit under Section 5(2) of this regulation for every hazardous constituent identified under subsection 7(b) of this section.

(f) If the owner or operator determines, pursuant to subsection (6) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to subsection (1) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner or operator may make a demonstration under this subsection in addition to, or in lieu of, submitting a permit modification application under subsection (7)(d) of this section; however, the owner or operator is not relieved of this requirement to submit a permit modification application within the time specified in subsection (7)(d) of this section unless the demonstration made under this subsection successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

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

2. Within ninety (90) days, submit a report to the cabinet which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

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

4. Continue to monitor in accordance with the detection monitoring program established under this section.

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

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

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

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

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

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

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

~~(b) Immediately sample the groundwater in all monitoring wells and determine whether constituents identified in 401 KAR 34:360 are present and, if so, at what concentration.~~

~~(c) Establish a background value for each constituent that has been found at the compliance point under paragraph (b) of this subsection, as follows:~~

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

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

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

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

~~1. An identification of the concentration of each constituent found in the groundwater at each monitoring well at the compliance point;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The cabinet shall specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with Section 8(7) and (8) of this regulation.

(a) The owner or operator shall conduct a sampling program for each chemical parameter or hazardous constituent in accordance with Section 8(7) of this regulation.

(b) The owner or operator shall record groundwater analytical data as measured and in form necessary for the determination of statistical significance under Section 8(8) of this regulation for the compliance period of the facility.

(4) The owner or operator shall determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to subsection (1) of this section, at a frequency specified under subsection (6) of this section.

(a) In determining whether statistically significant evidence of increased contamination exists, the owner or operator shall use the method specified in the permit under Section 8(8) of this regulation. The method shall compare data collected at the compliance point to a concentration limit developed in accordance with Section 5 of 401 KAR 34:060.

(b) The owner or operator shall determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The cabinet shall specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples. [~~Where a concentration limit established under subsection (1)(b) of this section is based on background groundwater quality, the cabinet shall specify the concentration limit in the permit as follows:~~

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

~~upgradient well.~~

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

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

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

~~(c) The owner or operator shall:~~

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

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

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

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

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

(6) The cabinet shall specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with Section 8(7) of this regulation. A sequence of at least four (4) samples from each well (background and compliance wells) shall be collected at least semiannually during the compliance period of the facility.

(7) The owner or operator shall analyze samples from all monitoring wells at the compliance point for all constituents contained in 401 KAR 34:360 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in Section 9(6) of this regulation. If the owner or operator finds 401 KAR 34:360 constituents in the groundwater that are not already identified in the permit is monitoring constituents, the owner or operator shall report the concentration of these additional constituents to the cabinet within seven (7) days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she shall report the concentrations of these additional constituents to the cabinet within seven (7) days after completion of the initial analysis and shall add them to the monitoring list. [~~The owner or operator shall analyze samples from all monitoring wells at the compliance point to determine whether constituents identified in 401 KAR 34:360 are present and, if so, at what concentration. The analysis shall be conducted at least annually to determine whether additional 401 KAR 34:360 constituents are present in the uppermost aquifer. If the owner or operator finds constituents from 401 KAR 34:360 in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator shall report the concentration of these additional constituents to the cabinet within seven (7) days after completion of the analysis.~~

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

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

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

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

(8) [~~(9)~~] If the owner or operator determines, pursuant to subsection (4) [~~(8)~~] of this section, that any concentration limits under Section 5 of this regulation are [~~the groundwater protection standard is~~] being exceeded at any monitoring well at the point of compliance, he or she shall:

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

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

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

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

(9) [~~(10)~~] If the owner or operator determines, pursuant to subsection (4) [~~(8)~~] of this section, that the groundwater concentration limits under this section are [~~protection standard is~~] being exceeded at any monitoring well at the point of compliance, he or she may demonstrate that a source other than a regulated unit caused the contamination [~~increase~~] or that the detection is an artifact caused by an [~~increase resulted from~~] error in sampling, analysis or statistical evaluation or natural variation in the groundwater. [~~While the owner or operator may make a demonstration under this subsection in addition to submitting a permit modification application under subsection (9)(b) of this section, he is only relieved of the requirement to submit a permit modification application within the time specified in subsection (9)(b) of this section if the cabinet approves the demonstration made under this subsection showing that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation.~~] In making a demonstration under this subsection, the owner or operator shall:

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

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

(c) Within ninety (90) days, submit to the cabinet an application for a permit modification to make any appropriate changes to the

compliance monitoring program at the facility; and

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

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

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

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

(1) The owner or operator shall take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under Section 3 of this regulation. The cabinet shall specify the groundwater protection standard in the facility permit, including:

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

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

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

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

(2) The owner or operator shall implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit shall specify the specific measures that shall be taken.

(3) The owner or operator shall begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The cabinet shall specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit shall specify when the correction action shall begin and such a requirement shall operate in lieu of Section 10(9)(b) of this regulation.

(4) In conjunction with a corrective action program, the owner or operator shall establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under Section 10 of this regulation and shall be as effective as that program in determining compliance with the groundwater protection standard under Section 3 of this regulation and in determining the success of a corrective action program under subsection (5) of this section, where appropriate.

(5) In addition to the other requirements of this section, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under Section 4 of this regulation that exceed concentration limits under Section 5 of this regulation in groundwater:

(a) Between the compliance point under Section 6 of this regulation and the downgradient property boundary; and

(b) Beyond the facility boundary, where necessary to project human health and the environment, unless the owner or operator demonstrates to the satisfaction of the cabinet that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases shall be determined on a case-by-case basis.

(c) Corrective action measures under this subsection shall be initiated and completed within a reasonable period of time as specified by the cabinet considering the extent of contamination.

(d) Corrective action measures under this subsection may be terminated upon approval of the cabinet once the concentration of hazardous constituents under Section 4 of this regulation is reduced to levels below their respective concentration limits under Section 5 of this regulation.

(6) The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he shall continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate to the satisfaction of the cabinet based on data from the groundwater monitoring program under subsection (4) of this section, that the groundwater protection standard of Section 3 of this regulation has not been exceeded for a period of three (3) consecutive years.

(7) The owner or operator shall report in writing to the cabinet on the effectiveness of the corrective action program. The owner or operator shall submit these reports at least semiannually on a schedule determined by the cabinet.

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

Section 12. Corrective Action for Waste Management Units. (1) The owner or operator of a facility or any person seeking a permit or any person closing a facility for the treatment, storage or disposal of hazardous waste shall institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(2) Corrective action shall be specified in the permit. The permit shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit or closure of the facility) and assurances of financial responsibility for completing such corrective action.

(3) The owner or operator shall implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the cabinet that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases shall be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action shall be provided. These financial responsibility assurances shall be approved by the cabinet.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 adminis-

trative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: This amendment affects all owners and operators of hazardous waste storage, treatment, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment may result in direct costs for the affected entities. RCRA regulations specify that a statistical method must be used to evaluate the presence or increase of contamination. The Cochran's Approximation to the Behrens-Fisher Students test has been replaced with five different tests more appropriate to groundwater monitoring.

2. Continuing costs or savings: First year costs may continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There may be additional paperwork and reporting requirements due to the newly proposed testing methods.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment may result in increased costs due to the newly proposed groundwater monitoring tests.

2. Continuing costs or savings: First year costs may continue.

3. Additional factors increasing or decreasing costs: At this time, there are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There may be additional reporting and paperwork requirements due to the changes in testing methods.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment provides additional language regarding the detection of hazardous waste storage, treatment, or disposal facility.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 264.92 as published in the Federal Register on October 11, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information or comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, storage, and disposal facilities in the Commonwealth of Kentucky.

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 October 11, 1988, at 40 CFR 264.92.

2. State compliance standards. The proposed amendment provides additional language in regard to the detection of hazardous constituents in groundwater in the vicinity of a hazardous waste storage, treatment, or disposal facility.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate provides additional language in regard to the detection of hazardous constituents in groundwater in the vicinity of a hazardous waste storage, treatment, or disposal facility.

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 34:070. Closure and postclosure.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46.520 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes standards for closure and postclosure of facilities.

Section 1. Applicability. Except as Section 1 of 401 KAR 34:010 provides otherwise:

(1) Sections 2 through 6 of this regulation (which concern closure) apply to the owners and operators of all hazardous waste management sites or facilities; and

(2) Sections 7 through 11 of this regulation (which concern postclosure care) apply to the owners and operators of:

(a) All hazardous waste disposal facilities;

(b) Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in Section 6 of 401 KAR 34:200 or Section 8 of 401 KAR 34:210; and

(c) Tank systems that are required under Section 8 of 401 KAR 34:190 to meet the requirements for landfills.

Section 2. Closure Performance Standards. The owner or operator shall close the facility in a manner that:

(1) Minimizes the need for further maintenance; and

(2) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or

surface waters or to the atmosphere; and

(3) Complies with the closure requirements of this regulation including but not limited to, the requirements of Section 9 of 401 KAR 34:180, Section 8 of 401 KAR 34:190, Section 6 of 401 KAR 34:200, Section 8 of 401 KAR 34:210, Section 8 of 401 KAR 34:220, Section 6 of 401 KAR 34:230, Section 8 of 401 KAR 34:240, and Section 2 through 4 of 401 KAR 34:250.

Section 3. Closure Plan; Amendment of Plan. (1) Written plan.

(a) The owner or operator of a hazardous waste site or facility shall have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by Section 6(3)(a)1 of 401 KAR 34:200 and Section 8(3)(a)1 of 401 KAR 34:210 to have contingent closure plans. The plan shall be submitted with the permit application, in accordance with Section 2(13) of 401 KAR 38:090, and approved by the cabinet as part of the permit issuance procedures under 401 KAR 38:050. In accordance with Section 3 of 401 KAR 38:030, the approved closure plan shall become a condition of any hazardous waste site or facility permit.

(b) The cabinet's approval of the plan shall ensure that the approved closure plan is consistent with Sections 2, 3, 4, 5 and 6 of this regulation and the applicable requirements of 401 KAR 34:060, Section 9 of 401 KAR 34:180, Section 8 of 401 KAR 34:190, Section 6 of 401 KAR 34:200, Section 8 of 401 KAR 34:210, Section 8 of 401 KAR 34:220, Section 6 of 401 KAR 34:230, Section 8 of 401 KAR 34:240, and Section 2 of 401 KAR 34:250. Until final closure is completed and certified in accordance with Section 6 of this regulation, a copy of the approved plan and all approved revisions shall be furnished to the cabinet upon request, including request by mail.

(2) Content of plan. The plan shall identify steps necessary to perform partial and final closure of the facility at any point during its active life. The closure plan shall include at least:

(a) A description of how each hazardous waste management unit at the facility shall be closed in accordance with Section 2 of this regulation;

(b) A description of how final closure of the facility shall be conducted in accordance with Section 2 of this regulation. The description shall identify the maximum extent of the operations which shall be unclosed during the active life of the facility; and

(c) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of the off-site hazardous waste management units to be used, if applicable; and

(d) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard; and

(e) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; and

(f) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule shall include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which shall allow tracking of the progress of partial and final closure (for example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover shall be included); and

(g) For facilities that use trust funds to establish financial assurance under 401 KAR 34:090 or 401 KAR 34:100 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(3) Amendment of plan. The owner or operator shall submit a written request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the procedures in 401 KAR Chapter 38. The written request shall include a copy of the amended closure plan for approval by the cabinet.

(a) The owner or operator may submit a written request to the cabinet for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(b) The owner or operator shall submit a written request for a permit modification to authorize a change in the approved closure plan whenever:

1. Changes in operating plans or facility design affect the closure plan; or

2. There is a change in the expected year of closure, if applicable; or

3. In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

(c) The owner or operator shall submit a written request for a permit modification including a copy of the amended closure plan for approval at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall request a permit modification no later than thirty (30) days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under Section 6(3)(a)1 of 401 KAR 34:200 or Section 8(3)(a)1 of 401 KAR 34:210, shall submit an amended closure plan to the cabinet no later than sixty (60) days from the date that the owner or operator or cabinet determines that the hazardous waste management unit shall be closed as a landfill, subject to the requirements of Section 6 of 401 KAR 34:230, or no later than thirty (30) days from that date if the determination is made during partial or final closure. The cabinet shall approve, disapprove, or modify this amended plan in accordance with the procedures in 401 KAR Chapter 38. In accordance with Section 3 of 401 KAR 38:030, the approved closure plan shall become a condition of any hazardous waste site or facility permit issued.

(d) The cabinet may request modifications to the plan under the conditions described in paragraph (b) of this subsection. The owner or operator shall submit the modified plan within sixty (60) days of the cabinet's request or within thirty (30) days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the cabinet shall be approved in accordance with the procedures in 401 KAR Chapter 38.

(4) Notification of partial closure and final closure.

(a) The owner or operator shall notify the cabinet in writing at least sixty (60) days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator shall notify the cabinet in writing at least forty-five (45) days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed.

(b) The date when he "expects to begin closure" shall be either no later than thirty (30) days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit shall receive additional hazardous wastes no

later than one (1) year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the cabinet that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and shall continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the cabinet may approve an extension to this one (1) year limit.

(c) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under KRS 224.10-100, 224.10-420, and 224.46-530 to cease receiving hazardous wastes or to close, then the requirements of this subsection do not apply. However, the owner or operator shall close the facility in accordance with the deadlines established in Section 4 of this regulation.

(5) Removal of wastes and decontamination or dismantling of equipment. Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

(6) For existing disposal facilities within the 100-year flood plain, the closure plan and cost estimates shall reflect compliance with the requirements in Section 9(2) of 401 KAR 34:020 to prevent washout of waste and protect the facility from inundation by waters of the 100-year flood.

(7) For new hazardous waste sites or facilities located or to be located in the 100-year flood plain, the closure plan and cost estimates shall reflect that all hazardous waste and hazardous waste residues shall be removed from the site at closure, in accordance with Section 9(2) of 401 KAR 34:020.

Section 4. Closure; Time Allowed for Closure. (1) Within ninety (90) days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The cabinet may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(a)1. The activities required to comply with this subsection shall, of necessity, take longer than ninety (90) days to complete; or

2.a. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

b. There is a reasonable likelihood that he or another person shall recommence operation of the hazardous waste management unit or the facility within one (1) year; and

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) He has taken and shall continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

(2) The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility. The cabinet may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(a)1. The partial or final closure activities shall, of necessity, take longer than 180 days to complete; or

2.a. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

b. There is reasonable likelihood that he or another person shall recommence operation of the hazardous waste management unit or the facility within one (1) year; and

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) He has taken and shall continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(3) The demonstrations referred to in subsections (1) and (2) of this section shall be made as follows:

(a) The demonstrations in subsection (1) of this section shall be made at least thirty (30) days prior to the expiration of the ninety (90) day period in subsection (1) of this section; and

(b) The demonstration in subsection (2) of this section shall be made at least thirty (30) days prior to the expiration of the 180 day period in subsection (2) of this section.

Section 5. Disposal or Decontamination of Equipment, Structures and Soils. During the partial and final closure periods, all contaminated equipment, structures and soils shall be properly disposed of or decontaminated unless otherwise specified in Section 8 of 401 KAR 34:190, Section 6 of 401 KAR 34:200, Section 8 of 401 KAR 34:210, Section 8 of 401 KAR 34:220, or Section 6 of 401 KAR 34:230 or under the authority of Section 2 and 4 of 401 KAR 34:250. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall handle that waste in accordance with all applicable requirements of 401 KAR Chapter 32.

Section 6. Certificate of Closure. Within sixty (60) days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within sixty (60) days of the completion of final closure, the owner or operator shall submit to the cabinet, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification shall be signed by the owner or operator and by an independent professional engineer registered in Kentucky. Documentation supporting the independent registered professional engineer's certification shall be furnished to the cabinet upon request until he releases the owner or operator from the financial assurance requirements for closure under Section 12 of 401 KAR 34:090.

Section 7. Survey Plat. No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the cabinet, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently displayed benchmarks. This plat shall be prepared and certified by a professional land surveyor registered in the Commonwealth of Kentucky. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, shall contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with this regulation.

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

1. Monitoring and reporting in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250; and

2. Maintenance and monitoring of waste containment systems in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250.

(b) Any time preceding partial closure of a hazardous waste

management unit subject to postclosure care requirements or final closure, or any time during the postclosure period for a particular unit, the cabinet may, in accordance with the permit modification procedures in 401 KAR Chapter 38:

1. Shorten the postclosure care period applicable to the hazardous waste management unit, or facility, to not less than thirty (30) years as specified in KRS 224.46-520 if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the hazardous waste management unit or facility is secure); or

2. Extend the postclosure care period applicable to the hazardous waste management unit or facility if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(2) The cabinet may require, at partial and final closure, continuation of any of the security requirements of Section 5 of 401 KAR 34:020 during part or all of the postclosure period when:

(a) Hazardous wastes may remain exposed after completion of partial or final closure; or

(b) Access by the public or domestic livestock may pose a hazard to human health.

(3) Postclosure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed to disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the cabinet finds that the disturbance:

(a) Is necessary to the proposed use of the property, and shall not increase the potential hazard to human health or the environment; or

(b) Is necessary to reduce a threat to human health or the environment.

(4) All postclosure care activities shall be in accordance with the provisions of the approved postclosure plan as specified in Section 9 of this regulation.

Section 9. Postclosure Plan; Amendment of Plan. (1) Written plan. The owner or operator of a hazardous waste disposal unit shall have a written postclosure plan. In addition, certain waste piles and certain surface impoundments from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by Section 6(3)(a)2 of 401 KAR 34:200, and Section 8(3)(a)2 of 401 KAR 34:210 to have contingent postclosure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent postclosure plans under Section 6(3)(a)2 of 401 KAR 34:200 and Section 8(3)(a)2 of 401 KAR 34:210 shall submit a postclosure plan to the cabinet within ninety (90) days from the date that the owner or operator or cabinet determines that the hazardous waste management unit shall be closed as a landfill, subject to the requirements of Sections 8 through 11 of this regulation. The plan shall be submitted with the permit application, in accordance with Section 2(13) of 401 KAR 38:090, and approved by the cabinet as part of the permit issuance procedures under 401 KAR Chapter 38. In accordance with Section 3 of 401 KAR 38:030, the approved postclosure plan shall become a condition of any hazardous waste site or facility permit issued.

(2) For each hazardous waste management unit subject to the requirements of this section, the postclosure plan shall identify the activities that shall be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(a) A description of the planned monitoring activities and frequencies at which they shall be performed to comply with 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250 during the postclosure care period; and

(b) A description of the planned maintenance activities, and frequencies at which they shall be performed, to ensure:

1. The integrity of the cap and final cover or other containment systems in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250; and

2. The function of the monitoring equipment in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250; and

(c) The name, address and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the postclosure care period.

(3) Until final closure of the facility, a copy of the approved postclosure plan shall be furnished to the cabinet upon request, including request by mail. After final closure has been certified, the person or office specified in subsection (2)(c) of this section shall keep the approved postclosure plan during the remainder of the postclosure period.

(4) Amendment of plan. The owner or operator shall request a permit modification to authorize a change in the approved postclosure plan in accordance with the applicable requirements of 401 KAR Chapter 38. The written request shall include a copy of the amended postclosure plan for approval by the cabinet.

(a) The owner or operator may submit a written request to the cabinet for a permit modification to amend the postclosure plan at any time during the active life of the facility or during the postclosure care period.

(b) The owner or operator shall submit a written request for a permit modification to authorize a change in the approved postclosure plan whenever:

1. Changes in operating plans or facility design affect the approved postclosure plan; or

2. There is a change in the expected year of final closure, if applicable; or

3. Events which occur during the active life of the facility, including partial and final closures, affect the approved postclosure plan.

(c) The owner or operator shall submit a written request for a permit modification at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the postclosure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent postclosure plan under Section 6(3)(a)2 of 401 KAR 34:200 and Section 8(3)(a)2 of 401 KAR 34:210, shall submit a postclosure plan to the cabinet no later than ninety (90) days after the date that the owner or operator or cabinet determines that the hazardous waste management unit shall be closed as a landfill, subject to the requirements of Section 6 of 401 KAR 34:230. The cabinet shall approve, disapprove, or modify this plan in accordance with the procedures in 401 KAR Chapter 38. In accordance with Section 3 of 401 KAR 38:030, the approved postclosure plan shall become a permit condition.

(d) The cabinet may request modifications to the plan under the conditions described in paragraph (b) of this subsection. The owner or operator shall submit the modified plan no later than sixty (60) days after the cabinet's request, or no later than ninety (90) days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent postclosure plan. Any modifications requested by the cabinet shall be approved, disapproved, or modified in accordance with the procedures in 401 KAR Chapter 38.

(5) For existing disposal facilities within the 100-year flood plain, the postclosure plan and cost estimates shall reflect compliance with the requirements in Section 9(2) of 401 KAR 34:020 to prevent washout of waste and protect the facility from inundation by waters of

the 100-year flood.

Section 10. Postclosure Notices. (1) No later than sixty (60) days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the cabinet a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(2) Within sixty (60) days of certification of closure of the first hazardous waste disposal unit and within sixty (60) days of certification of closure of the last hazardous waste disposal unit, the owner or operator shall:

(a) Record, in accordance with state law, a notation on the deed to the facility property - or on some other instrument which is normally examined during title search - that shall in perpetuity notify any potential purchaser of the property that:

1. The land has been used to manage hazardous wastes; and

2. Its use is restricted under this regulation; and

3. The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Section 7 of this regulation and subsection (1) of this section have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the cabinet; and

(b) Submit a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph (a) of this subsection, including a copy of the document in which the notation has been placed, to the cabinet [~~secretary~~].

(3) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes, hazardous waste residues, the liner, if any, or contaminated soils, he shall request a modification to the postclosure permit in accordance with the applicable requirements in 401 KAR Chapter 38. The owner or operator shall demonstrate that the removal of hazardous wastes shall satisfy the criteria of Section 8(3) of this regulation. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the cabinet approve either:

(a) The removal of the notation on the deed to the facility property or other instrument normally examined during title during title search; or

(b) The addition of a notation to the deed or other instrument indicating the removal of the hazardous waste.

Section 11. Certification of Completion of Postclosure Care. No later than sixty (60) days after completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator shall submit to the cabinet by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification shall be signed by the owner or operator and an independent professional engineer registered in the Commonwealth of Kentucky. Documentation supporting the independent registered professional engineer's certification shall be furnished to the cabinet upon request until he releases the owner or operator from the financial assurance requirements for postclosure care under Section 12 of 401 KAR 34:100.

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

APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment shall affect all owners and operators of hazardous waste storage, treatment, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment may result in direct costs to those affected entities, during the first year.

2. Continuing costs or savings: First year costs may continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs at this time.

(b) Reporting and paperwork requirements: The affected entities may experience additional reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The promulgating administrative body may experience direct costs during the first year.

2. Continuing costs or savings: First year costs may continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs at this time.

(b) Reporting and paperwork requirements: There will be an increase in the number of closure plans submitted to the cabinet.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment revises Section 5 of 401 KAR 34:070 by adding 401 KAR 34:190, Section 8, which lists requirements for closure and postclosure care for hazardous waste storage tanks.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 264.114 as published in the Federal Register on September 2, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no

conflict.

(6) Any additional information or comments: There is no additional information or comments.

Tiering: Was tiering applied? Yes. This regulation applies to all owners and operators of hazardous waste treatment, storage, and disposal facilities.

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 264.144.

2. State compliance standards. The proposed amendment revises Section 5 of 401 KAR 34:070 by adding 401 KAR 34:190, Section 8, which lists requirements for closure and postclosure care for hazardous waste storage tanks.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate revises the first sentence of 40 CFR 265.14 by adding 40 CFR 264.197, which lists requirements for closure and postclosure care for hazardous waste storage tanks.

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 34:190. Tanks.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes minimum standards for tanks.

Section 1. Applicability. The requirements of this regulation apply to owners and operators of hazardous waste sites or facilities that use tank systems for storing or treating hazardous waste, except as otherwise provided in subsections (1) and (2) of this section or in Section 1 of 401 KAR 34:010.

(1) Tank systems [~~Tanks~~] that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in Section 4 of this regulation. To demonstrate the absence or presence of free liquids in the stored or treated waste, EPA Method 9095 (paint filter liquids test) as described in "Test Methods for Evaluating Solid Wastes: Physical Chemical Methods" (EPA Publication No. SW-846) referenced [~~incorporated by reference~~] in Section 3 of 401 KAR 30:010 must be used.

(2) Tank systems [~~Tanks~~], including sumps, as defined in Section 1 of 401 KAR 30:010, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Section 4(1) of this regulation.

Section 2. Assessment of Existing Tank System's Integrity. (1) For each existing tank system that does not have secondary containment meeting the requirements of Section 4 of this regulation, the owner or operator shall [~~must~~] determine that the tank system is not leaking or is unfit for use. Except as provided in subsection (3) of this section, the owner or operator shall [~~must~~] obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified professional engineer registered in the Commonwealth of Kentucky, in accordance with Section 7(4) of 401 KAR 38:070, that attests to the tank system's integrity no later than 180 days from the date of promulgation of this regulation.

(2) This assessment shall [~~must~~] determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment shall [~~must~~] consider the following:

(a) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(b) Hazardous characteristics of the waste(s) that have been and will be handled;

(c) Existing corrosion protection measures;

(d) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(e) Results of a leak test, internal inspection, or other tank integrity examination such that:

1. For nonenterable underground tanks, the assessment shall [~~must~~] include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects; and

2. For other than nonenterable underground tanks and for ancillary equipment, this assessment shall [~~must~~] include either a leak test, as described above, or other integrity examination, that is certified by an independent, qualified, professional engineer registered in the Commonwealth of Kentucky in accordance with Section 7(4) of 401 KAR 38:070, that addresses cracks, leaks, corrosion, and erosion.

(3) Tank systems that store or treat materials that become hazardous wastes subsequent to the date of promulgation of this regulation, shall [~~must~~] conduct the assessment within twelve (12) months after the date that the waste becomes a hazardous waste.

(4) If, as a result of the assessment conducted in accordance with subsection (1) of this section, a tank system is found to be leaking or unfit for use, the owner or operator shall [~~must~~] comply with the requirements of Section 7 of this regulation.

Section 3. Design and Installation of New Tank Systems or Components. (1) Owners or operators of new tank systems or components shall [~~must~~] obtain and submit to the cabinet [~~director~~], at the time of submittal of Part B information, a written assessment, reviewed and certified by an independent, qualified professional engineer registered in the Commonwealth of Kentucky, in accordance with Section 7(4) of 401 KAR 38:070, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment shall [~~must~~] show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which shall [~~will~~] be used by the cabinet [~~director~~] to review and approve or disapprove the acceptability of the tank system design, shall [~~must~~] include, at a minimum, the following information:

(a) Design standards [~~(s)~~] according to which tanks or [~~(s) and/or~~]

the ancillary equipment are constructed;

(b) Hazardous characteristics of the wastes [(s)] to be handled;

(c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

1. Factors affecting the potential for corrosion, including but not limited to:

a. Soil moisture content;

b. Soil pH;

c. Soil sulfides level;

d. Soil resistivity;

e. Structure to soil potential;

f. Influence of nearby underground metal structures (e.g., piping);

g. Existence of stray electric current;

h. Existing corrosion-protection measures (e.g., coating, cathodic protection); and

2. The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one (1) or more of the following:

a. Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.;

b. Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and

c. Electrical isolation devices such as insulating joints, flanges, etc.

(d) For underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(e) Design considerations to ensure that:

1. Tank foundations are able to [will] maintain the load of a full tank;

2. Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of Section 9(1) of 401 KAR 34:020; and

3. Tank systems will withstand the effects of frost heave.

(2) The owner or operator of a new tank system shall [must] ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified professional engineer registered in the Commonwealth of Kentucky, either of whom is trained and experienced in the proper installation of tank systems or components, shall [must] inspect the system for the presence of any of the following items:

(a) Weld breaks;

(b) Punctures;

(c) Scrapes of protective coatings;

(d) Cracks;

(e) Corrosion; or

(f) Other structural damage or inadequate construction/installation.

All discrepancies (e.g., structural damage or inadequate construction/installation) shall [must] be remedied before the tank system is covered, enclosed, or placed in use.

(3) New tank systems or components, that are placed underground and that are backfilled shall [must] be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(4) All new tanks and ancillary equipment shall [must] be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system shall [must] be performed prior to the tank system being covered, enclosed, or placed into use.

(5) Ancillary equipment shall [must] be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(6) The owner or operator shall [must] provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under subsection (1)(c) of this section, or other corrosion protection if the cabinet [director] believes other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated shall [must] be supervised by an independent corrosion expert to ensure proper installation.

(7) The owner or operator shall [must] obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (2) through (6) of this section, that attest that the tank system was properly designed and installed and that repairs, pursuant to subsections (2) and (4) of this section, were performed. These written statements shall [must] also include the certification statement as required in Section 7(4) of 401 KAR 38:070.

Section 4. Containment and Detection of Releases. (1) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section shall [must] be provided (except as provided in subsections (6) and (7) of this section):

(a) For all new tank systems or components, prior to their being put into service;

(b) For all existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, by January 12, 1991;

(c) For those existing tank systems of known and documented age, by January 12, 1991 or when the tank system has reached fifteen (15) years of age, whichever comes later;

(d) For those existing tank systems for which the age cannot be documented, within eight (8) years of January 12, 1987, but if the age of the facility is greater than seven (7) years, secondary containment shall [must] be provided by the time the facility reaches fifteen (15) years of age, or within two (2) years of January 12, 1987, whichever comes later; and

(e) For tank systems that store or treat materials that become hazardous wastes subsequent to the date of promulgation of this regulation within the time intervals required in paragraphs (a) through (d) of this subsection, except that the date that a material becomes a hazardous waste shall [must] be used in place of the date of promulgation of this regulation.

(2) Secondary containment systems shall [must] be:

(a) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(b) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(3) To meet the requirements of subsection (2) of this section, secondary containment systems shall [must] be at a minimum:

(a) Constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and shall [must] have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic);

(b) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure

gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(c) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within twenty-four (24) hours, or at the earliest practicable time if the owner or operator can demonstrate to the cabinet [~~director~~] that existing detection technologies or site conditions will not allow detection of a release within twenty-four (24) hours; and

(d) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation shall [~~must~~] be removed from the secondary containment system within twenty-four (24) hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the cabinet [~~director~~] that removal of the released waste or accumulated precipitation cannot be accomplished within twenty-four (24) hours.

(e) If the collected material is a hazardous waste under 401 KAR Chapter 31 it is subject to management as a hazardous waste in accordance with all applicable requirements of 401 KAR Chapters 32 through 35. If the collected material is discharged through a point source to waters of the Commonwealth, it is subject to the requirements of KRS Chapter 224 and 401 KAR Chapter 5. If discharged to a publicly owned treatment works (POTW), it is subject to the requirements of KRS Chapter 224 and 401 KAR Chapter 5. If the collected material is released to the environment it may be subject to the reporting requirements of 40 CFR Part 302 and KRS 224.01-400.

(4) Secondary containment for tanks shall [~~must~~] include one (1) or more of the following devices:

(a) A liner (external to the tank);

(b) A vault;

(c) A double-walled tank; or

(d) An equivalent device as approved by the cabinet [~~director~~].

(5) In addition to the requirements of subsections (2), (3), and (4) of this section, secondary containment systems shall [~~must~~] satisfy the following requirements:

(a) External liner systems shall [~~must~~] be:

1. Designed and operated to contain 100 percent of the capacity of the largest tank within its boundary;

2. Designed and operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall [~~must~~] be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour rainfall event;

3. Free of cracks or gaps; and

4. Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

(b) Vault systems shall [~~must~~] be:

1. Designed and operated to contain 100 percent of the capacity of the largest tank within its boundary;

2. Designed and operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall [~~must~~] be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour rainfall event;

3. Constructed with chemical-resistant water stops in place at all joints (if any);

4. Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

5. Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

a. Meets the definition of ignitable waste under Section 2 of 401 KAR 31:030; or

b. Meets the definition of reactive waste under Section 4 of 401 KAR 31:030 and may form an ignitable or explosive vapor.

6. Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(c) Double-walled tanks shall [~~must~~] be:

1. Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

2. Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

3. Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four (24) hours, or at the earliest practicable time, if the owner or operator can demonstrate to the cabinet [~~director~~], and the cabinet [~~director~~] concludes, that the existing detection technology or site conditions would not allow detection of a release within twenty-four (24) hours.

(6) Ancillary equipment shall [~~must~~] be provided with secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of subsections (2) and (3) of this section except for:

(a) Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(b) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(c) Sealless or magnetic coupling pumps and all sealless valves, that are visually inspected for leaks on a daily basis; and

(d) Pressurized aboveground piping systems with automatic shutoff devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shutoff devices) that are visually inspected for leaks on a daily basis.

(7) The owner or operator may obtain a variance from the requirements of this section if the cabinet [~~director~~] finds, as a result of a demonstration by the owner or operator that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water at least as effectively as secondary containment during the active life of the tank system; or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with paragraph (b) of this subsection, be exempted from the secondary containment requirements of this section.

(a) In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the cabinet [~~director~~] will consider:

1. The nature and quantity of the wastes;

2. The proposed alternate design and operation;

3. The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and

4. All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to groundwater or surface water.

(b) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the cabinet [~~director~~] will consider:

1. The potential adverse effects on groundwater, surface water and land quality taking into account:

a. The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

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

c. The potential for health risks caused by human exposure to

waste constituents;

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

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

2. The potential adverse effects of a release on groundwater quality, taking into account:

a. The quantity and quality of groundwater and the direction of groundwater flow;

b. The proximity and withdrawal rates of groundwater in the area;

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

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

3. The potential adverse effects of a release on surface water quality taking into account:

a. The quantity and quality of groundwater and the direction of groundwater flow;

b. The patterns of rainfall in the region;

c. The proximity of the tank system to surface waters;

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

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

4. The potential adverse effects of a release on the land surrounding the tank system, taking into account:

a. The patterns of rainfall in the region; and

b. The current and future uses of the surrounding land;

(c) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), shall [~~must~~]:

1. Comply with the requirements of Section 7 of this regulation except subsection (4) of that section; and

2. Decontaminate or remove contaminated soil to the extent necessary to:

a. Enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

b. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and

3. If contaminated soil cannot be removed or decontaminated in accordance with subparagraph 2 of this paragraph, comply with the requirement of Section 8(2) of this regulation.

(d) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), shall [~~must~~]:

1. Comply with the requirements of Sections 7(1), (2), (3), and (4) of this regulation; and

2. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if groundwater has been contaminated, the owner or operator shall [~~must~~] comply with the requirements of Section 8(2) of this regulation; and

3. If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of subsections (1) through (6) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in Section 3 of this regulation if the tank system is replaced. The owner or operator shall [~~must~~] comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

(8) The following procedures shall [~~must~~] be followed in order to request a variance from secondary containment:

(a) The owner or operator shall notify the cabinet in writing [~~director must be notified in writing by the owner or operator~~] that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in subsection (7) according to the following schedule:

1. For existing tank systems, at least twenty-four (24) months prior to the date that secondary containment shall [~~must~~] be provided in accordance with subsection (1) of this section.

2. For new tank systems, at least thirty (30) days prior to entering into a contract for installation.

(b) As part of the notification, the owner or operator shall [~~must~~] also submit to the cabinet [~~director~~] a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall [~~must~~] address each of the factors listed in subsection (7)(a) or subsection (7)(b) of this section.

(c) The demonstration for a variance shall [~~must~~] be completed within 180 days after notifying the cabinet [~~director~~] of an intent to conduct the demonstration; and

(d) If a variance is granted under this subsection, the cabinet [~~director~~] will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

(9) All tank systems, until such time as secondary containment that meets the requirements of this section is provided, shall [~~must~~] comply with the following:

(a) For nonenterable underground tanks, a leak test that meets the requirements of Section 2(1) of this regulation or other tank integrity method, as approved or required by the cabinet shall [~~director must~~] be conducted at least annually.

(b) For other than nonenterable underground tanks, the owner or operator shall [~~must~~] either conduct a leak test as in paragraph (a) of this subsection or develop a schedule and procedure for an assessment of the overall condition of the tank system by an independent, qualified professional engineer registered in the Commonwealth of Kentucky. The schedule and procedure shall [~~must~~] be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator shall [~~must~~] remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments shall [~~must~~] be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

(c) For ancillary equipment, a leak test or other integrity assessment as approved by the cabinet shall [~~secretary must~~] be conducted at least annually.

(d) The owner or operator shall [~~must~~] maintain on file at the facility a record of the results of the assessments conducted in accordance with subsection (1)(a) through (c) of this section.

(e) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in paragraphs (a) through (c) of this subsection, the owner or operator shall [~~must~~] comply with the requirements of Section 7 of this regulation.

Section 5. General Operating Requirements. (1) Hazardous wastes or treatment reagents shall [~~must~~] not be placed in a tank system if they may [~~could~~] cause the tank, its ancillary equipment, or the secondary containment system to rupture, leak, corrode, or otherwise fail.

(2) The owner or operator shall [~~must~~] use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include at a minimum:

(a) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(b) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(c) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(3) The owner or operator shall [~~must~~] comply with the requirements of Section 7 of this regulation if a leak or spill occurs in the tank system.

Section 6. Inspections. (1) The owner or operator shall [~~must~~] develop and follow a schedule and procedure for inspecting overfill controls.

(2) The owner or operator shall [~~must~~] inspect at least once each operating day:

(a) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(b) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, and monitoring wells) to ensure that the tank system is being operated according to its design; and

(c) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(3) The owner or operator shall [~~must~~] inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(a) The proper operation of the cathodic protection system shall [~~must~~] be confirmed within six (6) months after initial installation and annually thereafter; and

(b) All sources of impressed current shall [~~must~~] be inspected and[~~/or~~] tested as appropriate, at least every other month [~~bimonthly (i.e., every other month)~~].

(4) The owner or operator shall [~~must~~] document in the operating record of the facility an inspection of those items in subsections (1) through (3) of this section.

Section 7. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-Use Tank Systems. A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use shall [~~must~~] be removed from service immediately, and the owner or operator shall [~~must~~ satisfy the following requirements:

(1) Cessation of use: prevent flow or addition of wastes. The owner or operator shall [~~must~~] immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(2) Removal of waste from tank system or secondary containment system.

(a) If the release was from the tank system, the owner or [~~/~~] operator shall [~~must~~], within twenty-four (24) hours after detection of the leak or, if the owner or [~~/~~] operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(b) If the material released was to a secondary containment system all released materials shall [~~must~~] be removed within twenty-four (24) hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(3) Containment of visible releases to the environment. The owner or [~~/~~] operator shall [~~must~~] immediately conduct a visual inspection of the release and based upon that inspection shall:

(a) Prevent further migration of the leak or spill to soils or surface water; and

(b) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(4) Notifications and reports.

(a) Any release to the environment except as provided in paragraph (b) of this subsection, shall [~~must~~] be reported to the cabinet [~~director~~] within twenty-four (24) hours of its detection. If the release has been reported pursuant to 40 CFR Part 302 that report will satisfy this requirement.

(b) A leak or spill of hazardous waste is exempted from the requirements of this subsection if it is:

1. Less than or equal to a quantity of one (1) pound; and

2. Immediately contained and cleaned up.

(c) Within thirty (30) days of detection of a release to the environment, a report containing the following information shall [~~must~~] be submitted to the cabinet [~~director~~]:

1. Likely route of migration of the release;

2. Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

3. Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty (30) days, these data shall [~~must~~] be submitted to the cabinet [~~director~~] as soon as they become available;

4. Proximity to downgradient drinking water, surface water, and populated areas; and

5. Description of response actions taken or planned.

(5) Provision of secondary containment, repair or closure.

(a) Unless the owner or [~~/~~] operator satisfies the requirements of paragraphs (b) through (d) of this subsection, the tank system shall [~~must~~] be closed in accordance with Section 8 of this regulation.

(b) If the cause of the release was a spill that has not damaged the integrity of the system, the owner or [~~/~~] operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(c) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system shall [~~must~~] be repaired prior to returning the tank system to service.

(d) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner or [~~/~~] operator shall [~~must~~] provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section 4 of this regulation before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component shall [~~must~~] be repaired and may be returned to service without secondary containment as long as the requirements of subsection (6) of this section are satisfied. If a component is replaced to comply with the requirements of this paragraph that component shall [~~must~~] satisfy the requirements for new tank systems or components in Sections 3 and 4 of this regulation. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an in-ground or on-ground tank), the entire component shall [~~must~~] be provided with secondary containment in accordance with Section 4 of this regulation prior to being returned to use.

(6) Certification of major repairs. If the owner or [~~/~~] operator has repaired a tank system in accordance with subsection (5) of this section, and the repair has been extensive (e.g., installation of an internal liner, repair of a ruptured primary containment or secondary containment vessel), the tank system shall [~~must~~] not be returned to service unless the owner or [~~/~~] operator has obtained a certification by an independent, qualified professional engineer registered in the Commonwealth of Kentucky in accordance with Section 7(4) of 401 KAR 38:070 that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification shall [~~must~~] be submitted to the cabinet [~~director~~] within seven (7) days after returning the tank system to use.

Section 8. Closure and Postclosure Care. (1) At closure of a tank system, the owner or operator shall [~~must~~] remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless Section 3(4) of 401 KAR 31:010 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems shall [~~must~~] meet all of the requirements specified in 401 KAR 34:070 through 34:176.

(2) If the owner or operator demonstrates that not all contaminated soil can be practicably removed or decontaminated as required in subsection (1) of this section, then the owner or operator shall [~~must~~] close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to landfills (Section 6 of 401 KAR 34:230). In addition, for the purposes of closure, postclosure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator shall [~~must~~] meet all of the requirements for landfills specified in 401 KAR 34:070 through 34:176.

(3) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of Section 4(2) through (6) of this regulation and it is not exempt from the secondary containment requirements in accordance with Section 4(7) of this regulation then:

(a) The closure plan for the tank system shall [~~must~~] include both a plan for complying with subsection (1) of this section and a contingent plan for complying with subsection (2) of this section;

(b) A contingent postclosure plan for complying with subsection (2) of this section shall [~~must~~] be prepared and submitted as part of the permit application;

(c) The cost estimates calculated for closure and postclosure care shall [~~must~~] reflect the costs of complying with the contingent closure plan and the contingent postclosure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (1) of this section;

(d) Financial assurance shall [~~must~~] be based on the cost estimates in paragraph (c) of this subsection;

(e) For the purposes of the contingent closure and postclosure plans, such a tank system is considered to be a landfill, and the contingent plans shall [~~must~~] meet all of the closure, postclosure, and financial responsibility requirements for landfills under 401 KAR 34:070 through 34:176; and

(f) For new tank systems that shall [~~will~~] close in accordance with subsection (2) of this section, the owner or operator shall demonstrate compliance with 401 KAR 38:500.

Section 9. Special Requirements for Ignitable or Reactive Wastes. (1) Ignitable or reactive waste shall [~~must~~] not be placed in a tank unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the tank so that:

1. The resulting waste, mixture or dissolved material no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; and

2. Section 8(2) of 401 KAR 34:020 is complied with; or

(b) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(c) The tank system is used solely for emergencies.

(2) The owner or operator of a facility where ignitable or reactive waste is stored or treated in a tank shall [~~must~~] comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981), referenced [~~incorporated by reference~~] in Section 3 of 401 KAR 30:010.

Section 10. Special Requirements for Incompatible Wastes. (1) Incompatible wastes, or incompatible wastes and materials, shall [~~must~~] not be placed in the same tank system unless Section 8(2) of 401 KAR 34:020 is complied with.

(2) Hazardous waste shall [~~must~~] not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless Section 8(2) of 401 KAR 34:020 is complied with.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment affects all owners and operators of hazardous waste storage, treatment, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment shall not provide any 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 any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There may be no new or additional reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: During the first year, the promulgating administrative body shall not experience direct costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The proposed amendment shall not have any reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment 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.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the

federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 264.190 as published in the Federal Register on September 2, 1988.

(5) Identify any statute; administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, storage, and disposal facilities.

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 264.190.

2. State compliance standards. The proposed amendment 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 that the federal mandate. There is no need to justify imposition of stricter standards.

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

401 KAR 35:020. General facilities standards (IS).

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes the general standards for facilities.

Section 1. Applicability. The requirements in this regulation apply to owners and operators of all hazardous waste sites or facilities, except as Section 1 of 401 KAR 35:010 provides otherwise.

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

Section 3. Required Notices. (1) The owner or operator of a facility that has arranged to received hazardous waste from a foreign source shall notify the cabinet in writing at least four (4) weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(2) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the postclosure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of this chapter and 401 KAR Chapter 38 (see also Section 3 of 401 KAR 38:020).

Section 4. General Waste Analysis. (1)(a) Before an owner or operator treats, stores, or disposes of any hazardous waste, he shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis shall contain all the information which shall be known to treat, store, or dispose of the waste in accordance with the requirements of this chapter and 401 KAR Chapter 37.

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

(c) The analysis shall be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis shall be repeated:

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

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

(d) The owner or operator of an off-site facility shall inspect and if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(2) The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which he shall carry out to comply with subsection (1) of this section. He shall keep this plan at the site or facility. At a minimum, the plan shall specify:

(a) The parameters for which each hazardous waste shall be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters shall provide sufficient information on the waste's properties to comply with subsection (1) of this section);

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

(c) The sampling method which shall be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

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

2. An equivalent sampling method.

(d) The frequency with which the initial analysis of the waste shall be reviewed or repeated to ensure that the analysis is accurate and up to date;

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

(f) Where applicable, the methods which shall be used to meet the additional waste analysis requirements for specific waste management methods as specified in Section 4 of 401 KAR 35:190,

Section 4 of 401 KAR 35:200, Section 3 of 401 KAR 35:210 and Section 3 of 401 KAR 35:220, Section 7 of 401 KAR 35:230, Section 2 of 401 KAR 35:240, Section 3 of 401 KAR 35:250, Section 3 of 401 KAR 35:260, and Section 7 of 401 KAR 37:010.

(g) For surface impoundments exempted from land disposal restrictions under Section 4(1) of 401 KAR 37:010, the procedures and schedules for:

1. The sampling of impoundment contents;

2. The analysis of test data; and

3. The annual removal of residues which are not delisted under Section 2 of 401 KAR 31:060 or which [~~and do not~~] exhibit a characteristic of hazardous waste and either:

a. Do not meet applicable treatment standards of 401 KAR 37:040; or

b. Where no treatment standards have been established.

(i) The residues are prohibited from land disposal under 401 KAR 37:030, Section 4 or KRS 224.46-520; or

(ii) The residues are prohibited from land disposal under 401 KAR 37:030, Section 5(6). [~~which do not meet the treatment standards of 401 KAR 37:040 or, where no treatment standards have been established, the annual removal of residues which do not meet the applicable prohibition levels in 401 KAR 37:030 or KRS 224.46-520.~~]

(3) For off-site facilities, the waste analysis plan required in subsection (2) of this section shall also specify the procedures which shall be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan shall describe:

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

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

Section 5. Security. (1) The owner or operator shall prevent the unknowing entry and minimize the possibility for the unauthorized entry of persons or livestock onto the active portion of his facility, unless:

(a) Physical contact with the waste, structures, or equipment within the active portion of the facility shall not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(b) Disturbance of the waste or equipment by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility shall not cause a violation of the requirements of this chapter.

(2) Unless exempt under subsection (1)(a) and (b) of this section, a site or facility shall have:

(a) A twenty-four (24) hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(b)1. An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff) which completely surrounds the active portion of the facility; and

2. A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(3) Unless exempt under subsection (1)(a) and (b) of this section, a sign with the legend, "Danger - Unauthorized Personnel Keep Out," shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend shall be written in English and in any other language predominant in the area surrounding the facility, and shall be legible from a distance of at least twenty-five (25) feet. Existing signs with a legend other than "Danger - Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous (see Section 7(2) of 401 KAR 35:070 for security requirements at disposal facilities during the postclosure care period).

Section 6. General Inspection Requirements. (1)(a) The owner or operator shall inspect his facility for malfunctions and deterioration, operator errors and discharges which may be causing (or may lead to):

1. Release of hazardous waste constituents to the environment; or

2. A threat to human health.

(b) The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(2)(a) The owner or operator shall develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(b) The owner or operator [~~He~~] shall keep this schedule at the facility.

(c) The schedule shall identify the types of problems (e.g., malfunctions or deterioration) which are to be checked during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

(d) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, or malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the items and frequencies called for in Section 5 of 401 KAR 35:180, Section 4 of 401 KAR 35:190, Section 6 of 401 KAR 35:190, Section 5 of 401 KAR 35:200, Section 4 of 401 KAR 35:240, Section 4 of 401 KAR 35:250 and Section 4 of 401 KAR 35:260.

(3) The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(4) The owner or operator shall record inspections in an inspection log or summary. He shall keep these records for at least three (3) years from the date of inspection. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

Section 7. Personnel Training. (1)(a) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this chapter. The owner or operator shall ensure that this program includes all the elements described in the document required under subsection (4)(c) of this section.

(b) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

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

applicable:

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

2. Key parameters for automatic waste feed cutoff systems;

3. Communications or alarm systems;

4. Response to fires or explosions;

5. Response to groundwater contamination incidents; and

6. Shutdown of operations.

(2) Facility personnel shall successfully complete the program required in subsection (1) of this section within six (6) months after January 7, 1981, or six (6) months after the date of their employment or assignment to a site or facility, or to a new position at a facility, whichever is later. Employees hired after January 7, 1981, shall not work in unsupervised positions until they have completed the training requirements of subsection (1) of this section.

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

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

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

(b) A written job description for each position listed under paragraph (a) of this subsection. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(c) A written description of the type and amount of both introductory and continuing training that shall be given to each person filling a position listed under paragraph (a) of this subsection; and

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

(5) Training records on current personnel shall be kept until closure of the site or facility. Training records on former employees shall be kept for at least three (3) years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

Section 8. General Requirements for Ignitable, Reactive, or Incompatible Wastes. (1) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flames to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(2) Where specifically required by other sections of this regulation, the treatment, storage or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, shall be conducted so that it does not:

(a) Generate extreme heat or pressure, fire or explosion, or violent reaction;

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

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

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

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

Section 9. Location Standards. The placement of any hazardous waste in a salt dome, salt bed formation, underground mine or cave is prohibited.

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

APPROVED BY AGENCY: June 15, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment will effect the owners and operators of treatment, storage, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: Those affected by the proposed amendment shall not experience direct or indirect cost increases or savings since they have been required to comply with these standards since they were established by the U.S. EPA on August 17, 1988.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment may result in minor direct costs for the promulgating administrative body.

2. Continuing costs or savings: First year costs may continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional 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 promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment revises wording related to the annual removal of residues from surface impoundments and adds language which deals with appropriate treatment standards.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 265.13 as published in the Federal Register on August 17, 1988.

(5) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional information.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, storage, and disposal facilities.

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 August 17, 1988, at 40 CFR 265.13.

2. State compliance standards. The proposed amendment revises wording regulated to the annual removal of residues from surface impoundments, and adds language which deals with appropriate treatment standards.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate revises wording related to the annual removal of residues from surface impoundments, and adds language which deals with appropriate treatment standards.

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 Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 35:050. Manifest system, recordkeeping and reporting (IS).

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes manifest system, recordkeeping and reporting requirements for facilities.

Section 1. Applicability. The requirements in this regulation apply to owners and operators of both on-site and off-site facilities, except as Section 1 of 401 KAR 35:010 provides otherwise. Sections 2, 3 and 7 of this regulation do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

Section 2. Use of Manifest System. (1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator (or his agent) shall [~~must~~]:

(a) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(b) Note any significant discrepancies in the manifest (as defined in Section 3(1) of this regulation) on each copy of the manifest;

(c) Immediately give the transporter at least one (1) copy of the signed manifest;

(d) Within thirty (30) days after the delivery, send a copy of the manifest to the generator; and

(e) Retain at the facility a copy of each manifest for at least three (3) years from the date of delivery.

(2) If a facility receives from a rail or water (bulk shipment) transporter hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification and signatures), the owner or operator (or his agent) shall [~~must~~]:

(a) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(b) Note any significant discrepancies (as defined in Section 3(1) of this regulation) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

(c) Immediately give the rail or water (bulk shipment) transporter at least one (1) copy of the manifest or shipping paper (if the manifest has not been received);

(d) Within thirty (30) days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within thirty (30) days after delivery, the owner or operator (or his agent) shall [~~must~~] send a copy of the shipping paper signed and dated to the generator; and

(e) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three (3) years from the date of delivery.

(3) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of the facility shall [~~must~~] comply with the requirements of 401 KAR Chapter 32.

Section 3. Manifest Discrepancies. (1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives.

(a) Significant discrepancies in quantity are:

1. For bulk waste, variations greater than ten (10) percent in weight; and

2. For batch waste, any variation in piece count, such as a discrepancy of one (1) drum in a truckload.

(b) Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(2) Upon discovering a significant discrepancy, the owner or operator shall [~~must~~] attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within fifteen (15) days after receiving the waste, the owner or operator shall [~~must~~] immediately submit to the cabinet a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

Section 4. Operating Record. (1) The owner or operator shall [~~must~~] keep a written operating record at his facility.

(2) The following information shall [~~must~~] be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(a) A description and the quantity of each hazardous waste

received, and the method[~~(s)~~] and date[~~(s)~~] of its treatment, storage or disposal at the facility as required by 401 KAR 35:290;

(b) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste shall [~~must~~] be recorded on a map or diagram of each cell or disposal area. For all facilities, this information shall [~~must~~] include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest (see Section 9 of 401 KAR 35:070, Section 6 of 401 KAR 35:220 and Section 3 of 401 KAR 35:230 for related requirements);

(c) Records and results of waste analyses and trial tests performed as specified in Section 4 of 401 KAR 35:020, Section 4 of 401 KAR 35:190, Section 4 of 401 KAR 35:200, Section 3 of 401 KAR 35:210, Section 3 of 401 KAR 35:220, Section 7 of 401 KAR 35:230, Section 2 of 401 KAR 35:240, Section 3 of 401 KAR 35:250, Section 3 of 401 KAR 35:260, and Sections 4(1) and 7 of 401 KAR 37:010;

(d) Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 7(10) of 401 KAR 35:040;

(e) Records and results of inspections as required by Section 6(4) of 401 KAR 35:020 (except these data need be kept only three (3) years);

(f) Monitoring, testing, or analytical data when required by Section 1 of 401 KAR 35:060, Section 5 of 401 KAR 35:060 (requires that monitoring data at disposal facilities shall [~~must~~] be kept throughout the postclosure period), Sections 2, 4 and 6 of 401 KAR 35:190, Sections 4, 5 and 7(4)(a) of 401 KAR 35:220, Section 4 of 401 KAR 35:240, and Section 4 of 401 KAR 35:250; [~~and~~]

(g) All closure cost estimates under Section 1 of 401 KAR 35:090 and for disposal facilities, all postclosure cost estimates under Section 1 of 401 KAR 35:100;

(h) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Section 5 of 401 KAR 37:010, monitoring data required pursuant to a petition under 401 KAR 37:010, Section 6, or a certification under 401 KAR 37:010, Section 8, and the applicable notice required of a generator under 401 KAR 37:010, Section 7(1); [~~or a petition pursuant to Section 6 of 401 KAR 37:010 and the notice required by a generator under Section 7(1)(c) of 401 KAR 37:010;~~]

(i) For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required of the [~~by a~~] generator or the owner or operator under Section 7 or 8 [~~(1)(a)~~] of 401 KAR 37:010;

(j) For an on-site treatment facility, the information contained in the notice and the certification and demonstration if applicable, required of the [~~by a~~] generator or the owner or operator under Section 7 or 8 [~~(1)(a)~~] of 401 KAR 37:010[~~, except for the manifest number~~];

(k) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required of [~~by~~] the generator or owner or operator of a treatment facility under Section 7 or 8 [~~(2)~~] of 401 KAR 37:010; [~~or the certification required by the generator under Section 7(1)(b) of 401 KAR 37:010, whichever is applicable; and~~]

(l) For an on-site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the [~~by a~~] generator or the owner or operator under Section 7 or 8 [~~(1)(b)~~] of 401 KAR 37:010; [~~, except for the manifest number, or the information contained in the notice required by the treatment facility under Section 7(2)(b) of 401 KAR 37:010, except for the manifest number, whichever is applicable.~~]

(m) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or the owner or operator under 401 KAR 37:010, Section 7 or 8; and

(n) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the generator or the owner or operator of a treatment facility under 401 KAR 37:010, Section 7 or 8.

Section 5. Availability, Retention, and Disposition of Records. (1) All records, including plans, required under this chapter shall [~~must~~] be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee or representative of the cabinet who is duly designated by the secretary.

(2) The retention period for all records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the site or facility or as requested by the cabinet.

(3) A copy of records of waste disposal locations and quantities under Section 4(2)(b) of this regulation shall [~~must~~] be submitted to the cabinet and local land authority upon closure of the facility (see Section 9 of 401 KAR 35:070).

Section 6. Annual Report. The owner or operator shall [~~must~~] prepare and submit a single copy of an annual report to the cabinet by March 1 of each year. The report form and instructions designated by the cabinet shall [~~must~~] be used for this report. The annual report shall [~~must~~] cover site or facility activities during the previous calendar year and shall [~~must~~] include at a minimum the following information:

(1) The EPA identification number, name and address of the facility;

(2) The calendar year covered by the report;

(3) For off-site facilities, the name and EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, [~~the report must give~~] the name, number and address of the foreign generator;

(4) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information shall [~~must~~] be listed by EPA identification number of each generator;

(5) The method of treatment, storage or disposal for each hazardous waste;

(6) Monitoring data under Sections 5(1)(b)2 and 3, and 5(2)(b) of 401 KAR 35:060, where required;

(7) Information on transportation, the use of the manifest, and other information from the manifest, as applicable;

(8) For generators who treat, store, or dispose of hazardous waste on site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(9) For generators who treat, store, or dispose of hazardous waste on site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

(10) The certification signed by the owner or operator of the facility or his authorized representative.

Section 7. Unmanifested Waste Report. If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in Section 1(5)(b) of 401 KAR 33:020, and if the waste is not excluded from the manifest requirement by Section 5 of 401 KAR 31:010, then the owner or operator shall [~~must~~] prepare and submit a single copy of a report to the cabinet within fifteen (15) days after receiving the waste. The unmanifested waste report shall [~~must~~] be submitted on a form approved by the cabinet. Such report shall [~~must~~] be designated "Unmanifested Waste Report" and shall include the following information:

(1) The EPA identification number, name and address of the

facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

Section 8. Additional Reports. In addition to submitting the annual report and unmanifested waste reports described in Sections 6 and 7 of this regulation, the owner or operator shall [~~must~~] also report to the cabinet:

(1) Releases, fires and explosions as specified in Section 7(10) of 401 KAR 35:040;

(2) Groundwater contamination and monitoring data as specified in Sections 4 and 5 of 401 KAR 35:060; and

(3) Facility closure as specified in Section 6 of 401 KAR 35:070.

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

APPROVED BY AGENCY: June 15, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment shall affect hazardous waste generators, transporters, and treatment, storage, and disposal facilities. There are approximately 2,200 generators, 150 transporters, and 90 treatment, storage, and disposal facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: Those affected entities shall experience no direct or indirect costs or savings. This amendment merely makes adjustments in existing requirements dealing with manifests, records, and reports.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(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 to the promulgating administrative body.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The minor adjustments in the manifest system, recordkeeping and reporting requirements shall have a minimal affect on reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment makes wording changes relating to the records of operation at hazardous waste treatment, storage and disposal facilities.

ALTERNATIVES: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 265.73 as published in the Federal Register on August 17, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, storage and disposal facilities.

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 August 17, 1988, at 40 CFR 265.73.

2. State compliance standards. The proposed amendment makes wording changes relating to the records of operation at hazardous waste treatment, storage, and disposal facilities.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate makes wording changes relating to the records of operation at hazardous waste treatment, storage, and disposal facilities.

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. There is no need to justify imposition of stricter standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards in this administrative regulation are identical to those in the federal regulations. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 35:070. Closure and postclosure (IS).

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes the standards for closure and postclosure of facilities.

Section 1. Applicability. Except as Section 1 of 401 KAR 35:010 provides otherwise:

(1) Sections 2 through 6 of this regulation (which concern closure) apply to the owners and operators of all hazardous waste sites or facilities; and

(2) Sections 7 through 11 of this regulation (which concern postclosure care) apply to the owners and operators of:

(a) All hazardous waste disposal facilities; and

(b) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to the facilities in 401 KAR 35:200, Section 6, or 401 KAR 35:210, Section 7; and

(c) [~~(b)~~] Tank systems that are required under Section 8 of 401 KAR 35:190 to meet requirements for landfills.

Section 2. Closure Performance Standards. The owner or operator shall [~~must~~] close the facility in a manner that:

(1) Minimizes the need for further maintenance;

(2) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere;

(3) Complies with the closure requirements of this chapter including, but not limited to, the requirements of Section 8 of 401 KAR 35:190, Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, Section 4 of 401 KAR 35:230, Section 5 of 401 KAR 35:240, Section 5 of 401 KAR 35:250, and Section 5 of 401 KAR 35:260;

(4) Includes any corrective action necessary to bringing the facility into compliance with the applicable facility standards contained in Section 12 of 401 KAR 34:060; and

(5) Complies with KRS 224.46-520(8), requiring sites and facilities to be maintained in operational condition.

Section 3. Closure Plan; Amendment of Plan. (1) Written plan. By May 19, 1981, the owner or operator of a hazardous waste site or facility shall [~~must~~] have a written closure plan. Until final closure is completed and certified in accordance with Section 6 of this regulation, a copy of the most current plan shall [~~must~~] be furnished to the cabinet [~~secretary~~] upon request, including request by mail. In addition, for facilities without approved plans, the most current plan shall [~~it must~~] also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the cabinet who is duly designated by the secretary.

(2) Content of plan. The plan shall [~~must~~] identify steps necessary to perform partial and[~~/or~~] final closure of the facility at any point during its active life. The closure plan shall [~~must~~] include, at least:

(a) A description of how each hazardous waste management unit at the facility will be closed in accordance with Section 2 of this regulation; [~~and~~]

(b) A description of how final closure of the facility will be conducted in accordance with Section 2 of this regulation. The description shall [~~must~~] identify the maximum extent of the operation which will be unclosed during the active life of the facility; [~~and~~]

(c) An estimate of the maximum inventory of hazardous wastes ever on site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, recycling, treating, storing, or disposing of all hazardous wastes, identification of and the type(s) of the off-site hazardous waste management unit(s) to be used, if applicable; [~~and~~]

(d) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard in Section 2 of this regulation; [~~and~~]

(e) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards in Section 2 of this regulation, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; [~~and~~]

(f) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule shall [~~must~~] include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover shall [~~must~~] be included); and

(g) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under Sections 2 through 11 of 401 KAR 35:090 or Sections 2 through 11 of 401 KAR 35:100 and whose remaining operating life is less than twenty (20) years, and for facilities without approved closure plans.

(3) Amendment of plan. The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan shall [~~must~~] submit a written request to the cabinet [~~secretary~~] to authorize a change to the approved closure plan. The written request shall [~~must~~] include a copy of the amended closure plan for approval by the cabinet [~~secretary~~].

(a) The owner or operator shall [~~must~~] amend the closure plan whenever:

1. Changes in operating plans or facility design affect the closure plan; or

2. There is a change in the expected year of closure, if applicable; or

3. In conducting partial or final closure activities, unexpected events require a modification of the closure plan.

(b) The owner or operator shall [~~must~~] amend the closure plan at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall [~~must~~] amend the closure plan no later than thirty (30) days after the unexpected event. These provisions also apply to

owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with Section 4 of 401 KAR 35:230.

(c) An owner or operator with an approved closure plan shall [~~must~~] submit the modified plan to the cabinet [~~secretary~~] at least sixty (60) days prior to the proposed change in facility design or operation, or no more than sixty (60) days after an unexpected event has occurred which has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator shall [~~must~~] submit the modified plan no more than thirty (30) days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with Section 4 of 401 KAR 35:230. If the amendment to the plan is a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modification to the plan shall [~~will~~] be approved according to the procedures in subsection (4)(d) of this section.

(d) The cabinet [~~secretary~~] may request modifications to the plan under the conditions described in paragraph (a) of this subsection. An owner or operator with an approved closure plan shall [~~must~~] submit the modified plan within sixty (60) days of the request from the cabinet [~~director~~] or within thirty (30) days if the unexpected event occurs during partial or final closure. If the amendment is considered a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modification to the plan shall [~~will~~] be approved in accordance with the procedures in subsection (4)(d) of this section.

(4) Notification of partial closure and final closure.

(a) The owner or operator shall [~~must~~] submit the closure plan to the cabinet [~~director~~] at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator shall [~~must~~] submit the closure plan to the cabinet [~~director~~] at least forty-five (45) days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units. An owner or operator [~~Owners or operators~~] with approved closure plans shall [~~must~~] notify the cabinet [~~director~~] in writing at least sixty (60) days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit. An owner or operator [~~Owners and operators~~] with approved closure plans shall [~~must~~] notify the cabinet [~~secretary~~] in writing at least forty-five (45) days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

(b) The date when the owner or operator [~~he~~] "expects to begin closure" shall [~~must~~] be ~~either~~ within thirty (30) days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes no later than one (1) year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the cabinet [~~secretary~~] that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and that he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the cabinet [~~director~~] may approve an extension to this one (1) year limit.

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

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

2. Issuance of a judicial decree or final order under KRS 224.10-100, 224.10-420, and 224.46-530 to cease receiving hazardous wastes or close.

(d) The cabinet shall [~~director will~~] provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than thirty (30) days from the date of the notice. The cabinet shall [~~He will~~] also, in response to a request or at its [~~his~~] own discretion, hold a public hearing whenever such a hearing might clarify one (1) or more issues concerning a closure plan. The cabinet shall [~~director will~~] give public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two (2) notices may be combined.) The cabinet shall [~~director will~~] approve, modify, or disapprove the plan within ninety (90) days of its receipt. If the cabinet [~~director~~] does not approve the plan it [~~he~~] shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall [~~must~~] modify the plan or submit a new plan for approval within thirty (30) days after receiving such written statement. The cabinet shall [~~director will~~] approve or modify this plan in writing within sixty (60) days. If the cabinet [~~director~~] modifies the plan, this modified plan becomes the approved closure plan. The cabinet shall [~~director must~~] assure that the approved plan is consistent with Sections 2, through 6 of this regulation and the applicable requirements of Section 1 of 401 KAR 35:060 et seq., Section 5 of 401 KAR 35:190, Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, Section 4 of 401 KAR 35:230, Section 5 of 401 KAR 35:240, Section 5 of 401 KAR 35:250, and Section 5 of 401 KAR 35:260. A copy of the modified plan with a detailed statement of reasons for the modifications shall [~~must~~] be mailed to the owner or operator.

(5) Removal of wastes and decontamination or dismantling of equipment. Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure. If the owner or operator planned to begin closure before November 19, 1981, he was required to submit the closure plan by May 19, 1981.

Section 4. Closure; Time Allowed for Closure. (1) Within ninety (90) days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, or within ninety (90) days after approval of the closure plan, whichever is later, the owner or operator shall [~~must~~] treat, remove from the unit or facility, or dispose of on site, all hazardous wastes in accordance with the approved closure plan. The cabinet [~~director~~] may approve a longer period if the owner or operator demonstrates that:

(a)1. The activities required to comply with this subsection will, of necessity, take longer than ninety (90) days to complete; or

2.a. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

b. There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one (1) year; and

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) He has taken and shall [~~will~~] continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(2) The owner or operator shall [~~must~~] complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The cabinet [~~director~~] may approve an extension to the closure period if the owner or operator demonstrates that:

(a)1. The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

2.a. The hazardous waste management unit or facility has the

capacity to receive additional hazardous wastes; and

b. There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one (1) year; and

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

(3) The demonstrations referred to in subsections (1) and (2) of this section shall [~~must~~] be made as follows:

(a) The demonstrations in subsection (1) of this section shall [~~must~~] be made at least thirty (30) days prior to the expiration of the ninety (90) day period in subsection (1) of this section; and

(b) The demonstrations in subsection (2) of this section shall [~~must~~] be made at least thirty (30) days prior to the expiration of the 180 day period in subsection (2) of this section.

Section 5. Disposal or Decontamination of Equipment, Structures and Soils. During the partial and final closure periods, all contaminated equipment, structures and soil shall [~~must~~] be properly disposed of or decontaminated unless specified otherwise in Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, or Section 4 of 401 KAR 35:230. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall [~~must~~] handle that hazardous waste in accordance with all applicable requirements of 401 KAR Chapter 32.

Section 6. Certification of Closure. Within sixty (60) days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within sixty (60) days of completion of final closure, the owner or operator shall [~~must~~] submit to the cabinet [~~director~~], by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification shall [~~must~~] be signed by the owner or operator and by an independent professional engineer who is registered in the Commonwealth of Kentucky. Documentation supporting the independent registered professional engineer's certification shall [~~must~~] be furnished to the cabinet [~~secretary~~] upon request until it [~~he~~] releases the owner or operator from the financial assurance requirements for closure under Section 11 of 401 KAR 35:090.

Section 7. Survey Plat. No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator shall [~~must~~] submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the cabinet [~~director~~] a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat shall [~~must~~] be prepared and certified by a professional land surveyor registered in the Commonwealth of Kentucky. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use shall [~~must~~] contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with this regulation.

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

1. Monitoring and reporting in accordance with the requirements of 401 KAR 35:060, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220 and 401 KAR 35:230; and

2. Maintenance and monitoring of waste containment systems in accordance with the requirements of 401 KAR 35:060, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230.

(b) Any time preceding closure of a hazardous waste management unit subject to postclosure care requirements or final closure, or any time during the postclosure period for a particular hazardous waste disposal unit, the cabinet [~~director~~] may extend the postclosure care period applicable to the hazardous waste management unit or facility, if it [~~he~~] finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(2) The cabinet [~~director~~] may require, at partial and final closure, continuation of any of the security requirements of Section 5 of 401 KAR 35:020 during part or all of the postclosure period when:

(a) Hazardous wastes may remain exposed after completion of partial or final closure; or

(b) Access by the public or domestic livestock may pose a hazard to human health.

(3) Postclosure use of property on or in which hazardous wastes remain after partial or final closure shall not [~~must never~~] be allowed to disturb the integrity of the final cover, liner(s), or any other component of the containment system, or the function of the facility's monitoring systems, unless the cabinet [~~director~~] finds that the disturbance:

(a) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(b) Is necessary to reduce a threat to human health or the environment.

(4) All postclosure care activities shall [~~must~~] be in accordance with the provisions of the approved postclosure plan as specified in Section (8) of this regulation. (Note: KRS 224.46-520(4) establishes that the postclosure care period is a minimum of thirty (30) years after closure of the disposal facility.)

Section 9. Postclosure Plan; Amendment of Plan. (1) Written plan. By May 19, 1981, the owner or operator of a hazardous waste disposal unit shall [~~must~~] have a written postclosure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure shall [~~must~~] prepare a postclosure plan and submit it to the cabinet [~~director~~] within ninety (90) days of the date that the owner or operator or the cabinet [~~director~~] determines that the hazardous waste management unit or facility shall [~~must~~] be closed as a landfill, subject to the requirements of Sections 8 through 11 of this regulation.

(2) Until final closure of the facility, a copy of the most current postclosure plan shall [~~must~~] be furnished to the cabinet [~~director~~] upon request, including request by mail. In addition, for facilities without approved postclosure plans, the most current postclosure plan shall [~~it must~~] also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the cabinet who is duly designated by the cabinet [~~secretary~~]. After final closure has been certified, the person or office specified in subsection (3)(c) of this section shall [~~must~~] keep the approved postclosure plan during the postclosure period.

(3) For each hazardous waste management unit subject to the requirements of this section, the postclosure plan shall [~~must~~] identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(a) A description of the planned monitoring activities and the frequencies at which they will be performed to comply with 401 KAR 35:060, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230 during the postclosure care period; and

(b) A description of the planned maintenance activities, and the

frequencies at which they will be performed, to ensure:

1. The integrity of the cap and final cover or other containment systems in accordance with the requirements of 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230; and

2. The function of the monitoring equipment in accordance with the requirements of 401 KAR 35:060, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230; and

(c) The name, address and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the postclosure care period.

(4) Amendment of plan. The owner or operator may amend the postclosure plan any time during the active life of the facility or during the postclosure care period. An owner or operator with an approved postclosure plan shall [~~must~~] submit a written request to the cabinet [~~secretary~~] to authorize a change to the approved plan. The written request shall [~~must~~] include a copy of the amended postclosure plan for approval by the cabinet [~~secretary~~].

(a) The owner or operator shall [~~must~~] amend the postclosure plan whenever:

1. Changes in operating plans or facility design affect the postclosure plan; or

2. Events which occur during the active life of the facility, including partial and final closures, affect the postclosure plan.

(b) The owner or operator shall [~~must~~] amend the postclosure plan at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the postclosure plan.

(c) An owner or operator with an approved postclosure plan shall [~~must~~] submit the modified plan to the cabinet [~~director~~] at least sixty (60) days prior to the proposed change in facility design or operation, or no more than sixty (60) days after an unexpected event has occurred which has affected the postclosure plan. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with Section 6(2) of 401 KAR 35:200 or Section 7(1) of 401 KAR 35:210 is required to close as a landfill in accordance with Section 4 of 401 KAR 35:230, the owner or operator shall [~~must~~] submit a postclosure plan within ninety (90) days of the determination by the owner or operator or cabinet [~~director~~] that the unit shall [~~must~~] be closed as a landfill. If the amendment to the postclosure plan is a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modification to the plan shall [~~will~~] be approved according to the procedures in subsection (6) of this section.

(d) The cabinet [~~secretary~~] may request modifications to the plan under the conditions described in paragraph (a) of this subsection. An owner or operator with an approved postclosure plan shall [~~must~~] submit the modified plan within no later than sixty (60) days of the request from the cabinet [~~secretary~~]. If the amendment to the plan is considered a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modifications to the postclosure plan shall [~~will~~] be approved in accordance with the procedures in subsection (6) of this section. If the cabinet [~~secretary~~] determines that an owner or operator of a surface impoundment or waste pile who intended to remove all hazardous wastes at closure shall [~~must~~] close the facility as a landfill, the owner or operator shall [~~must~~] submit a postclosure plan for approval to the cabinet [~~secretary~~] within ninety (90) days of the determination.

(5) The owner or operator of a facility with hazardous waste management units subject to these requirements shall [~~must~~] submit his postclosure plan to the cabinet [~~director~~] at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date when he "expects to begin closure" of the first hazardous waste disposal unit shall [~~must~~] be either within thirty (30) days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one (1) year after the date on which the unit received the most recent volume of hazardous waste. The owner or operator shall [~~must~~] submit the postclosure plan to the cabinet [~~director~~] no later than fifteen (15) days after:

(a) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(b) Issuance of a judicial decree or final orders under KRS Chapter 224 to cease receiving wastes or close.

(6) The cabinet shall [~~director will~~] provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the postclosure plan and request modifications to the plan no later than thirty (30) days from the date of the notice. The cabinet shall [~~He will~~] also, in response to a request or at its [~~his~~] own discretion hold a public hearing whenever [~~such~~] a hearing might clarify one (1) or more issues concerning a postclosure plan. The cabinet shall [~~director will~~] give public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two (2) notices may be combined). The cabinet shall [~~director will~~] approve, modify, or disapprove the plan within ninety (90) days of its receipt. If the cabinet [~~director~~] does not approve the plan it [~~he~~] shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall [~~must~~] modify the plan or submit a new plan for approval within thirty (30) days after receiving such written statement. The cabinet shall [~~director will~~] approve or modify this plan in writing within sixty (60) days. If the cabinet [~~director~~] modifies the plan, this modified plan shall become [~~becomes~~] the approved postclosure plan. The cabinet shall [~~director must~~] ensure that the approved postclosure plan is consistent with Sections 8 through 11 of this regulation. A copy of the modified plan with a detailed statement of reasons for the modifications shall [~~must~~] be mailed to the owner or operator. If an owner or operator planned to begin closure before November 19, 1981, he was required to submit the postclosure plan by May 19, 1981.

(7) The postclosure plan and length of the postclosure care period may be modified any time prior to the end of the postclosure care period in either of the following two (2) ways:

(a) The owner or operator or any member of the public may petition the cabinet [~~director~~] to extend or reduce the postclosure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the postclosure care period based on cause.

1. The petition shall [~~must~~] include evidence demonstrating that:

a. The secure nature of the hazardous waste management unit or facility makes the postclosure care requirement(s) unnecessary or supports reduction of the postclosure care period specified in the current postclosure plan (e.g., leachate or groundwater monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the facility is secure) and the site has been closed for thirty (30) years; or

b. The requested extension in the postclosure care period or alteration of postclosure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

2. These petitions shall [~~will~~] be considered by the cabinet [~~director~~] only when they present new and relevant information not previously considered by the cabinet [~~director~~]. Whenever the cabinet [~~director~~] is considering a petition, it shall [~~he will~~] provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within thirty (30) days of the date of the notice. The cabinet shall [~~He will~~] also, in response to a request or at its [~~his~~] own discretion, hold a public hearing whenever a hearing might clarify one (1) or more issues concerning the postclosure plan.

The cabinet shall [director will] give the public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two (2) notices may be combined). After considering the comments, the cabinet shall [he will] issue a final determination, based upon the criteria set forth in this paragraph.

3. If the cabinet [director] denies the petition, it shall [he will] send the petitioner a brief written response giving a reason for the denial.

(b) The cabinet [director] may tentatively decide to modify the postclosure plan if it [he] deems it necessary to prevent threats to human health and the environment. The cabinet [He] may propose to extend or reduce (except that the postclosure period shall not be less than thirty (30) years) the postclosure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the postclosure care period based on cause.

1. The cabinet shall [director will] provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within thirty (30) days of the date of the notice and the opportunity for a public hearing as in paragraph (a)2 of this subsection. After considering the comments, the cabinet shall [he will] issue a final determination.

2. The cabinet shall [director will] base its [his] final determination upon the same criteria as required for petitions under paragraph (a)1 of this subsection.

Section 10. Postclosure Notices. (1) No later than sixty (60) days after certification of closure of each hazardous waste disposal unit, the owner or operator shall [must] submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the cabinet [director], a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall [must] identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(2) Within sixty (60) days of certification of closure of the first hazardous waste disposal unit and within sixty (60) days of certification of closure of the last hazardous waste disposal unit, the owner or operator shall [must]:

(a) Record, in accordance with state law, a notation on the deed to the facility property - or on some other instrument which is normally examined during title search - that shall [will] in perpetuity notify any potential purchaser of the property that:

1. The land has been used to manage hazardous wastes; and

2. Its use is restricted under this regulation; and

3. The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Section 7 of this regulation and subsection (1) of this section have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the cabinet [director]; and

(b) Submit to the cabinet a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph (a) of this subsection, and a copy of the document in which the notation has been placed[, to the director].

(3) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he shall [must] request a modification to the approved postclosure plan in accordance with the requirements of Section 9(7) of this regulation. The owner or operator shall [must] demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 8(3) of this regulation. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall [must] manage it in accordance with all applicable requirements of this chapter and 401 KAR Chapter 32. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the cabinet [director] approve either:

(a) The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

(b) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

Section 11. Certification of Completion of Postclosure Care. No later than sixty (60) days after the completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator shall [must] submit to the cabinet [director] by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification shall [must] be signed by the owner or operator and an independent professional engineer registered in the Commonwealth of Kentucky. Documentation supporting the independent registered professional engineer's certification shall [must] be furnished to the cabinet [director] upon request until it [he] releases the owner or operator from the financial assurance requirements for postclosure care under Section 11 of 401 KAR 35:100.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: This amendment affects the owners and operators of hazardous waste storage, treatment, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment shall not result in direct or indirect costs or savings to the affected facilities.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs at this time.

(b) Reporting and paperwork requirements:

(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 to the promulgating administrative body.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements imposed as a result of the proposed

amendments to this regulation.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment adds a paragraph relating to (the applicability to) owners or operators of a hazardous waste site or facility with waste piles or surface impoundments from which wastes shall be removed during closure operations.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 265.110 as published in the Federal Register on September 2, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, storage, and disposal facilities.

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 265.110.

2. State compliance standards. The proposed amendment adds a paragraph relating to (the applicability to) owners or operators of a hazardous waste site or facility with waste piles and surface impoundments from which wastes shall be removed during closure operations.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate adds a paragraph relating to (the applicability to) owners or operators of a hazardous waste site or facility with waste piles and surface impoundments from which wastes shall be removed during closure operations.

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 35:190. Tanks (IS).

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.46.520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46.520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes minimum standards for tanks.

Section 1. Applicability. The regulations of this chapter apply to owners or operators of sites or facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in subsections (1) and (2) of this section or in Section 1 of 401 KAR 35:010.

(1) Tank systems [~~Tanks~~] that are used to store or treat hazardous waste which contain [~~containing~~] no free liquids and that are situated inside a building with an impermeable floor are exempted from the requirements of Section 4 of this regulation. To demonstrate the absence or presence of free liquids in the stored/treated waste, EPA Method 9095 (paint filter liquids test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication No. SW-846) incorporated by reference in subsection (3) of this section, shall be used.

(2) Tank systems [~~Tanks~~], including sumps, as defined in Section 1 of 401 KAR 30:010, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Section 4(1) of this regulation.

(3) The paint filter liquids test, Method 9095 in the EPA publication SW-846, is being incorporated by reference into this section. The test method became effective in April of 1984 and is available from the National Technical Information Section, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4600. This material is available for public inspection and copying during business hours of 8 a.m. to 4:30 p.m. at the Division of Waste Management, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

Section 2. Assessment of Existing Tank System's Integrity. (1) For each existing tank system that does not have secondary containment meeting the requirements of Section 4 of this regulation, the owner or operator shall determine that the tank system is not leaking or is unfit for use. Except as provided in subsection (3) of this section, the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified, professional engineer registered in the Commonwealth of Kentucky, in accordance with Section 7(4) of 401 KAR 38:070, that attests to the tank system's integrity no later than 180 days from the date of promulgation of this regulation.

(2) This assessment shall determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste to be stored or treated to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(a) Design standards, if available, according to which the tank and ancillary equipment were constructed;

(b) Hazardous characteristics of the waste that have been or shall

be handled;

(c) Existing corrosion protection measures;

(d) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(e) Results of a leak test, internal inspection, or other tank integrity examination such that:

1. For nonenterable underground tanks, this assessment shall consist of a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects; and

2. For other than nonenterable underground tanks and for ancillary equipment, this assessment shall be either a leak test, or as described above, or an internal inspection and other tank integrity examination certified by an independent, qualified, professional engineer registered in the Commonwealth of Kentucky in accordance with Section 7(4) of 401 KAR 38:070, that addresses cracks, leaks, corrosion, and erosion.

(3) Tank systems that store or treat materials that become hazardous wastes subsequent to date of promulgation of this regulation shall conduct this assessment within twelve (12) months after the date that the waste becomes a hazardous waste.

(4) If, as a result of the assessment conducted in accordance with subsection (1) of this section, a tank system is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of Section 7 of this regulation.

Section 3. Design and Installation of New Tank Systems or Components. (1) Owners or operators of new tanks systems or components shall ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste to be stored or treated, and corrosion protection so that it shall not collapse, rupture, or fail. The owner or operator shall obtain a written assessment reviewed and certified by an independent, qualified professional engineer registered in the Commonwealth of Kentucky in accordance with Section 7(4) of 401 KAR 38:070, attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment shall include, at a minimum, the following information:

(a) Design standards according to which the tank and the ancillary equipment is or shall be constructed;

(b) Hazardous characteristics of the waste to be handled;

(c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or shall be in contact with the soil or with water, a determination by a corrosion expert of:

1. Factors affecting the potential for corrosion, including but not limited to:

a. Soil moisture content;

b. Soil pH;

c. Soil sulfides level;

d. Soil resistivity;

e. Structure to soil potential;

f. Influence of nearby underground metal structures (e.g., piping);

g. Stray electric current;

h. Existing corrosion-protection measures (e.g., coating, cathodic protection); and

2. The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one (1) or more of the following:

a. Corrosion-resistant materials of construction such as special alloys, fiberglass-reinforced plastic, etc.;

b. Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and

c. Electrical isolation devices such as insulating joints, flanges, etc.

(d) For underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(e) Design considerations to ensure that:

1. Tank foundations shall maintain the load of a full tank;

2. Tank systems shall be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone; and

3. Tank systems shall withstand the effects of frost heave.

(2) The owner or operator of a new tank system shall ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified professional engineer registered in the Commonwealth of Kentucky, either of whom is trained and experienced in the proper installation of tank systems, shall inspect the system or component for the presence of any of the following items:

(a) Weld breaks;

(b) Punctures;

(c) Scrapes of protective coatings;

(d) Cracks;

(e) Corrosion; or

(f) Other structural damage or inadequate construction or installation.

All discrepancies shall be remedied before the tank system is covered, enclosed, or placed in use.

(3) New tank systems or components and piping that are placed underground and that are backfilled shall be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is carefully installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(4) All new tanks and ancillary equipment shall be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak in the system shall be performed prior to the tank system being covered, enclosed, or placed in use.

(5) Ancillary equipment shall be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(6) The owner or operator shall provide the type and degree of corrosion protection necessary, based on the information provided under subsection (1)(c) of this section, to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated shall be supervised by an independent corrosion expert to ensure proper installation.

(7) The owner or operator shall obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (2) through (6) of this section to attest that the tank system was properly designed and installed and that repairs, pursuant to subsections (2) and (4) of this section were performed. These written statements shall also include the certification statement as required in Section 7(4) of 401 KAR 38:070.

Section 4. Containment and Detection of Releases. (1) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section shall be provided (except as provided in subsections (6) and (7) of this section):

(a) For all new tank systems or components, prior to their being put into service;

(b) For all existing tank used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, by January 12, 1991;

(c) For those existing tank systems of known and documentable age, by January 12, 1991 or when the tank systems have reached fifteen (15) years of age, whichever comes later;

(d) For those existing tank systems for which the age cannot be documented within eight (8) years of January 12, 1987, but if the age of the facility is greater than seven (7) years, secondary containment shall be provided by the time the facility reaches fifteen (15) years of age, or within two (2) years of January 12, 1987, whichever comes later; and

(e) For tanks systems that store or treat materials that become hazardous wastes subsequent to the date of promulgation of this regulation within the time intervals required in subsections (1)(a) through (d) of this section, except that the date that a material becomes a hazardous waste shall be used in place of the date of promulgation of this regulation.

(2) Secondary containment systems shall be:

(a) Designed, installed, and operated, to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(b) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(3) To meet the requirements of subsection (2) of this section, secondary containment systems shall be at a minimum:

(a) Constructed of or lined with materials that are compatible with the waste to be placed in the tank system and shall have sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which they are exposed climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);

(b) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(c) Provided with a leak-detection system that is designed and operated so that it shall detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within twenty-four (24) hours, or at the earliest practicable time if the existing detection technology or sites conditions shall not allow detection of a release within twenty-four (24) hours; and

(d) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation shall be removed from the secondary containment system within twenty-four (24) hours, or in as timely a manner as is possible to prevent harm to human health or the environment, if removal of the released waste or accumulated precipitation cannot be accomplished within twenty-four (24) hours.

(4) Secondary containment for tanks shall include one (1) or more of the following devices:

(a) A liner (external to the tank);

(b) A vault;

(c) A double-walled tank; or

(d) An equivalent device as approved by the cabinet.

(5) In addition to the requirements of subsections (2), (3), and (4) of this section, secondary containment systems shall satisfy the following requirements:

(a) External liner systems shall be:

1. Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

2. Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour rainfall event;

3. Free of cracks or gaps; and

4. Designed and installed to completely surround the tank and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank (i.e., capable of preventing lateral as well as vertical migration of the wastes).

(b) Vault systems shall be:

1. Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

2. Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour rainfall event;

3. Constructed with chemical-resistant water stops in place at all joints (if any);

4. Provided with an impermeable interior coating or lining that is compatible with the stored waste and that shall prevent migration of waste into the concrete;

5. Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

a. Meets the definition of ignitable waste under Section 2 of 401 KAR 31:030; or

b. Meets the definition of reactive waste under Section 4 of 401 KAR 31:030 and which may form an ignitable or explosive vapor.

6. Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(c) Double-walled tanks shall be:

1. Designed as an integral structure (i.e., an inner tank within an outer shell) so that any release from the inner tank is contained by the outer shell;

2. Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

3. Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four (24) hours or at the earliest practicable time, if the owner or operator can demonstrate to the cabinet, and the cabinet concurs, that the existing leak detection technology or site conditions shall not allow detection of a release within twenty-four (24) hours.

(6) Ancillary equipment shall be provided with full secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of subsections (2) and (3) of this section except for:

(a) Aboveground piping (exclusive of flanges, joints, valves, and connections) that are visually inspected for leaks on a daily basis;

(b) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(c) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(d) Pressurized aboveground piping systems with automatic shutoff devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shutoff devices) that are visually inspected for leaks on a daily basis.

(7) The owner or operator may obtain a variance from the requirements of this section if the cabinet finds, as a result of a demonstration by the owner or operator, either: that alternative design and operating practices, together with location characteristics, shall prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water at least as effectively as secondary containment during the active life of the tank system; or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard shall be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with paragraph

(b) of this subsection, be exempted from the secondary containment requirements of this section. Application for a variance as allowed in this subsection does not waive compliance with the requirements of this regulation for new tank systems.

(a) In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the cabinet shall consider:

1. The nature and quantity of the waste;

2. The proposed alternate design and operation;

3. The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and

4. All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to groundwater or surface water.

(b) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the cabinet shall consider:

1. The potential adverse effects on groundwater, surface water, and land quality taking into account:

a. The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

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

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

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

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

2. The potential adverse effects of a release on groundwater quality, taking into account:

a. The quantity and quality of groundwater and the direction of groundwater flow;

b. The proximity and withdrawal rates of groundwater in the area;

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

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

3. The potential adverse effects of a release on surface water quality taking into account:

a. The quantity and quality of groundwater and the direction of groundwater flow;

b. The patterns of rainfall in the region;

c. The proximity of the tank system to surface waters;

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

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

4. The potential adverse effects of a release on the land surrounding the tank system, taking into account:

a. The patterns of rainfall in the region; and

b. The current and future uses of the surrounding land.

(c) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), shall:

1. Comply with the requirements of Section 7 of this regulation except subsection (4) of that section; and

2. Decontaminate or remove contaminated soil to the extent necessary to:

a. Enable the tank system for which the variance was granted to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release; and

b. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and

3. If contaminated soil cannot be removed or decontaminated in accordance with subparagraph 2 of this paragraph, comply with the requirements in Section 8(2) of this regulation [~~401 KAR 34:190~~].

(d) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), shall:

1. Comply with the requirements of Sections 7(1), (2), (3), and (4) of this regulation;

2. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if groundwater has been contaminated, the owner or operator shall comply with the requirements of Section 8(2) of this regulation; and

3. If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of subsections (1) through (6) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in Section 3 of this regulation if the tank system is replaced. The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

(8) The following procedures shall be followed in order to request a variance from secondary containment:

(a) The cabinet shall be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from a secondary containment as allowed in subsection (7) of this section according to the following schedule:

1. For existing tank systems, at least twenty-four (24) months prior to the date that secondary containment shall be provided in accordance with subsection (1) of this section.

2. For new tank systems, at least thirty (30) days prior to entering into a contract for installation of the tank system.

(b) As part of the notification, the owner or operator shall also submit to the cabinet a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in subsection (7)(a) or (b) of this section.

(c) The demonstration for a variance shall be completed and submitted to the cabinet within 180 days after notifying the cabinet of an intent to conduct the demonstration; and

(d) The cabinet shall inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notification shall be placed in a daily or weekly major local newspaper of general circulation, and shall provide at least thirty (30) days from the date of the notice for the public to review and comment on the demonstration for a variance. The cabinet also shall hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one (1) or more issues concerning the demonstration for a variance. Public notice of the hearing shall be given at least thirty (30) days prior to the date of the hearing and may be given the same time as notice of the opportunity for the public to review and comment on the demonstration. These two (2) notices may be combined.

(e) The cabinet shall approve or disapprove the request for a variance within ninety (90) days of receipt of the demonstration from the owner or operator and shall notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the ninety (90) day time period shall begin when the cabinet receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in paragraph (d) of this

subsection is extended, the ninety (90) day time period shall be similarly extended.

(9) All tank systems, until such time as secondary containment meeting the requirements of this section is provided, shall comply with the following:

(a) For nonenterable underground tanks, a leak test that meets the requirements of Section 2(2)(e) of this regulation shall be conducted at least annually.

(b) For other than nonenterable underground tanks and for all ancillary equipment, an annual leak test, as described in subsection (9)(a) of this section or an internal inspection or other tank integrity examination by an independent, qualified, professional engineer registered in the Commonwealth of Kentucky that addresses cracks, leaks, corrosion and erosion shall be conducted at least annually. The owner or operator shall remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed.

(c) The owner or operator shall maintain on file at the facility a record of the results of the assessments conducted in accordance with subsections (1)(a) through (c) of this section.

(d) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in subsections (1)(a) through (c) of this section, the owner or operator shall comply with the requirements of Section 7 of this regulation.

Section 5. General Operating Requirements. (1) Hazardous wastes or treatment reagents shall not be placed in a tank system if they could cause the tank, its ancillary equipment, or the secondary containment system to rupture, leak, corrode or otherwise fail.

(2) The owner or operator shall use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include at a minimum:

(a) Spill prevention controls (e.g., check valves, dry discount couplings);

(b) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(c) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(3) The owner or operator shall comply with the requirements of Section 7 of this regulation if a leak or spill occurs in the tank system.

(4) Tanks holding hazardous waste shall be labeled "hazardous waste" upon the date that hazardous waste is first added to the tank.

Section 6. Inspections. (1) The owner or operator shall inspect, where present, at least once each operating day:

(a) Overfilling/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

(b) The aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(c) Data gathered from monitoring equipment and leak-detection equipment (e.g., pressure and temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and

(d) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including the secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(2) The owner or operator shall inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(a) The proper operation of the cathodic protection system shall be confirmed within six (6) months after initial installation and annually thereafter; and

(b) All sources of impressed current shall be inspected and tested, as appropriate, at least bimonthly (i.e., every other month).

(3) The owner or operator shall document in the operating record of the facility an inspection of those items in subsections (1) and (2) of this section.

Section 7. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-use Tank Systems. A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, shall be removed from service immediately, and the owner or operator shall satisfy the following requirements:

(1) Cessation of use: prevent flow or addition of wastes. The owner or operator shall immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(2) Removal of waste from tank system or secondary containment system.

(a) If the release was from the tank system, the owner/operator shall, within twenty-four (24) hours after detection of the leak or, if the owner/operator demonstrates that is not possible, at the earliest practicable time remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(b) If the material released was to a secondary containment system, all released materials shall be removed within twenty- four (24) hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(3) Containment of visible releases to the environment. The owner/operator shall immediately conduct a visual inspection of the release and based upon that inspection:

(a) Prevent further migration of the leak or spill to soils or surface water; and

(b) Remove and properly dispose of any visible contamination of the soil or surface water.

(4) Notifications and reports.

(a) Any release to the environment except as provided in paragraph (b) of this subsection, shall be reported to the cabinet within twenty-four (24) hours of detection. If the release has been reported pursuant to 40 CFR Part 302 that report shall satisfy this requirement.

(b) A leak or spill of hazardous waste is exempted from the requirements of this subsection if it is:

1. Less than or equal to a quantity of one (1) pound; and

2. Immediately contained and cleaned up.

(c) Within thirty (30) days of detection of a release to the environment, a report containing the following information shall be submitted to the cabinet:

1. Likely route of migration of the release;

2. Characteristics of the surrounding soil(soil composition, geology, hydrogeology, climate);

3. Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty (30) days, these data shall be submitted to the cabinet as soon as they become available;

4. Proximity to downgradient drinking water, surface water, and population areas; and

5. Description of response actions taken or planned.

(5) Provision of secondary containment, repair or closure.

(a) Unless the owner/operator satisfied the requirements of paragraphs (b) through (d) of this subsection, the tank system shall be closed in accordance with Section 8 of this regulation.

(b) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(c) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system shall be repaired prior to returning the tank system to service.

(d) If the source of the release was a leak to the environment

from a component of a tank system without secondary containment, the owner/operator shall provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section 4 of this regulation before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system. If the source is an aboveground component that can be inspected visually, the component shall be repaired and may be returned to service without secondary containment as long as the requirements of subsection (6) of this section are satisfied. If a component is replaced to comply with the requirements of this paragraph that component shall satisfy the requirements for new tank systems or components in Sections 3 and 4 of this regulation. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an in-ground or on-ground tank), the entire component shall be provided with secondary containment in accordance with Section 4 of this regulation prior to being returned to use.

(6) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with subsection (5) of this section, and the repair has been extensive (e.g., installation of an internal liner, repair of a ruptured primary containment or secondary containment vessel), the tank system shall not be returned to service unless the owner/operator has obtained a certification by an independent qualified, professional engineer registered in the Commonwealth of Kentucky in accordance with Section 7(4) of 401 KAR 38:070 that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification shall be submitted to the cabinet within seven (7) days after returning the tank system to use.

Section 8. Closure and Postclosure Care. (1) At closure of a tank system, the owner/operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless Section 3(4) of 401 KAR 31:010 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems shall meet all of the requirements specified in 401 KAR 35:070 through 35:130.

(2) If the owner or operator demonstrates that not all contaminated soil can be practicably removed or decontaminated as required in subsection (1) of this section, then the owner or operator shall close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to landfills in Section 4 of 401 KAR 35:230. In addition, for the purposes of closure, postclosure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner/operator shall meet all of the requirements for landfills specified in 401 KAR 35:070 through 35:130.

(3) If an owner or operator has a tank system which does not have secondary containment that meets the requirements in Section 4(2) through (6) of this regulation and which is not exempt from the secondary containment requirements in accordance with Section 4(7) of this regulation then:

(a) The closure plan for the tank system shall include both a plan for complying with subsection (1) of this section and a contingent plan for complying with subsection (2) of this section;

(b) A contingent postclosure plan for complying with subsection (2) of this section shall be prepared and submitted as part of the permit application;

(c) The cost estimates calculated for closure and postclosure care shall reflect the costs of complying with the contingent closure plan and the contingent postclosure plan, if these costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (1) of this section.

(d) Financial assurance shall be based on the cost estimates in paragraph (c) of this subsection.

(e) For the purposes of the contingent closure and postclosure plans, such a tank system is considered to be a landfill, and the contingent plans shall meet all of the closure, postclosure and financial responsibility requirements for landfills under 401 KAR 35:070 through 35:130.

(f) For new tank systems that shall close in accordance with subsection (2) of this section, the owner or operator shall demonstrate compliance with 401 KAR 38:500.

Section 9. Special Requirements for Ignitable or Reactive Waste. (1) Ignitable or reactive waste shall not be placed in a tank unless:

(a) The waste is treated, rendered or mixed before or immediately after placement in the tank system so that:

1. The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under Sections 2 or 4 of 401 KAR 31:030; and

2. Section 8(2) of 401 KAR 35:020 is complied with; or

(b) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(c) The tank system is used solely for emergencies.

(2) The owner or operator of a facility where ignitable or reactive waste is stored or treated in tanks shall comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981), incorporated by reference in Section 3 of 401 KAR 30:010.

Section 10. Special Requirements for Incompatible Wastes. (1) Incompatible wastes, or incompatible wastes and materials shall not be placed in the same tank system, unless Section 8(2) of 401 KAR 35:020 is complied with.

(2) Hazardous waste shall not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless Section 9(2) of 401 KAR 35:020 is complied with.

Section 11. Waste Analysis and Trial Tests. (1) In addition to performing the waste analysis required by Section 4 of 401 KAR 35:020, the owner/operator shall whenever a tank system is to be used to treat chemically or to store a hazardous waste that is substantially different from waste previously treated or stored in that tank system; or treat chemically hazardous waste with a substantially different process than any previously used in that tank system;

(2) Conduct waste analyses and trial treatment or storage tests (e.g., bench scale or pilot plant scale tests); or

(3) Obtain written, documented information on similar waste under similar operating conditions, to show that the proposed treatment or storage shall meet the requirements of Section 5(1) of this regulation.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: This proposed amendment shall affect owners and operators of hazardous waste storage, treatment, and disposal facilities. There are approximately 90 treatment, storage and disposal facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: Owners and operators of hazardous waste treatment, storage, and disposal facilities who are affected by the exemptions included in this amendment may experience some savings.

2. Continuing costs or savings: First year savings may continue for the affected owners and operators.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The promulgating administrative body may experience some direct savings due to the exemptions included in this amendment.

2. Continuing costs or savings: First year savings may continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements imposed as a result of the proposed amendments to this regulation.

(3) Assessment of anticipated effect on state and local revenues: There will be effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed amendment 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.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 265.190 as published in the Federal Register on September 2, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, storage, and disposal facilities.

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 265.193.

2. State compliance standards. The proposed amendment 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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 36:030. Recyclable materials used in a manner constituting disposal.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.46.520 requires that persons engaging in recycling of hazardous waste obtain a permit. KRS 224.46.520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all hazardous waste recycling facilities. This chapter establishes minimum standards for hazardous waste recycling facilities. This regulation establishes minimum standards for recyclable materials which are used in a manner constituting disposal.

Section 1. Applicability. (1) This regulation applies to recyclable materials that are applied to or placed on the land:

(a) Without mixing with any other substance[~~(s)~~]; or

(b) After mixing or combination with any other substance[~~(s)~~]. These materials shall [~~will~~] be referred to throughout this regulation as "materials used in a manner that constitutes disposal".

(2) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not subject to the requirements in this regulation if the recyclable materials have undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means and if the products meet the applicable treatment standards in 401 KAR 37:040 (or applicable prohibition levels in 401 KAR 37:030, Section 4, or KRS 224.46-520, where no treatment standards have been established) for each recyclable material (i.e., hazardous waste constituent) that they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation. [~~Commercial fertilizers that are produced for the general public's use that contain recyclable materials are not subject to the requirements~~

~~in this regulation.~~]

Section 2. Standards Applicable to Generators and Transporters of Materials Used in a Manner that Constitutes Disposal. Generators and transporters of materials that are used in a manner that constitutes disposal are subject to the applicable requirements of 401 KAR Chapters 32 and 33 and the notification requirement under KRS 224.46-510(3).

Section 3. Standards Applicable to Storers of Materials That Are to be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users. Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of 401 KAR 34:010 through 401 KAR 34.210, 401 KAR 35:010 through 401 KAR 35:210 and 401 KAR Chapter 38 and the notification requirements under 401 KAR 34.020, Section 2 and 401 KAR 35:020, Section 2.

Section 4. Standards Applicable to Users of Materials that are Used in a Manner that Constitutes Disposal. (1) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of 401 KAR 34:010 through 401 KAR 34:230, 401 KAR 35:010 through 401 KAR 35.230 and 401 KAR Chapter 38 and the notification requirements under 401 KAR 34.020, Section 2 and 401 KAR 35:020, Section 2. (These requirements do not apply to products which contain these recyclable materials under the provisions of Section 1(2) of this regulation.)

(2)(a) The use of waste or used oil or other material, which is contaminated with dioxin or any other hazardous waste for dust suppression or road treatment is prohibited.

(b) In accordance with KRS 224.46-510(2), any person engaged in spreading waste or used oil or other material shall make a determination as to whether such waste is hazardous pursuant to criteria specified in 401 KAR Chapter 31. This determination shall be carried in the vehicle whenever waste or used oil or other material is being applied for dust suppression or road treatment.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment affects persons engaged in the recycling of hazardous waste. There are approximately 110 hazardous waste recycling facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The U.S. EPA established identical standards on August 17, 1988. The affected entities have been required to follow those federal guidelines since that date and shall experience no further direct or indirect costs or savings as a result of this proposed amendment.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no new reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Aside from the minimal costs of adding the new wording to the existing regulation, the promulgating administrative body shall experience no direct or indirect costs or savings.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment outlines land disposal for those first third wastes treatment standards that are not established.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 266.20 as published in the Federal Register on August 17, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to specific types of hazardous waste management facilities.

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 August 17, 1988, at 40 CFR 266.20.

2. State compliance standards. The proposed amendment outlines land disposal for those first third waste treatment standards that are not established.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate outlines land disposal for those first third waste treatment standards that are not established.

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 37:010. General provisions for land disposal restrictions.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99, 40 CFR 268.10 through 268.12

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520, 40 CFR 268.10 through 268.12

NECESSITY AND FUNCTION: KRS 224.46-520 enables the cabinet to prohibit the land disposal of any hazardous wastes. KRS 224.46-520 requires that the cabinet allow land disposal of hazardous waste when the disposal methods have been determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous. 401 KAR Chapter 37 establishes land disposal restrictions and treatment standards for hazardous wastes. This regulation establishes waste specific prohibitions on land disposal.

Section 1. Definitions Applicable to 401 KAR Chapter 37. (1) When used in 401 KAR Chapter 37 the following terms have the meanings given below:

(a) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond which are listed under 401 KAR 37:110.

(b) "Hazardous constituent or constituents" means those constituents listed in 401 KAR 31:170.

(c) "Land disposal", as set forth in KRS 224.01-010, means placement in or on the land and includes, but is not limited, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.

(d) "Polychlorinated biphenyls" or "PCB" are halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(2) All other terms have the meanings given under Section 1 of 401 KAR 30:010, Section 2 and 3 of 401 KAR 31:010 or Section 2 of 401 KAR 38:010.

Section 2. Purpose, Scope and Applicability. (1) This chapter identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(2) Except as specifically provided otherwise in 401 KAR Chapter 31 or 37, the requirements of 401 KAR Chapter 37 apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(3) Prohibited wastes may continue to be land disposed as follows:

(a) Where persons have been granted an extension to the effective date of a prohibition under 401 KAR 37:030 or pursuant to Section 5 of this regulation, with respect to those wastes covered by the extension;

(b) Where persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of this regulation, with respect to those wastes and units covered by the petition;

~~[(c) Until November 8, 1988, where the wastes are contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or a corrective action required under KRS Chapter 224;]~~

(c) ~~[(d)]~~ Where the waste is generated by limited quantity generators as defined in Section 5 of 401 KAR 31:010; or

(d) ~~[(e)]~~ Where a farmer is disposing of waste pesticides in accordance with 401 KAR 32:050, Section 10; or

(e) Prior to May 8, 1990, a landfill or surface impoundment unit where all applicable persons are in compliance with the requirements of Section 8 of this regulation, with respect to wastes that are not subject to the treatment standards set forth in 401 KAR 37:040 and not subject to the prohibitions in 401 KAR 37:030, Section 4, or KRS 224.46-520.

(4) The requirements of this chapter shall not affect the availability of a waiver under Section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Section 3. Dilution Prohibited as a Substitute for Treatment. No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with 401 KAR 37:040 to circumvent the effective date of a prohibition in 401 KAR 37:030, to otherwise avoid a prohibition in 401 KAR 37:030, or to circumvent a land disposal prohibition imposed by KRS 224.46-520.

Section 4. Treatment Surface Impoundment Exemption. (1) Wastes which are otherwise prohibited from land disposal under 401 KAR Chapter 37 may be treated in a surface impoundment or series of impoundments provided that:

(a) Treatment of such wastes occurs in the impoundments;

(b) The following conditions are met:

1. Sampling and testing. For wastes with treatment standards in 401 KAR 37:040 or prohibition levels in 401 KAR 37:030 or KRS 224.46-520, the residues from treatment are analyzed, as specified in Section 7 of this regulation or 401 KAR 37:030, Section 4, to determine if they meet the applicable treatment standards or where no treatment standards have been established for the waste, the applicable prohibition levels. The sampling method specified in the waste analysis plan under 401 KAR 34:020, Section 4, or 401 KAR 35:020, Section 4, shall be designed so that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples.

2. Removal. The following treatment residues (including any liquid waste) shall be removed at least annually: residues which do not meet the treatment standards of 401 KAR 37:040; residues which do not meet the prohibition levels established under 401 KAR 37:030 or imposed by statute (where no treatment standards have been established); residues which are from the treatment of wastes prohibited levels apply); or residues from managing listed wastes which are not delisted under 401 KAR 31:050, Section 2. However, residues which are the subject of a valid certification under Section 8 of this regulation made no later than a year after placement of the wastes in an impoundment are not required to be removed annually. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement.

3. Subsequent management. Treatment residues may not be placed in any other surface impoundment for subsequent management unless the residues are the subject of a valid certification under Section 8 of this regulation which allows disposal in surface impoundments meeting the requirements of Section 8(1) of

this regulation.

4. Recordkeeping. The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residues which do not meet the treatment standards, or prohibition levels (where no treatment standards have been established), or which are from the treatment of wastes prohibited from land disposal under 401 KAR 37:030 (where no treatment standards have been established and no prohibition levels apply), shall be specified in the facility's waste analysis plan as required under 401 KAR 34:020, Section 4, or 401 KAR 35:020, Section 4. [~~The residues of the treatment are analyzed, as specified in Section 7 of this regulation or 401 KAR 37:030, Section 4, to determine if they meet the applicable treatment standards in 401 KAR 37:040, or, where no treatment standards have been established for the waste, the applicable prohibition levels specified in 401 KAR 37:030 or KRS 224.46-520. The sampling method, specified in the waste analysis plan under Section 4 of 401 KAR 34:020 or Section 4 of 401 KAR 35:020, shall be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples. The treatment residues (including any liquid waste) that do not meet the treatment standards promulgated under 401 KAR 37:040, or the applicable prohibition levels promulgated under 401 KAR 37:030 or imposed by statute (where no treatment standards have been established) or which are not delisted under Section 2 of 401 KAR 31:060, and no longer exhibit a characteristic of hazardous waste, shall be removed at least annually. These residues may not be placed in any other surface impoundment for subsequent management. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow through constitutes removal of the supernatant for the purpose of this requirement. The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residue which does not meet the 401 KAR 37:040 treatment standards, or 401 KAR 37:030 or KRS 224.46-520 prohibition levels where no treatment standards have been established, shall be specified in the facility's waste analysis plan as required under Section 4 of 401 KAR 34:020 or Section 4 of 401 KAR 35:020.~~]

(c) The impoundment meets the design requirements of Section 2(3) of 401 KAR 34:200 or Section 10(1) of 401 KAR 35:200, regardless that the unit may not be new, expanded, or a replacement, and be in compliance with applicable groundwater monitoring requirements of 401 KAR 34:060 or 401 KAR Chapter 35 unless:

1. Exempted pursuant to Section 2(4) or (5) of 401 KAR 34:200, or to Section 10(3) or (4) of 401 KAR 35:200; or

2. Upon application by the owner or operator, the cabinet after notice and an opportunity to comment has granted a waiver of the requirements on the basis that the surface impoundment:

a. Has at least one (1) liner, for which there is no evidence that such liner is leaking;

b. Is located more than one-quarter (1/4) mile from an underground source of drinking water; and

c. Is in compliance with generally applicable groundwater monitoring requirements for facilities with permits; or

3. Upon application by the owner or operator, the cabinet, after notice and an opportunity to comment, has granted a modification to the requirements on the basis of a demonstration that the surface impoundment is located, designed, and operated so as to assure that there shall be no migration of any hazardous constituent into groundwater or surface water at any future time.

(d) The owner or operator submits to the cabinet a written certification that the requirements of paragraph (c) of this subsection have been met and submits a copy of the waste analysis plan required under paragraph (b) of this subsection. The following certification is required:

I certify under penalty of law that the requirements of Section 4(1)(c) of 401 KAR 37:010 have been met for all surface impoundments being used to treat restricted wastes. I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(2) Evaporation of hazardous constituents as the principal means of treatment is not considered to be treatment for purposes of an exemption under this section.

Section 5. Procedures for Case-by-case Extensions to an Effective Date. (1) Any person who generates, treats, stores, or disposes of a hazardous waste may submit an application to the cabinet for an extension to the effective date of any applicable restriction established under 401 KAR 37:030. The applicant shall demonstrate the following:

(a) He has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established under 401 KAR 37:030;

(b) He has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g., recycling), or disposal capacity that meets the treatment standards specified in 401 KAR 37:040 or, where treatment standards have not been specified, such treatment, recovery, or disposal capacity is protective of human health and the environment;

(c) Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity shall result in the capacity not being available by the applicable effective date;

(d) The capacity being constructed or otherwise provided by the applicant shall be sufficient to manage the entire quantity of waste that is the subject of the application;

(e) He provides a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity shall be available;

(f) He has arranged for adequate capacity to manage his waste during an extension and has documented in the application the location of all sites at which the waste shall be managed; and

(g) Any waste managed in a surface impoundment or landfill during the extension period shall meet the requirements of subsection (8)(b) of this section.

(2) An authorized representative signing an application described under subsection (1) of this section shall make the following certification:

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

(3) After receiving an application for an extension, the cabinet may request any additional information which it [~~he~~] deems [~~as~~] necessary to evaluate the application.

(4) An extension shall apply only to the waste generated at the individual facility covered by the application and shall not apply to restricted waste from any other facility.

(5) On the basis of the information referred to in subsection (1) of this section, after notice and opportunity for comment, and after consultation with appropriate state agencies in all affected states, the cabinet may grant an extension of up to one (1) year from the effective date. The cabinet may renew this extension for up to one (1) additional year upon the request of the applicant if the demonstration required in subsection (1) of this section can still be made. In no event shall an extension continue [~~extend~~] beyond twenty-four (24)

months from the applicable effective date specified in 401 KAR 37:030. The length of any extension authorized shall be determined by the cabinet [~~secretary~~] based on the time required to construct or obtain the type of capacity needed by the applicant as described in the completion schedule discussed in subsection (1)(e) of this section. The cabinet shall give public notice of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition shall be published in the Kentucky Administrative Register.

(6) Any person granted an extension under this section shall immediately notify the cabinet as soon as he has knowledge of any change in the conditions certified to in the application.

(7) Any person granted an extension under this section shall submit written progress reports at intervals designated by the cabinet. Such reports shall describe the overall progress made toward constructing or otherwise providing alternative treatment, recovery or disposal capacity; shall identify any event which may cause or has caused a delay in the development of the capacity; and shall summarize the steps taken to mitigate the delay. The cabinet may revoke the extension at any time if the applicant does not demonstrate a good-faith effort to meet the schedule for completion, if the cabinet denies or revokes any required permit, if conditions certified in the application change, or for any violation of this chapter.

(8) Whenever the cabinet establishes an extension to an effective date under this section, during the period for which such extension is in effect:

(a) The storage restrictions under Section 2(1) of 401 KAR 37:050 do not apply; and

(b) The [~~Such~~] hazardous waste may be disposed of in a landfill or surface impoundment unit only if the unit is in compliance with the following requirements: [~~at a facility only if each new landfill or surface impoundment unit, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit at the facility is in compliance with the following requirements:~~]

1. The landfill, if in interim status, is in compliance with the requirements of 401 KAR 35:060 and Section 10(1), (3) and (4) of 401 KAR 35:230;

2. The landfill, if permitted, is in compliance with the requirements of 401 KAR 34:060 and Section 10(3), (4), and (5) of 401 KAR 34:230;

3. The surface impoundment, if in interim status, is in compliance with the requirements of 401 KAR 35:060 and Section 10(1), (3) and (4) of 401 KAR 35:200 and KRS 224.46-520; or

4. The surface impoundment, if permitted, is in compliance with the requirements of 401 KAR 34:060 and Section 10(3), (4), and (5) of 401 KAR 34:200.

(9) Pending a decision on the application the applicant is required to comply with all restrictions on land disposal under 401 KAR Chapter 37 once the effective date for the waste has been reached.

(10) Any decisions of the cabinet relating to an application for an extension to the effective date of any applicable restriction established under 401 KAR 37:030 shall not supersede the authority of the Environmental Protection Agency under 40 CFR 268.5 (1989).

Section 6. Petitions to Allow Land Disposal of a Waste Prohibited Under 401 KAR 37:030. (1) Any person seeking an exemption from a prohibition under 401 KAR 37:030 for the disposal of a restricted hazardous waste in a particular unit or units shall submit a petition to the cabinet demonstrating, to a reasonable degree of certainty, that there shall be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The demonstration shall include the following components:

(a) An identification of the specific waste and the specific unit for which the demonstration shall be made;

(b) A waste analysis to describe fully the chemical and physical characteristics of the subject waste;

(c) A comprehensive characterization of the disposal unit site including an analysis of background air, soil, and water quality;

(d) A monitoring plan that detects migration at the earliest practicable time; and

(e) Sufficient information to assure the cabinet that the owner or operator of a land disposal unit receiving restricted waste shall comply with other applicable federal, state, and local laws.

(2) The demonstration referred to in subsection (1) of this section shall meet the following criteria:

(a) All waste and environmental sampling, test, and analysis data shall be accurate and reproducible to the extent that state-of-the-art techniques allow;

(b) All sampling, testing, and estimation techniques for chemical and physical properties of the waste and all environmental parameters shall have been approved by the cabinet;

(c) Simulation models shall be calibrated for the specific waste and site conditions, and verified for accuracy by comparison with actual measurements;

(d) A quality assurance and quality control plan that addresses all aspects of the demonstration shall be approved by the cabinet; and

(e) An analysis shall be performed to identify and quantify any aspects of the demonstration that contribute significantly to uncertainty. This analysis shall include an evaluation of the consequences of predictable future events, including, but not limited to, earthquakes, floods, severe storm events, droughts, or other natural phenomena.

(3) Each petition referred to in subsection (1) of this section shall include the following:

(a) A monitoring plan that describes the monitoring program installed at or around the unit to verify continued compliance with the conditions of the variance. This monitoring plan shall provide information on the monitoring of the unit or the environment around the unit. The following specific information shall be included in the plan:

1. The media monitored in the case where monitoring of the environment around the unit is required;

2. The type of monitoring conducted at the unit, in the cases where monitoring of the unit is required;

3. The location of the monitoring stations;

4. The monitoring interval (frequency of monitoring at each station);

5. The specific hazardous constituents to be monitored;

6. The implementation schedule for the monitoring program;

7. The equipment used at the monitoring stations;

8. The sampling and analytical techniques employed; and

9. The data recording and reporting procedures.

(b) Where applicable, the monitoring program described in paragraph (a) of this subsection shall be in place for a period of time specified by the cabinet, as part of the approval of the petition, prior to receipt of prohibited waste at the unit.

(c) The monitoring data collected according to the monitoring plan specified under paragraph (a) of this subsection shall be sent to the cabinet according to a format and schedule specified and approved in the monitoring plan.

(d) A copy of the monitoring data collected under the monitoring plan specified under paragraph (a) of this subsection shall be kept on site at the facility in the operating record.

(e) The monitoring program specified under paragraph (a) of this subsection shall meet the following criteria:

1. All sampling, testing, and analytical data shall be approved by the cabinet and shall provide data that is accurate and reproducible.

2. All estimation and monitoring techniques shall be approved by the cabinet.

3. A quality assurance and quality control plan addressing all aspects of the monitoring program shall be provided to and approved by the cabinet.

(4) Each petition shall be submitted to the cabinet.

(5) After a petition has been approved, the owner or operator shall report any changes in conditions at the unit or the environment around the unit that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the units as follows:

(a) If the owner or operator plans to make changes to the unit design, construction, or operation, the change shall be proposed, in writing, and the owner or operator shall submit a demonstration to the cabinet at least thirty (30) days prior to making the change. The cabinet shall determine whether the proposed change invalidates the terms of the petition and shall determine the appropriate response. Any change shall be approved by the cabinet prior to being made.

(b) If the owner or operator discovers that a condition at the site which was modeled or predicted in the petition does not occur as predicted, this change shall be reported, in writing, to the cabinet within ten (10) days of discovering the change. The cabinet shall determine whether the reported change from the terms of the petition requires further action, which may include termination of waste acceptance and revocation of the petition, petition modifications, or other responses.

(6) If the owner or operator determines that there is migration of hazardous constituents from the unit, the owner or operator shall:

(a) Immediately suspend receipt of restricted waste at the unit;

(b) Notify the cabinet, in writing, within ten (10) days of the determination that the release has occurred; and

(c) Following receipt of the notification the cabinet shall determine, within sixty (60) days of receiving notification, whether the owner or operator can continue to receive prohibited waste in the unit and whether the variance is to be revoked. The cabinet shall also determine whether further examination of any migration is warranted under applicable provisions of 401 KAR Chapters 34 and 35.

(7) [~~(4)~~] Each petition shall include the following statement signed by the petitioner or an authorized representative:

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

(8) [~~(5)~~] After receiving a petition, the cabinet may request any additional information that reasonably may be required to evaluate the demonstration.

(9) [~~(6)~~] If approved, the petition shall apply to land disposal of the specific restricted waste at the individual disposal unit described in the demonstration and shall not apply to any other restricted waste at that disposal unit, or to that specific restricted waste at any other disposal unit.

(10) [~~(7)~~] The cabinet shall give public notice in the Kentucky Administrative Register of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition shall be published in the Kentucky Administrative Register.

(11) [~~(8)~~] The term of a petition granted under this section shall be no longer than the term of the hazardous waste site or facility permit if the disposal unit is operating under a hazardous waste site or facility permit, or up to a maximum of ten (10) years from the date of approval provided under subsection (7) of this section if the unit is operating under interim status. In either case, the term of the granted petition shall expire upon the termination or denial of a hazardous waste site or facility permit, or upon the termination of interim status or when the volume limit of waste to be land disposed during the term of petition is reached.

(12) [~~(9)~~] Prior to the cabinet's decision, the applicant is required to comply with all restrictions on land disposal under 401 KAR Chapter 37 once the effective date for the waste has been reached.

(13) [~~(10)~~] The petition granted by the cabinet does not relieve the petitioner of his responsibilities in the management of hazardous waste under the hazardous waste management regulations.

(14) [~~(11)~~] Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 500 ppm are not eligible for an exemption under this section.

(15) [~~(12)~~] Any decisions of the cabinet relating to petitions to seek an exemption from a prohibition under 401 KAR 37:030 for the disposal of a restricted hazardous waste in a particular unit shall not supersede the authority of the Environmental Protection Agency under 40 CFR 268.6 (1989).

Section 7. Waste Analysis. (1) Except as specified in 401 KAR 37:030, Section 4, or 401 KAR 37:040, Section 6, the generator shall test his waste or an extract developed using the test method described in 401 KAR 37:100, or use knowledge of the waste to determine if the waste is restricted from land disposal under 401 KAR Chapter 37.

(a) If a generator determines that he is managing a restricted waste under 401 KAR Chapter 37 and the waste does not meet the applicable treatment standards set forth in 401 KAR 37:040 or exceeds [~~, or where the waste does not comply with~~] the applicable prohibition levels set forth in 401 KAR 37:030, Section 4 or KRS 224.46-520 with each shipment of waste the generator shall notify the treatment or storage facility in writing of the appropriate treatment standard set forth in 401 KAR 37:040 and any applicable prohibition levels set forth in 401 KAR 37:030, Section 4 or KRS 224.46-520. The notice shall include the following information:

1. EPA hazardous waste number;

2. The corresponding treatment standards and all applicable prohibitions set forth in 401 KAR 37:030, Section 4, or KRS 224.46-520;

3. The manifest number associated with the shipment of waste; and

4. Waste analysis data, where available.

(b) If a generator determines that he is managing a restricted waste under 401 KAR Chapter 37, and determines that the waste can be land disposed without further treatment, with each shipment of waste he shall submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets applicable treatment standards set forth in 401 KAR 37:040 and the applicable prohibition levels set forth in 401 KAR 37:030, Section 4, or KRS 224.46-520.

1. The notice shall include the following information:

a. EPA hazardous waste number;

b. The corresponding treatment standard and all applicable prohibition levels set forth in 401 KAR 37:030, Section 4, or KRS 224.46-520;

c. The manifest number associated with the shipment of waste;

d. Waste analysis data, where available.

2. The certification shall be signed by an authorized representative and shall state the following:

I certify under penalty of law that I have personally examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with treatment standards specified in 401 KAR 37:040 and all applicable prohibitions set forth in 401 KAR 37:030, Section 4, or KRS 224.46-520. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(c) If a generator's waste is subject to a case-by-case extension under Section 5 of this regulation, an exemption under Section 6 of this regulation, [~~an extension under Section 1(3)(c) of this regulation,~~] or a nationwide variance under 401 KAR 37:030, he shall with each shipment of waste submit a notice to the [~~forward a notice with the waste to the land disposal~~] facility receiving his waste, stating that the waste is not prohibited from land disposal. The notice shall include the following information: [~~exempt from the land disposal restrictions.~~]

1. EPA hazardous waste number;

2. The corresponding treatment standards and all applicable prohibitions set forth in 401 KAR 37:040, Section 4, or KRS 224.46-520;

3. The manifest number associated with the shipment of waste;

4. Waste analysis data, where available; and

5. The date the waste is subject to the prohibitions.

(d) If a generator determines that he is managing a waste that is subject to the prohibitions under 401 KAR 37:030, Section 5(6), and is not subject to the prohibitions set forth in 401 KAR 37:030, Section 4, the generator shall with each shipment of waste notify the treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in 401 KAR 37:030, Section 5(6). The notice shall include the following information:

1. EPA Hazardous Waste Number;

2. The applicable prohibitions set forth in 401 KAR 37:030, Section 5(6);

3. The manifest number associated with the shipment of waste; and

4. Waste analysis data, where available.

(e) [~~(d)~~] If the generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination shall be maintained on-site in the generator's files. If a generator determines whether the waste is restricted based on testing this waste or an extract developed using the test method described in 401 KAR 37:100, Section 1, all waste analysis data shall be retained on site in the generator's files.

(f) Generators shall retain on site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to this section for at least five (5) years from the date that the waste that is the subject of the documentation was last sent to on-site or off-site treatment, storage, or disposal. The five (5) year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the cabinet.

(2) Treatment facilities shall test their wastes according to the frequency specified in their waste analysis plans as required by 401 KAR 30:020, Section 4, or 401 KAR 35:020, Section 4. The testing shall be performed as provided in paragraphs (a), (b), and (c) of this subsection.

(a) [~~(2)~~] For wastes with treatment standards expressed as concentrations in the waste extract (Section 3 of 401 KAR 37:040), the owner or operator of the treatment facility shall test the treatment residues or an extract of such residues developed using the test method described in 401 KAR 37:100 to assure that the treatment residues or extract meet the applicable treatment standards.

(b) For wastes prohibited under 401 KAR 37:030, Section 4, or KRS 224.46-520 which are not subject to any treatment standards under 401 KAR 37:040, the owner or operator of the treatment facility shall test the treatment residues according to the generator testing requirements specified in 401 KAR 37:030, Section 4, to assure that the treatment residues comply with the applicable prohibitions.

(c) For waste with treatment standards expressed as concentrations in the waste (401 KAR 37:040, Section 6) the owner or operator of the treatment facility shall test the treatment residues (not an extract of the residues) to assure that the treatment residues meet the applicable treatment standards. [~~For both circumstances described above, such testing shall be performed according to the frequency specified in the facility's waste analysis plan as required by Section 4 of 401 KAR 34:020 or Section 4 of 401 KAR 35:020. Where the treatment residues do not comply with the applicable treatment standards or prohibitions, the treatment facility shall comply with the notice requirements applicable to generators in subsection (1)(a) of this section if the treatment residues shall be further managed at a different treatment facility.~~]

(d) [~~(a)~~] A notice shall be sent with each waste shipment to the land disposal facility which includes the following information:

1. EPA hazardous waste number;

2. The corresponding treatment standards and all applicable prohibitions set forth in 401 KAR 37:030, Section 4, or KRS 224.46-520;

3. The manifest number associated with the shipment of waste; and

4. Waste analysis data, where available.

(e) [~~(b)~~] The treatment facility shall submit a certification with each shipment of waste or treatment residue of a restricted waste to the land disposal facility stating that the waste or treatment residue has been treated in compliance with the applicable performance standards specified in 401 KAR 37:040 and applicable prohibitions set forth in 401 KAR 37:030, Section 4, or KRS 224.46-520.

1. For wastes with treatment standards expressed as concentrations in the waste extract or in the waste (Section 3 of 401 KAR 37:040), or for wastes prohibited under 401 KAR 37:030, Section 4, or KRS 224.46-520 which are not subject to any treatment standards under 401 KAR 37:040, the certification shall be signed by an authorized representative and shall state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the performance levels specified in 401 KAR 37:040 and all applicable prohibitions set forth in 401 KAR 37:030, Section 4, and KRS 224.46-520 without dilution of the prohibited waste. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

2. For wastes with treatment standards expressed as technologies (Section 4 of 401 KAR 37:040), the certification shall be signed by an authorized representative and shall state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of Section 4 of 401 KAR 37:040. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(f) If the waste or treatment residue shall be further managed at a different treatment or storage facility, the treatment, storage, or disposal facility sending the waste or treatment residue off site shall comply with the notice and certification requirements applicable to generators under this section.

(g) For wastes that are not subject to the prohibitions under 401 KAR 37:030, Section 5(6), and are not subject to the prohibitions set forth in 401 KAR 37:040, Section 4, with each shipment of the waste the owner or operator shall notify any subsequent treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in 401 KAR 37:030, Section 5(6). The notice shall include the following information:

1. EPA hazardous waste number;

2. The applicable prohibitions set forth in 401 KAR 37:030, Section 5(6);

3. The manifest number associated with the shipment of waste; and

4. Waste analysis data, where available.

(h) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of 401 KAR 36:030, Section 1, the owner or operator of a treatment facility (the recycler) is not required to notify the receiving facility, pursuant to paragraph (d) of this section. With each shipment of the wastes, the owner or operator of the recycling facility shall submit a certification described in paragraph (e) of this section, and a notice which includes the information listed in paragraph (d) of this section (except the manifest number) to the cabinet. The recycling facility also shall keep records of the name and location of each entity receiving the hazardous waste-derived product.

(3) The owner or operator of any land disposal facility disposing

of any waste subject to restrictions under 401 KAR Chapter 37 shall:

(a) Have copies of the notice and certifications specified in subsection (1) or (2) of this section, and the certification specified in 401 KAR 37:010, Section 8, if applicable.

(b) Test the waste, or an extract of the waste or treatment residue developed using the test method described in 401 KAR 37:100, Section 1, or using any methods required by generators under 401 KAR 37:030, Section 4, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in 401 KAR 38:040 and all applicable prohibitions set forth in 401 KAR 37:030, Section 4, or in KRS 224.46-520. The testing shall be performed according to the frequency specified in the facility's waste analysis plan as required by 401 KAR 34:020, Section 4, or 401 KAR 37:020, Section 4.

(c) Where the owner or operator is disposing of any waste that is subject to the prohibitions under 401 KAR 37:030, Section 5(6), but not subject to the prohibitions set forth in 401 KAR 37:040, Section 4, he shall ensure that the waste is the subject of a certification according to the requirements of Section 8 of this regulation prior to disposal in a landfill or surface impoundment unit, and that the disposal is in accordance with the requirements of Section 5(8)(b) of this regulation. The same requirement applies to any waste that is subject to the prohibitions under 401 KAR 37:030, Section 5(6), and also is subject to the statutory prohibitions in KRS 224.46-520 or the codified prohibitions in 401 KAR 37:040, Section 4. [~~have records of the notice and certification specified in either subsections (1) or (2) of this section. The owner or operator of the land disposal facility shall test the waste or an extract of the waste or treatment residue developed using the test method described in 401 KAR 37:100 or using any methods required by generators under 401 KAR 37:030, Section 4, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in 401 KAR 37:040 and all applicable prohibitions set forth in 401 KAR 37:030, Section 4, or KRS 224.46-520. Such testing shall be performed according to the frequency specified in the facility's waste analysis plan as required by Section 4 of 401 KAR 34:020 or Section 4 of 401 KAR 35:020.~~]

Section 8. Landfill and Surface Impoundment Disposal Restrictions. (1) Prior to May 8, 1990, wastes which are otherwise prohibited from land disposal under 401 KAR 37:030, Section 5(6) may be disposed in a landfill or surface impoundment which is in compliance with the requirements of Section 5(8)(b) of this regulation provided that the requirements of this section are met.

(a) Prior to the disposal, the generator has made a good faith effort to locate and contract with treatment and recovery facilities practically available which provide the greatest environmental benefit.

(b) The generator submits to the cabinet a demonstration and certification that the requirements of paragraph (a) of this subsection have been met. The demonstration shall include a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates.

1. If a generator determines that there is no practically available treatment for his waste, he shall indicate so in his demonstration, and provide a written discussion of why he was not able to obtain treatment or recovery for that waste. The generator shall also provide the following certification:

I certify under penalty of law that the requirements of 401 KAR 37:010, Section 8(1)(a), have been met and that disposal in a landfill or surface impoundment is the only practical alternative to treatment currently available. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

2. If a generator determines that there are practically available treatments for his waste, he shall contract to use the practically available technology that yields the greatest environmental benefit, as indicated in his demonstration. He shall provide the following certification:

I certify under penalty of law that the requirements of 401 KAR 37:010, Section 8(1)(a), have been met and that I have contracted to treat my waste (or shall otherwise provide treatment) by the practically available technology which yields the greatest environmental benefit, as indicated in my demonstration. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(c) Where the generator has determined that there is no practically available treatment for his waste prior to disposal, with the initial shipment of waste, the generator shall submit a copy of the demonstration and the certification required in paragraph (b)1 of this subsection to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. The generator shall retain on site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five (5) years from the date that the waste that is subject to the documentation was last sent to on-site or off-site disposal. The five (5) year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the cabinet.

(d) Where the generator has determined that there is practically available treatment for his waste prior to disposal, with the initial shipment of waste, the generator shall submit a copy of the demonstration and certification required in paragraph (b)2 of this section to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. The generator shall retain on site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five (5) years from the date that the waste that is the subject of the documentation was last sent to on-site or off-site disposal. The five (5) year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the cabinet.

(2) After receiving the demonstration and certification, the cabinet may request any additional information deemed necessary to evaluate the certification.

(a) A generator who has submitted a certification under this section shall immediately notify the cabinet when he has knowledge of any change in the conditions which formed the basis of his certification.

(b) If, after review of the certification, the cabinet determines that practically available treatment exists where the generator has certified otherwise, or that there exists some other method of practically available treatment yielding greater environmental benefit than that which the generator has certified, the cabinet may invalidate the certification.

(c) If the cabinet invalidates a certification, the generator shall immediately cease further shipments of the waste, and inform all facilities that received the waste of the invalidation and keep records of the communication on site in his files.

(3) A treatment, recovery, or storage facility receiving wastes subject to a valid certification shall keep copies of the generator's demonstration (if applicable) and certification in his operating record.

(a) The owner or operator of a treatment or recovery facility shall certify that he has treated the waste in accordance with the generator's demonstration. The following certification is required:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the treatment

as specified in the generator's demonstration. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) The owner or operator of a treatment, recovery, or storage facility shall send a copy of the generator's demonstration (if applicable) and certification under subsections (1)(b) and (3)(a) of this section (if applicable) to the facility receiving the waste or treatment residues.

(4) The owner or operator of a disposal facility shall ensure that those wastes prohibited under 401 KAR 37:030, Section 5(6), are subject to a certification according to the requirements of this section prior to disposal in a landfill or surface impoundment, and that the units receiving the wastes shall meet the minimum technological requirements of Section 5(8)(b) of this regulation.

(5) Once the certification is received by the cabinet, and provided that the wastes have been treated by the treatment (if any), determined by the generator to yield the greatest environmental benefit practically available, the wastes or treatment residuals may be disposed in a landfill or surface impoundment unit meeting the requirements of Section 5(8)(b) of this regulation, unless otherwise prohibited by the cabinet.

Section 9. Identification of Wastes to be Evaluated by EPA. (1) 40 CFR 268.10 through 268.12 (1991) are hereby incorporated by reference.

(2) The federal regulations incorporated by reference in subsection (1) of this section are available for copying and inspection at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601. The business hours of the division are from 8 a.m. to 4:30 p.m. Monday through Friday.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment affects owners and operators of hazardous waste storage, treatment, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The U.S. EPA established identical standards on August 17, 1988. The affected entities have been required to follow those federal guidelines since that date, and shall experience no further direct or indirect costs or savings as a result of this proposed amendment.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There shall be an increase in recordkeeping, relating to documentation of procedures and analyses required by the standards in the proposed amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The promulgating administrative body shall experience direct costs in the first year. These costs will be related to normal administrative adjustments, new procedures development, etc.

2. Continuing costs or savings: First year costs shall continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements shall increase accordingly.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment outlines land disposal restrictions for those first third wastes treatment standards that are not established.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 268 as published in the Federal Register on August 17, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to specific types of hazardous waste facilities.

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 August 17, 1988, at 40 CFR 268.

2. State compliance standards. The proposed amendment outlines land disposal restrictions for those first third wastes treatment standards that are not established.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate outlines land disposal restrictions for those first third wastes treatment standards that are not established.

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 37:030. Prohibitions on land disposal.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.46-520 requires that the cabinet may prohibit the land disposal of any hazardous wastes. KRS 224.46-520 requires that the cabinet allow land disposal of hazardous waste when the disposal methods have been determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous. This chapter establishes land disposal restrictions and treatment standards for hazardous wastes. This regulation establishes waste specific prohibitions on land disposal.

Section 1. Applicability. The requirements in this regulation apply to owners and operators of hazardous waste treatment, storage, and disposal facilities and hazardous waste generators which dispose of hazardous wastes on site or off site except as provided otherwise in Section 2(3) or 3(2) of this regulation.

Section 2. Waste Specific Prohibitions - Solvent Wastes. (1) Effective November 8, 1986, the spent solvent wastes specified in Section 2 of 401 KAR 31:040 as EPA Hazardous Waste Numbers F001, F002, F003, F004, and F005, are prohibited from land disposal (except in an injection well) unless one (1) or more of the following conditions apply:

(a) The generator of the solvent waste is a registered small quantity generator of 100-1000 kilograms of hazardous waste per month; or

(b) The solvent waste is generated from any response action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or any corrective action taken under KRS Chapter 224 except where the waste is contaminated soil or debris [~~not subject to the provisions of 401 KAR Chapter 37 until November 8, 1988~~]; or

(c) The initial generator's solvent waste is a solvent-water mixture, solvent-containing sludge or solid, or solvent- contaminated soil (non-CERCLA or KRS Chapter 224 corrective action) containing less than one (1) percent total F001-F005 solvent constituents listed in Table 1 of Section 3 of 401 KAR 37:040; or

(d) The solvent waste is a residue from treating a waste described in paragraphs (a), (b), or (c) of this subsection; or the solvent waste is a residue from treating a waste not described in paragraphs (a), (b), or (c) of this subsection provided such residue belongs to a different treatability group than the waste as initially generated and wastes belong to such a treatability group are described in paragraph (c) of this subsection.

(2) Effective November 8, 1988, the F001-F005 solvent wastes listed in subsection (1)(a), (b), and (c) of this section are prohibited from land disposal. [~~Between November 8, 1986, and November 8, 1988, wastes included in subsection (1)(a), (b), and (c) of this section may be disposed of in a landfill or surface impoundment only if the facility is in compliance with the requirements specified in Section 5(8)(b) of 401 KAR 37:010.~~]

(3) Effective November 8, 1990, the F001-F005 solvent wastes which are contaminated soil and debris resulting from a response action taken under Section 104 or 106 of CERCLA or a corrective action required under KRS Chapter 224 and the residues from treating these wastes are prohibited from land disposal. Between November 8, 1988, and November 8, 1990, these wastes may be disposed in a landfill or surface impoundment only if the unit is inc ompliance with the requirements specified in 401 KAR 37:010, Section 5(8)(b).

(4) [~~(3)~~] The requirements of subsections (1), (2), and (3) [~~and (2)~~] of this section do not apply if:

(a) The wastes meet the standards of 401 KAR 37:040; or

(b) Persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of 401 KAR 37:010, with respect to those wastes and units covered by the petition; or

(c) Persons have been granted an extension to the effective date of a prohibition pursuant to Section 5 of 401 KAR 37:010, with respect to those wastes covered by the extension.

Section 3. Waste Specific Prohibitions - Dioxin-Containing Wastes. (1) Effective November 8, 1988, the dioxin-containing wastes specified in Section 2 of 401 KAR 31:040 as EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, and F028, are prohibited from land disposal unless the F020-F023 and F026-F028 dioxin-containing waste is contaminated soil and debris resulting from a response action taken under Section 104 and 106 of CERCLA or a corrective action taken under KRS Chapter 224.

(2) Effective November 8, 1990, the F020-F023 and F026-F028 dioxin-containing wastes listed in subsection (1)(a) of this section are prohibited from land disposal.

(3) Between November 8, 1988, and November 8, 1990, wastes included in subsection (1)(a) of this section may be disposed in a landfill or surface impoundment only if the unit is in compliance with the requirements specified in 401 KAR 37:010, Section 5(8)(b) and all other applicable requirements of 401 KAR Chapters 34 and 35.

(4) The requirements of subsections (2) and (3) of this section do not apply if:

(a) The wastes meet the standards of 401 KAR 37:040; or

(b) Persons have been granted an exemption from a prohibition pursuant to a petition under 401 KAR 37:010, Section 6 with respect to those wastes and units covered by the petition; or

(c) Persons have been granted an extension to the effective date of a prohibition pursuant to 401 KAR 37:010, Section 5 with respect to those wastes covered by the extension.

[~~(2) The requirements of subsection (1) of this section do not apply if:~~

~~(a) The wastes meet the standards of 401 KAR 37:040; or~~

~~(b) Persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of 401 KAR 37:010, with respect to those wastes and units covered by the petition; or~~

~~(c) Persons have been granted an extension from the effective date of a prohibition pursuant to Section 5 of 401 KAR 37:010, with respect to those wastes covered by the extension.~~

~~(3) Between November 8, 1986, and November 8, 1988, wastes included in subsection (1) of this section may be disposed of in a landfill or surface impoundment only if the facility is in compliance with the requirements specified in Section 5(8)(b) of 401 KAR 37:010 and all other applicable requirements of 401 KAR Chapters 34 and 35.~~]

Section 4. Waste Specific Prohibitions - California List Wastes. (1) Effective July 8, 1987, the following hazardous wastes are prohibited from land disposal (except in injection wells):

(a) Liquid hazardous wastes having a pH less than or equal to two (2);

(b) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to fifty (50) ppm;

(c) Liquid hazardous wastes that are primarily water and contain halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/l and less than 10,000 mg/l HOCs.

(2) The requirements of subsections (1) and (5) of this section do not apply until:

(a) July 8, 1989, [~~November 8, 1988,~~] where the wastes are

contaminated soil or debris resulting from a response action taken under section 104 or 106 of CERCLA [~~the Comprehensive Environmental Response, Compensation and Liability Act as amended through November 1989~~] or a corrective action required under RCRA Subtitle C [~~as amended through December 1988~~]. Between July 8, 1987, and July 8, 1989, the wastes may be disposed of in a landfill or surface impoundment only if the disposal is in compliance with the requirements specified in 401 KAR 37:010, Section 5(8)(b).

(b) November 8, 1990, where the wastes are contaminated soil or debris resulting from a response action taken under Section 104 or 106 of CERCLA or a corrective action taken under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Between November 8, 1988, and November 8, 1990, the wastes may be disposed in a landfill or surface impoundment only if the unit is in compliance with the requirements specified in 401 KAR 37:010, Section 5(8)(b).

(3) Effective November 8, 1988, [~~July 8, 1988,~~] the following hazardous wastes are prohibited from land disposal (subject to any regulations that may be promulgated with respect to disposal in injection wells):

(a) Liquid hazardous wastes that contain HOCs in total concentration greater than or equal to 1,000 mg/l and are not prohibited under subsection (1)(c) of this section; and

(b) Nonliquid hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg and are not wastes described in subsection (2) of this section.

(4) Between July 8, 1987 and November 8, 1988, [~~July 8, 1988,~~] the wastes included [~~described~~] in subsection (3)(a) and (b) of this section may be disposed [~~of~~] in a landfill or surface impoundment only if the disposal [~~facility~~] is in compliance with the requirements specified in Section 5(8)(b) of 401 KAR 37:010.

(5) The requirements of subsections (1), (2), and (3) of this section do not apply if:

(a) Persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of 401 KAR 37:010, with respect to those wastes and units covered by the petition (except for liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 500 ppm which are not eligible for such exemptions); or

(b) Persons have been granted an extension to the effective date of a prohibition pursuant to Section 5 of 401 KAR 37:010, with respect to those wastes covered by the extension; or

(c) The wastes meet the applicable standards specified in 401 KAR 37:040 or, where treatment standards are not specified, the wastes are in compliance with the applicable prohibitions set forth in this section or KRS 224.46-520.

(6) The prohibitions and effective dates specified in subsections (1)(c), (2), and (3) of this section do not apply where the waste is subject to 401 KAR 37:030 prohibition and effective date for a specified HOC (such as a hazardous waste chlorinated solvent, for example Section 2(1) of this regulation).

(7)(a) To determine whether or not a waste is a liquid under subsections (1) and (3) of this section and under KRS 224.46-520 the following test shall be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods, EPA Publication No. SW-846.

(b) The paint filter liquids test, Method 9095 in the EPA publication SW 846, is being incorporated by reference into this section. The test method became effective in April of 1984 and is available from the National Technical Information Section, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4600. This material is available for public inspection and copying during business hours of 8 a.m. to 4:30 p.m. at the Division of Waste Management, Frankfort Office Park, 14 [~~18~~] Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

(8) Except as otherwise provided in this paragraph, the waste analysis and recordkeeping requirements of Section 7 of 401 KAR 37:010 are applicable to wastes prohibited under this chapter or KRS 224.46-520:

(a) The initial generator of a liquid hazardous waste shall test his waste (not an extract or filtrate) in accordance with the procedures specified in Section 3(1)(a) of 401 KAR 31:030, or use knowledge of the waste, to determine if the waste has a pH less than or equal to two (2). If the liquid waste has a pH less than or equal to two (2), it is restricted from land disposal and all requirements of 401 KAR Chapter 37 are applicable, except as otherwise specified in this section.

(b) The initial generator of either a liquid hazardous waste containing polychlorinated biphenyls (PCBs) or a liquid or nonliquid hazardous waste containing halogenated organic compounds (HOCs) shall test his waste (not an extract or filtrate), or use knowledge of the waste, to determine whether the concentration levels in the waste equal or exceed the prohibition levels specified in this section. If the concentration of PCBs or HOCs in the waste is greater than or equal to the prohibition levels specified in this section, the waste is restricted from land disposal and all requirements of 401 KAR Chapter 37 are applicable, except as otherwise specified in this section.

Section 5. Waste Specific Prohibitions - First Third Wastes. (1) Effective August 8, 1988, the wastes specified in 401 KAR 31:040, Section 3 as EPA Hazardous Waste Nos. F006 (nonwastewater), K001, K004 wastes specified in Section 3 of 401 KAR 37:040, K008 wastes specified in Section 3 of 401 KAR 37:040, K016, K018, K019, K020, K021 wastes specified in Section 3 of 401 KAR 37:040, K022 (nonwastewater), K024, K025 nonwastewaters specified in Section 3 of 401 KAR 37:040, K030, K036 (nonwastewater), K037, K044, K045, nonexplosive K046 (nonwastewater), K047, K060 (nonwastewater), K061 (nonwastewaters containing less than fifteen (15) percent zinc), K062, non $CaSO_4$, K069 (nonwastewaters), K086 (solvent washes), K087, K099, K100 nonwastewaters specified in Section 3 of 401 KAR 37:040, K101 (wastewater), K101 (non-wastewater, low arsenic subcategory - less than one (1) percent total arsenic), K102 (non-wastewater, low arsenic subcategory - less than one (1) percent total arsenic), K103, and K104 are prohibited from land disposal (except in an injection well). Effective August 8, 1988, and continuing until August 7, 1990, K061 wastes containing fifteen (15) percent zinc or greater are prohibited from land disposal pursuant to the treatment standards specified in 401 KAR 37:040, Section 3 applicable to K061 wastes that contain less than fifteen (15) percent zinc.

(2) Effective August 8, 1990, the wastes specified in 401 KAR 31:040, Section 3 as EPA Hazardous Waste No. K071 is prohibited from land disposal.

(3) Effective August 8, 1990, the wastes specified in 401 KAR 37:010, Section 9(1) having a treatment standard in 401 KAR 37:040 based on incineration and which are contaminated soil and debris are prohibited from land disposal.

(4) Between November 8, 1988, and August 8, 1990, wastes included in subsections (2) and (3) of this section may be disposed of in a landfill or surface impoundment only if the unit is in compliance with the requirements specified in 401 KAR 37:010, Section 5(8)(b).

(5) The requirements of subsections (1), (2), (3), and (4) of this section do not apply if:

(a) The wastes meet the applicable standards specified in 401 KAR 37:040; or

(b) Persons have been granted an exemption from a prohibition pursuant to a petition under 401 KAR 37:010, Section 6, with respect to those wastes and units covered by the petition; or

(c) Persons have been granted an extension to the effective date of a prohibition pursuant to 401 KAR 37:010, Section 5, with respect to those wastes covered by the extension.

(6) Between August 8, 1988, and May 8, 1990, the wastes specified in 401 KAR 37:010, Section 9(1) for which treatment standards under 401 KAR 37:040 are not applicable, including those wastes which are subject to the statutory prohibitions of KRS 224.46-

520 or prohibitions under 401 KAR 37:030, Section 4, but not including wastes subject to a treatment standard under 401 KAR 37:040, Section 4, are prohibited from disposal in a landfill or surface impoundment unless the wastes are the subject of a valid demonstration and certification pursuant to 401 KAR 37:010, Section 8.

(7) To determine whether a hazardous waste listed in 401 KAR 37:010, Section 9(1) exceeds the applicable treatment standards specified in 401 KAR 37:040, Sections 3 and 4, the initial generator shall test a representative sample of the waste extract or the entire waste depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste. If the waste contains constituents in excess of the applicable sections of 401 KAR 37:040 levels, the waste is prohibited from land disposal and all requirements of 401 KAR Chapter 37 are applicable, except as otherwise specified.

Section 6. Waste Specific Prohibitions - Second Third Wastes. (1) Effective June 8, 1989, the wastes specified in 401 KAR 31:040, Section 2 as EPA Hazardous Waste Nos. F010, F024, the wastes specified in 401 KAR 31:040, Section 3 as EPA Hazardous Waste Nos. K005, K007, K009 (nonwastewaters), K010, K023, K027, K028, K029 (nonwastewaters), K036 (wastewaters), K038, K039, K040, K043, K093, K094, K095 (nonwastewaters), K096 (nonwastewaters), K113, K114, K115, K116, and the wastes specified in 401 KAR 31:040, Section 4 as EPA Hazardous Waste Nos. P013, P021, P029, P030, P039, P040, P041, P043, P044, P062, P063, P071, P074, P085, P089, P094, P097, P098, P099, P104, P106, P109, P111, P121, U028, U058, U069, U087, U088, U102, U107, U221, U223, and U235 are prohibited from land disposal.

(2) Effective June 8, 1989, the wastes specified in Section 3 of 401 KAR 31:040 as EPA Hazardous Waste Nos. K009 (wastewaters), K011 (nonwastewaters), K013 (nonwastewaters), and K014 (nonwastewaters) are prohibited from land disposal except when they are underground injected pursuant to 40 CFR 148.14(f) and 148.15(d).

(3) Effective July 8, 1989, the wastes specified in 401 KAR 31:040, Section 2 as EPA Hazardous Waste Nos. F006-cyanide (nonwastewater), F008, F009, F011 (wastewaters) and F012 (wastewaters) are prohibited from land disposal.

(a) Effective July 8, 1989, the waste specified in 401 KAR 31:040, Section 2 as EPA Hazardous Waste No. F007 is prohibited from land disposal except when it is underground injected pursuant to 40 CFR 148.14(f).

(b) Effective July 8, 1989, and continuing until December 8, 1989, F011 (nonwastewaters) and F012 (nonwastewaters) are prohibited from land disposal pursuant to the treatment standards specified in 401 KAR 37:040, Sections 3 and 6 applicable to F007, F008, and F009 (nonwastewaters). Effective December 8, 1989, F011 (nonwastewaters) and F012 (nonwastewaters) are prohibited from land disposal pursuant to the treatment standards specified in 401 KAR 37:040, Sections 3 and 6 applicable to F011 (nonwastewaters), and F012 (nonwastewaters).

(4) Effective June 8, 1991, the wastes specified in this section having a treatment standard in 401 KAR 37:040 based on incineration, and which are contaminated soil and debris are prohibited from land disposal.

(5) Between June 8, 1989, and June 8, 1991 (for wastes F007, F008, F009, F011, and F012 between June 8, 1989, and July 8, 1989) wastes included in subsections (3) and (4) of this section may be disposed in a landfill or surface impoundment, regardless of whether the unit is a new, replacement, or lateral expansion unit, only if the unit is in compliance with the technical requirements specified in 401 KAR 37:010, Section 5(8)(b).

(6) The requirements of subsections (1), (2), (3), and (4) of this section do not apply if:

(a) The wastes meet the applicable standards specified in 401 KAR 37:040; or

(b) Persons have been granted an exemption from a prohibition pursuant to a petition under 401 KAR 37:010, Section 6, with respect to those wastes and units covered by the petition.

(7) The requirements of subsections (1), (2), and (3) of this section do not apply if persons have been granted an extension to the effective date of a prohibition pursuant to 401 KAR 37:010, Section 5 with respect to those wastes covered by the extension.

(8) Between June 8, 1989, and May 8, 1990, the wastes specified in 401 KAR 37:010, Section 9(2) for which treatment standards under 401 KAR 37:040 are not applicable, including California list wastes subject to the sanctuary prohibitions of section 3004(d) of RCRA or Section 4 of this regulation, are prohibited from disposal in a landfill or surface impoundment unless the wastes are the subject of a valid demonstration and certification pursuant to 401 KAR 37:010, Section 8.

(9) To determine whether a hazardous waste listed in 401 KAR 37:010, Section 9 exceeds the applicable treatment standards specified in 401 KAR 37:040, Sections 3 and 6, the initial generator shall test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable 401 KAR 37:040 levels, the waste is prohibited from land disposal and all requirements of 401 KAR Chapter 37 are applicable, except as otherwise specified.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment will affect hazardous waste generators, transporters, and owners and operators of hazardous waste treatment storage, and disposal facilities. There are approximately 2,200 generators, 150 transporters, and 90 treatment, storage, and disposal facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings during the first year since those affected have been obligated to follow U.S. Environmental Protection Agency standards, since they were promulgated on August 17, 1988.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The promulgating administrative body shall experi-

ence minimal costs in enforcing the proposed land disposal restrictions.

2. Continuing costs or savings: The minimal increased costs shall continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There should be no additional reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be NO effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed amendment provides changes in prohibitions on land disposal dealing with solvents wastes, dioxin-containing wastes, California list wastes, and first third wastes.

ALTERNATIVES: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 268.30, 268.31, 268.32, and 268.33 as published in the Federal Register on August 17, 1988 and June 23, 1989.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to specific types of hazardous waste facilities.

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 August 17, 1988, and June 23, 1989, at 40 CFR 268.30, 268.31, 268.32 and 268.33.

2. State compliance standards. The proposed amendment provides changes in prohibitions on land disposal dealing with solvent wastes, dioxin-containing wastes, California list wastes and "first third wastes".

3. Minimum or uniform standards contained in the federal mandate. The federal mandate provides changes in prohibitions on land disposal dealing with solvent wastes, dioxin-containing wastes, California list wastes and "first third wastes".

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 37:040. Treatment standards.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99, 40 CFR 268.43

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520, 224.46-530, 40 CFR 268.43

NECESSITY AND FUNCTION: KRS 224.46-520 provides that the cabinet may prohibit the land disposal of any hazardous wastes. KRS 224.46-520 requires that the cabinet allow land disposal of hazardous waste when the disposal methods have been determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous. This chapter establishes land disposal restrictions and treatment standards for hazardous wastes. This regulation establishes treatment standards expressed either as concentrations in waste extract or as specified technologies. This regulation also establishes the procedure for obtaining a variance from the treatment standard.

Section 1. Applicability. The requirements in this regulation apply to hazardous waste generators and hazardous waste treatment sites or facilities.

Section 2. Applicability of Treatment Standards. (1) A restricted waste identified in Section 3 of this regulation may be land disposed [~~without further treatment~~] only if an extract of the waste or of the treatment residue [~~residual~~] of the waste developed using the test method of Section 1 of 401 KAR 37:100 does not exceed the value shown in Table CCWE (Constituent Concentrations in Waste Extract) referenced in Section 3 [~~1~~] of this regulation for any hazardous constituent listed in Table 1 (Constituent Concentrations in Waste Extract) for that waste.

(2) A restricted waste for which a treatment technology is specified under Section 4(1) of this regulation may be land disposed after it is treated using that specified technology or an equivalent treatment method approved by the cabinet under the procedures set forth in Section 4(2) of this regulation.

(3) A restricted waste identified in Section 6 of this regulation may be land disposed only if the constituent concentrations in the waste or treatment residue of the waste do not exceed the value shown in Table CCW referenced in Section 6 of this regulation for any hazardous constituent listed in Table CCW for that waste.

Section 3. Treatment Standards Expressed as Concentrations in Waste Extract. (1) Table CCWE [~~1~~] (Constituent Concentrations in Waste Extract) identifies the restricted wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the extract of a waste or waste treatment residual developed using the test method in Section 1 of 401 KAR 37:100 for the allowable land disposal of such waste. Section 2 of 401 KAR 37:100 provides cabinet guidance on treatment methods that have been shown to achieve the Table CCWE [~~1 (Constituent Concentrations in Waste Extract)~~] levels for the respective wastes. Section 2 of 401 KAR 37:100 is not a regulatory requirement but is provided to assist generators and owners or [~~/~~]operators in their selection of appropriate treatment methods.

Table CCWE - Constituent Concentrations in Waste Extract of 40 CFR 268.41(a), is hereby incorporated by reference. This table is available for copying and inspection at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601. The business hours of the division are from 8 a.m. to 4:30 p.m. Monday through Friday.

[TABLE 1
Constituent Concentrations in Waste Extract

F001-F005 spent solvents	Concentration (in mg/l) Wastewaters containing spent solvents	All other spent solvent wastes
Acetone	0.05	0.59
n-Butyl alcohol	5.0	5.0
Carbon disulfide	1.05	4.81
Carbon tetrachloride	.05	.96
Chlorobenzene	.15	.05
Cresols (and cresylic acid)	2.82	.75
Cyclohexanone	.125	.75
1,2-dichlorobenzene	.65	.125
Ethyl acetate	.05	.75
Ethylbenzene	.05	.053
Ethyl ether	.05	.75
Isobutanol	5.0	5.0
Methanol	.25	.75
Methylene chloride	.20	.96
Methylene chloride (from the pharmaceutical industry)	12.7	.96
Methyl ethyl ketone	0.05	0.75
Methyl isobutyl ketone	0.05	0.33
Nitrobenzene	0.66	0.125
Pyridine	1.12	0.33
Tetrachloroethylene	0.079	0.05
Toluene	1.12	0.33
1,1,1-Trichloroethane	1.05	0.41
1,1,2-Trichloro-1,2,2-Trifluoro-ethane	1.05	0.96
Trichloroethylene	0.062	0.091
Trichlorofluoromethane	0.05	0.96
Xylene	0.05	0.15

F020-F023 & F026-F028 dioxin-containing wastes	Concentration
HxCDD-All Hexachlorodibenzo-p-dioxins	< 1 ppb
HxCDF-All Hexachlorodibenzofurans	< 1 ppb
PeCDD-All Pentachlorodibenzo-p-dioxins	< 1 ppb
PeCDF-All Pentachlorodibenzofurans	< 1 ppb
TCDD-All Tetrachlorodibenzo-p-dioxins	< 1 ppb
TCDF-All Tetrachlorodibenzofurans	< 1 ppb
2,4,5-Trichlorophenol	< 0.05 ppm
2,4,6-Trichlorophenol	< 0.05 ppm
2,3,4,6-Tetrachlorophenol	< 0.10 ppm
Pentachlorophenol	< 0.01 ppm]

(2) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue shall meet the lowest treatment standard for the constituent of concern.

Section 4. Treatment Standards Expressed as Specific Technologies. (1) The following wastes shall be treated using the identified technology or technologies, or an equivalent method approved by the cabinet.

(a) Liquid hazardous waste containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to fifty (50) ppm but less than 500 ppm shall be incinerated in accordance with the technical requirements of 40 CFR 761.70 (1989) or burned in high efficiency boilers in accordance with the technical requirements of the federal regulations at 40 CFR 761.60 (1989). Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 500 ppm shall be incinerated in accordance with the technical requirements of 40 CFR 761.70 (1989). Thermal treatment under this section shall also be in compliance with applicable regulations in Chapters 34, 35, and 36.

(b) Nonliquid hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg and liquid HOC-containing wastes that are prohibited under 401 KAR 37:030, Section 4(3)(a), shall be incinerated in accordance with the requirements of 401 KAR 34:240 or 401 KAR 35:240 or in boilers or industrial furnaces burning in accordance with applicable regulatory standards. These treatment standards do not apply where the waste is subject to a 401 KAR 37:030 treatment standard for a specific HOC (such as a hazardous waste chlorinated solvent for which a treatment standards is established under Section 3(1) of this regulation.

(c) The nonwastewater form of the following hazardous wastes listed in Section 9 of 401 KAR 37:010 shall be incinerated in accordance with the requirements of 401 KAR 34:240 or 401 KAR 35:240, or burned in boilers or industrial furnaces burning in accordance with applicable regulatory standards: K027, K039, K113, K114, K115, K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223.

(d) The wastewater form of the following hazardous wastes listed in 401 KAR 37:010 shall be treated by carbon absorption, or incineration, or pretreatment followed by carbon absorption: K027, K039, K113, K114, K115, K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223.

(2) Any person may submit an application to the cabinet demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achievable by methods specified in subsection (1) of this section. The applicant shall submit information demonstrating that his treatment method is in compliance with federal, state and local requirements and is protective of human health and the environment. On the basis of such information the cabinet may approve the use of the alternative treatment method if he finds that the alternative treatment method provides a measure of performance equivalent to that achieved by methods specified in subsection (1) of this section. Any approval shall be stated in writing and may contain such provisions and conditions as the cabinet deems appropriate. The person to whom such approval is issued shall comply with all limitations contained in such a determination. No [All] decision of the cabinet relating to applications demonstrating an alternative treatment method shall [not] supersede the authority of the Environmental Protection Agency under 40 CFR 268.42(b) (1989).

Section 5. Variance From a Treatment Standard. (1) Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may petition the cabinet [secretary] for a variance from the treatment standard. The petitioner shall demonstrate that because the physical or chemical properties of the waste differs significantly from wastes analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods.

(2) Each petition shall be submitted in accordance with the procedures in Section 1 of 401 KAR 31:060.

(3) Each petition shall include the following statement signed by the petitioner or an authorized representative:

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

(4) After receiving a petition for variance from a treatment

standard, the cabinet may request any additional information or samples which he may require to evaluate the petition. Additional copies of the complete petition may be requested as needed to send to affected states and the Environmental Protection Agency.

(5) The cabinet shall make a tentative decision to grant or deny the petition for a variance. If the tentative decision is to deny, the cabinet shall notify the petitioner. The cabinet shall give public notice stating the intent to deny the petition for variance. The public notice shall allow at least forty-five (45) days for public comment. If the tentative decision is to grant the petition, the cabinet shall propose an amendment to the regulations and provide an opportunity for public comment pursuant to KRS Chapter 13A. The final decision on a variance from a treatment standard shall be promulgated in a Kentucky administrative regulation.

(6) A generator, treatment facility, or disposal facility that is managing a waste covered by a variance from the treatment standards shall comply with the waste analysis requirements for restricted wastes found under Section 7 of 401 KAR 37:010.

(7) During the petition review process, the applicant is required to comply with all restrictions on land disposal under this chapter once the effective date for the waste has been reached.

(8) All decisions of the cabinet relating to petitions for variances from a treatment standard shall not supersede the authority of the Environmental Protection Agency under 40 CFR 268.44 (1989).

Section 6. Treatment Standards Expressed as Waste Concentrations. 40 CFR 268.43 (1991) entitled "Treatment Standards Expressed as Waste Concentrations" contains "Table CCW - Constituent Concentrations in Waste", is hereby incorporated by reference. This federal regulation is available for copying and inspection at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601. The business hours of the division are from 8 a.m. to 4:30 p.m. Monday through Friday.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment affects owners and operators of hazardous waste storage, treatment, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendments may result in increased costs for some of the affected entities. However, those proposed revisions listed in the August 17, 1988, Federal Register will not result in additional costs, since the U.S. EPA required them to take effect on that date, and additional costs would have been incurred at that time.

2. Continuing costs or savings: First year costs shall continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The proposed amendments may require additional reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendments may result in direct costs during the first year, due to minor changes in the regulations.

2. Continuing costs or savings: First year costs shall continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The proposed amendments may require additional reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendments affects various treatment standards relating to certain first third wastes, second third wastes, halogenated organic carbons, spent solvent wastewaters and nonwastewater forms of certain wastes.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 268 as published in the Federal Register on August 17, 1988, May 2, 1989, and June 23, 1989.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, disposal, and storage facilities.

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 August 17, 1988, May 2, 1982, and June 23, 1989, at 40 CFR 268.

2. State compliance standards. The proposed amendments affects various treatment standards relating to certain first third wastes, second third wastes, halogenated organic carbons, spent solvent wastewaters and nonwastewater forms of certain wastes.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate affects various treatment standards relating to certain first third wastes, second third wastes, halogenated organic carbons, spent solvent wastewaters and nonwastewater forms of certain wastes.

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 37:050. Prohibitions on storage.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: KRS 224.46-520 requires that the cabinet may prohibit the land disposal of any hazardous wastes. KRS 224.46-520 requires that the cabinet allow land disposal of hazardous waste when the disposal methods have been determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous. This chapter establishes land disposal restrictions and treatment standards for hazardous wastes. This regulation establishes prohibitions on storage of restricted wastes.

Section 1. Applicability. The requirements in this regulation apply to owners and operators of hazardous waste treatment, storage, and disposal facilities as well as hazardous waste generators and transporters.

Section 2. Prohibitions on Storage of Restricted Waste. (1) Except as otherwise provided in this section, the storage of hazardous wastes restricted from land disposal under 401 KAR 37:030 or KRS 224.46-520 is prohibited, unless the following conditions are met:

(a) A generator stores such wastes in tanks or containers on site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in section 5 of 401 KAR 32:030. A generator who is in existence on the effective date of this regulation and who shall store hazardous wastes for longer than ninety (90) days due to the regulations under this chapter becomes an owner or [/] operator of a storage facility and shall obtain a hazardous waste site or facility permit. Such a facility may qualify for interim status upon compliance with the regulations governing interim status under Section 1 of 401 KAR 38:020.

(b) An owner or [/] operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks or containers solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:

1. Each container is clearly labeled with the words "Hazardous Waste," marked to identify its contents and the date each period of accumulation begins;

2. Each tank is clearly labeled with the words "Hazardous Waste," marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator shall comply with the operating record requirements specified in Section 4 of 401 KAR 34:050 or Section 4 of 401 KAR 35:050.

(c) A transporter stores manifested shipments of such wastes at a transfer facility for ten (10) days or less.

(2) An owner or [/] operator of a treatment, storage or disposal facility may store such wastes for up to one (1) year unless the cabinet can demonstrate that such storage was not solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(3) An owner or [/] operator of a treatment, storage or disposal facility may store such wastes beyond one (1) year, however, the owner or [/] operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(4) The prohibition in subsection (1) of this section does not apply to the wastes which are the subject of an approved petition under Section 6 of 401 KAR 37:010, [or] a nationwide variance contained in 401 KAR 37:030, [or] an approved case-by- case extension under Section 5 of 401 KAR 37:010, or a valid certification under 401 KAR 37:010, Section 8.

(5) The prohibition in subsection (1) of this section does not apply to hazardous wastes that meet the treatment standards specified in 401 KAR 37:040 or the treatment standards specified under the variance in Section 5 of 401 KAR 37:040 or, where treatment standards have not been specified, is in compliance with the applicable prohibitions specified in Section 4 of 401 KAR 37:030 or KRS 224.46-520.

(6) Liquid hazardous waste containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to fifty (50) ppm shall be stored at a facility that meets the requirements of 40 CFR 761.65(b) (1989) and shall be removed from storage and treated or disposed as required by this chapter within one (1) year of the date when such wastes are first placed into storage. The provisions of subsection (3) of this section do not apply to such PCB wastes prohibited under Section 4 of 401 KAR 37:030.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment affects owners and operators of hazardous waste treatment storage, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The U.S. EPA established identical standards on August 17, 1988. The affected entities have been required to follow those federal guidelines since that date, and shall experience no further direct or indirect costs or savings as a result of this proposed amendment.

2. Continuing costs or savings: There are no continuing costs or

savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no new reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment adds language to Section 2 of 401 KAR 37:050 which requires the owner or operator of a hazardous waste treatment, storage, and disposal facility to provide a valid certification of his disposal efforts for accumulated hazardous waste. This process may require minimal additional administrative costs.

2. Continuing costs or savings: First year costs shall continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The proposed amendment may require additional reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment relates to requirements concerning first third wastes. These requirements, found in the August 17, 1988, Federal Register, deal with land disposal restrictions for hazardous wastes. This change specifically addresses prohibitions on storage.

ALTERNATIVES: 1. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

2. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 268.50(d) as published in the Federal Register on August 17, 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to specific types of hazardous waste facilities.

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 August 17, 1988, at 40 CFR 268.50(d).

2. State compliance standards. The proposed amendment relates to amendments concerning first third wastes. These requirements, found in the August 17, 1988, Federal Register, deal with land disposal restrictions for hazardous wastes. This change specifically addresses prohibitions on storage.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate relates to amendments concerning first third wastes. These requirements, found in the August 17, 1988, Federal Register, deal with land disposal restrictions for hazardous wastes. This change specifically addresses prohibitions on storage.

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 standards in this administrative regulation are identical to those in the federal regulations. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 38:010. General provisions for permitting.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99, 36 CFR 800, 50 CFR 402, 16 USC 661 et seq., 1273 et seq., 470 et seq., 1531 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530, 16 USC 661 et seq., 1273 et seq., 470 et seq., 1531 et seq.

NECESSITY AND FUNCTION: KRS 224.40-305 and 224.46-520 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the Natural Resources and Environmental Protection Cabinet. [~~Coverage.~~] The permit regulations of this chapter establish provisions for the hazardous waste permit program under KRS Chapter 224. The regulations of this chapter cover the basic permitting requirements, including application requirements, standard permit conditions, and monitoring and reporting. The regulations of this chapter are part of a regulatory scheme implementing the hazardous waste provisions of KRS Chapter 224. Additional requirements are in different Chapters of the Kentucky Administrative Regulations. [~~The following table indicates where the regulations implementing the hazardous waste provisions of KRS Chapter 224 appear in the Kentucky Administrative Regulations:~~

~~Section of KRS Chapter 224~~	~~Coverage~~	~~Final Regulation~~
~~KRS Chapter 224~~	~~Overview, definitions and General provisions~~	~~401 KAR Chapter 30~~
~~KRS 224.46-510~~	~~Identification and listing of hazardous waste~~	~~401 KAR Chapter 31~~
~~KRS 224.46-510~~	~~Generators of hazardous waste~~	~~401 KAR Chapter 32~~
~~KRS 224.46-560~~	~~Transporters of hazardous waste~~	~~401 KAR Chapter 33~~
~~KRS 224.01, 224.10, 224.224.40, 224.43, 224.46, 224.50~~	~~Standards for hazardous waste sites or facilities~~	~~401 KAR Chapters 34 and 35~~
~~KRS Chapter 224~~	~~Permit requirements for hazardous waste sites or facilities~~	~~401 KAR Chapter 38~~
~~KRS 224.46-550~~	~~Fees for registration and permits~~	~~401 KAR Chapter 39~~
~~KRS Chapter 224~~	~~Enforcement and compliance monitoring~~	~~401 KAR Chapter 40~~

~~The hazardous waste permit program relies upon technical requirements which are contained in 401 KAR Chapters 34 and 35. The technical regulations are used by the cabinet to determine what conditions are applicable to each permit and to determine compliance~~

~~with KRS Chapter 224.~~

~~Overview of the hazardous waste site or facility permit program. Not later than ninety (90) days after the original promulgation or revision of regulations in 401 KAR Chapter 31 (identifying and listing hazardous wastes) all generators and transporters of hazardous waste and all owners or operators of hazardous waste treatment, storage, or disposal facilities shall file a notification of that activity under KRS Chapter 224. Six (6) months after the initial promulgation of the 401 KAR Chapter 31 regulations, treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited. A permit application consists of two (2) parts, Part A (see 401 KAR 401 KAR 38:080) and Part B (see 401 KAR 38:090 through 401 KAR 38:210). For "existing hazardous waste sites or facilities," the requirement to submit an application is satisfied by submitting only Part A of the permit application to the U.S. EPA and submitting either Part A of the application or its Kentucky equivalent (Registration of Intent to Apply for a Permit) to the cabinet until the cabinet sets the date for submitting Part B of the application. Timely submission of both notification under KRS Chapter 224 and the Part A application form or its equivalent qualifies owners and operators of existing hazardous waste sites or facilities for interim status. Facility owners and operators with interim status are treated as having been issued a permit until the cabinet makes a final determination on the permit application. Facility owners and operators with interim status shall comply with interim status standards set forth in 401 KAR Chapter 35. Facility owners and operators with interim status are not relieved from complying with other state requirements. For existing hazardous waste sites or facilities, the cabinet shall set a date, giving at least six (6) months notice, for submission of Part B of the application. There is no form for Part B of the application; rather, Part B shall be submitted in narrative form and contain the information set forth in 401 KAR 38:090, 401 KAR 38:100, and the applicable requirements in 401 KAR 38:150 through 401 KAR 38:210. Owners or operators of new hazardous waste sites or facilities shall submit Part A, or its equivalent, and Part B of the permit application at least 180 days before physical construction is expected to commence. This chapter establishes the permitting process for hazardous waste sites or facilities. This regulation establishes the general provisions for permitting.]~~

Section 1. Scope of the Permit Requirements. (1) The permit program has separate additional regulations that contain technical requirements. These separate regulations are used by permit issuing authorities to determine what requirements shall be placed in permits if they are issued. These separate regulations are located in 401 KAR 30:020 and Chapters 34 and 35.

(2) This section sets forth the specific requirements for the hazardous waste site or facility permitting program. KRS 224.46-520 requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in 401 KAR Chapter 31. The terms "treatment facility," "storage facility," and "disposal facility," are defined in 401 KAR 30:010. Owners and operators of hazardous waste management units shall have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to Section 6 of 401 KAR 35:070) after January 26, 1983, shall have postclosure permits, unless they demonstrate closure by removal as provided under paragraphs (e) and (f) of this subsection. If a postclosure permit is required, the permit shall address applicable 401 KAR Chapter 34 groundwater monitoring, unsaturated zone monitoring, corrective action and postclosure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a postclosure permit under this section.

(a) Specific inclusions. Owners or [~~and~~] operators of certain facilities require hazardous waste site or facility permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste site or facility permits are required for:

1. Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste (see Section 5 of 401 KAR 38:060). However, the owner or [~~and~~] operator with a UIC permit issued by the cabinet under an approved or promulgated UIC program, or by EPA, will be deemed to have a permit for the injection well itself if they comply with the requirements of Section 1(2) of 401 KAR 38:060 (permit by rule for injection wells).

2. Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit or KPDES permit when the cabinet program is approved by EPA. However, the owner or [~~and~~] operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a permit for that waste if they comply with the applicable requirements of Section 1(3) of 401 KAR 38:060 (permit by rule for POTW's).

3. Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment, or storage facilities associated with an ocean disposal operation. However, the owner or [~~and~~] operator will be deemed to have a permit for ocean disposal for the barge or vessel itself if they comply with the requirements of Section 1(1) of 401 KAR 38:060 (permit by rule for ocean disposal barges and vessels).

(b) Specific exclusions. The following persons are among those who are not required to obtain a hazardous waste site or facility permit:

1. Generators who accumulate hazardous waste on-site for less than the time periods provided in Section 5 or 6 of 401 KAR 32:030 or in accordance with the standards in Section 5(6) of 401 KAR 31:010.

2. Farmers who dispose of hazardous waste pesticides from their own use as provided in Section 10 of 401 KAR 32:050.

3. Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under this chapter by Section 4 of 401 KAR 31:010 except as provided in 401 KAR 38:060.

4. Owners or operators of totally enclosed treatment facilities as defined in 401 KAR 30:010.

5. Owners or [~~and~~] operators of elementary neutralization units or of waste water treatment units as defined in 401 KAR 30:010 except as provided in Section 1(4) and (5) of 401 KAR 38:060.

6. Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of Section 1 of 401 KAR 32:030, at a transfer facility for a period of ten (10) days or less.

7. Persons adding absorbent material to waste in a container (as defined in Section 1 of 401 KAR 30:010) and persons adding waste to absorbent material in a container provided that these actions occur at the time waste is first placed in the container; and Section 8(2) of 401 KAR 34:020, and Sections 2 and 3 of 401 KAR 34:180 are complied with.

(c) Further exclusions.

1. A person is not required to obtain a hazardous waste permit for treatment or containment activities taken during immediate response to any of the following situations:

a. A discharge of a hazardous waste;

b. An imminent and substantial threat of a discharge of hazardous waste;

c. A discharge of a material which, when discharged, becomes a hazardous waste.

2. Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

(d) Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been

issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(e) Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under 401 KAR Chapter 35 standards shall obtain a postclosure permit unless they can demonstrate to the cabinet that the closure met the standards for closure by removal or decontamination in Section 6 of 401 KAR 34:200, Section 8(5) of 401 KAR 34:220, or Section 8 of 401 KAR 34:210, respectively. The demonstration may be made in the following ways:

1. If the owner or operator has submitted a Part B application for a postclosure permit, the owner or operator may request a determination based on information contained in the application that 401 KAR Chapter 34 closure by removal standards were met. If the cabinet believes that 401 KAR Chapter 34 standards were met, it [~~he~~] shall notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in paragraph (f) of this subsection.

2. If the owner or operator has not submitted a Part B application for a postclosure permit, the owner or operator may petition the cabinet for a determination that a postclosure permit is not required because the closure met the applicable 401 KAR Chapter 34 closure standards.

a. The petition shall include data demonstrating that closure by removal of decontamination standards were met, or it shall demonstrate that the unit closed under state requirements that met or exceeded the applicable 401 KAR Chapter 34 closure-by-removal standard.

b. The cabinet shall approve or deny the petition according to the procedures outlined in paragraph (f) of this subsection.

(f) Procedures for closure equivalency determination.

1. If a facility owner or operator seeks an equivalency demonstration under paragraph (e) of this subsection, the cabinet shall provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within thirty (30) days from the date of the notice. The cabinet shall also, in response to a request or at its [~~his~~] own discretion, hold a public hearing whenever such a hearing might clarify one (1) or more issues concerning the equivalence of the 401 KAR Chapter 35 closure to a 401 KAR Chapter 34 closure. The cabinet shall give public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two (2) notices may be combined.)

2. The cabinet shall determine whether the 401 KAR Chapter 35 closure met 401 KAR Chapter 34 closure by removal or decontamination requirements within ninety (90) days of its receipt. If the cabinet finds that the closure did not meet the applicable 401 KAR Chapter 34 standards, it [~~he~~] shall provide the owner or operator with a written statement of the reasons why the closure failed to meet 401 KAR Chapter 34 standards. The owner or operator may submit additional information in support of an equivalency demonstration within thirty (30) days after receiving such written statement. The cabinet shall review any additional information submitted and make a final determination within sixty (60) days.

3. If the cabinet determines that the facility did not close in accordance with 401 KAR Chapter 34 closure by removal standards, the facility is subject to postclosure permitting requirements.

Section 2. Considerations of Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable federal laws. These laws may include:

(1) [~~The Wild and Scenic Rivers Act.~~] 16 USC 1273-1287 (The Wild and Scenic Rivers Act), Section 7 of the Act prohibits the assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(2) [~~The National Historic Preservation Act of 1966.~~] 16 USC 470 (The National Historic Preservation Act of 1966, as amended), Section 106 of the Act and implementing regulations (36 CFR Part 800) (1989) require the adoption measures before issuing a license, when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(3) [~~The Endangered Species Act.~~] 16 USC 1531 (The Endangered Species Act, as amended), Section 7 of the Act and implementing regulations (50 CFR Part 402) (1989) require that in consultation with the Secretary of the Interior or Commerce, any action authorized is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(4) [~~The Fish and Wildlife Coordination Act.~~] 16 USC 661 et seq., (The Fish and Wildlife Coordination Act of 1958, as amended) requires that, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion or other control or modification of any body of water, consult with the appropriate state agency exercising jurisdiction over wildlife resources to conserve those resources.

Section 3. Effect of a Permit. (1) Compliance with a hazardous waste permit during its term constitutes compliance with KRS Chapter 224 for purposes of enforcement except for those requirements not included in the permit which become effective by statute, or which are promulgated under 401 KAR Chapter 37 restricting the placement of hazardous wastes in or on the land. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in 401 KAR 38:040 and in 401 KAR Chapter 40.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local laws or regulations.

Section 4. Prohibition of Use of Unpermitted Facility. (1) Restrictions. No person shall deliver hazardous waste to a facility for treatment, storage, or disposal unless the owner or [~~/~~] operator has:

(a) Registered with the cabinet as an existing hazardous waste facility in operation on or before November 19, 1980; or

(b) Qualified for interim status in accordance with Section 1(1) of 401 KAR 38:020; or

(c) Been granted a hazardous waste site or facility permit by the cabinet.

(2) Permit required. No person shall engage in the storage, treatment, or disposal of hazardous waste without first obtaining construction or operation permits from the cabinet as specified in KRS 224.46-520(1).

(3) Issuance of a federal permit to own or operate a hazardous waste site or facility will not relieve the owner or operator of the responsibility to comply with the requirements of this chapter.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment affects owners and operators of hazardous waste storage, treatment, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment provides a clarification designating the authority to deny permits for the active life of the facility while a permit decision with respect to the postclosure period remains open. Those affected by this amendment should experience no direct or indirect costs or savings.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There shall be no reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The clarification provided by the proposed amendment shall not result in direct or indirect costs or savings for the promulgating administrative body.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment contains clarification designating the authority to deny permits for the active life of the facility when a permit decision with respect to the postclosure period remains open.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 270.1(c) as published in the Federal Register on March 7, 1989.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, storage, and disposal facilities.

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 March 7, 1989, at 40 CFR 270.1(c).

2. State compliance standards. The proposed amendment contains a clarification designating the authority to deny permits for the active life of the facility when a permit decision with respect to the postclosure period remains open.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate contains a clarification designating the authority to deny permits for the active life of the facility when a permit decision with respect to the postclosure period remains open.

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 38:020. Interim status provisions.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.40-305 and 224.46-520 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. [~~An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010.~~] This regulation establishes permitting standards for interim status facilities.

Section 1. Qualifying for Interim Status. (1) Any person who owns or operates an "existing hazardous waste management facility" or a hazardous waste site or facility in existence on the effective date of statutory or regulatory amendments under the Resource Conservation and Recovery Act (RCRA) that render the facility subject to the requirements to have a RCRA permit shall have interim status and shall be treated as having been issued a permit to the extent he or she has: [~~Any person who owns or operates: an "existing hazardous waste site or facility;" or a facility in existence on November 8, 1984 if the Hazardous and Solid Waste Amendments of 1984 render the facility subject to the requirements of 401 KAR Chapters 30, 31, 34, 35, 36, 38, and 39; or a facility in existence on the effective date of this regulation if amendments made to 401 KAR Chapters 34, 35, 36, 38 or 39 on that date render the facility subject to those regulations shall have interim status and shall be treated as having been issued a permit to the extent he or she has:~~]

(a) Complied with the requirements of KRS 224.46-520 pertaining to notification of an existing hazardous waste activity; and

(b) Complied with the requirements of 401 KAR 38:070 governing

submission of Part A applications.

(2) When the cabinet determines on examination or reexamination of a Part A application (or its equivalent, Registration of Intent to Apply for a Permit) that it fails to meet the standards of these regulations, it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to interim status. The owner or operator shall [~~will~~] then be subject to enforcement procedures for operating without a permit.

(3) Subsection (1) of this section shall not apply to any facility which has been previously denied a permit or if authority to operate the facility under 401 KAR Chapters 30 through 39 and KRS Chapter 224 has been previously terminated.

Section 2. Operation During Interim Status. (1) During the interim status period the facility, except as provided in Section 3 of the regulation, shall not:

(a) Treat, store or dispose of hazardous waste not specified in Part A of the permit application (or its equivalent, Registration of Intent to Apply for a Permit);

(b) Employ processes not specified in Part A of the permit application (or its equivalent, Registration of Intent to Apply for a Permit); or

(c) Exceed the design capacities specified in Part A of the permit application (or its equivalent, Registration of Intent to Apply for a Permit).

(2) During interim status, owners or operators shall comply with the interim status standards in 401 KAR Chapter 35.

Section 3. Changes During Interim Status. (1) Except as provided in subsection (2) of this section, the owner or operator of an interim status facility may make the following changes at the facility:

(a) Treatment, storage, or disposal of new hazardous wastes not previously identified in Part A of the permit application (and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification) if the owner or operator submits a revised Part A permit application prior to the treatment, storage, or disposal;

(b) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A permit application prior to a change (along with a justification explaining the need for the change) and the cabinet approves the changes because:

1. There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities; or

2. The change is necessary to comply with a federal, state, or local requirement.

(c) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A permit application prior to such change (along with a justification explaining the need for the change) and the cabinet approves the change because:

1. The change is necessary to prevent a threat to human health and the environment because of an emergency; or

2. The change is necessary to comply with a federal, state, or local requirement.

(d) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised Part A permit application no later than ninety (90) days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of 401 KAR 35:080 through 35:130 (Financial Requirements) until the new owner or operator has demonstrated to the cabinet that he is complying with the requirements of that chapter. The new owner or operator shall demonstrate compliance with 401 KAR 35:080 through 35:130 requirements within six (6) months of the date of the change in ownership or operational control of the facility. Upon demonstration to the cabinet by the new owner or operator of compliance with 401 KAR 35:080 through 35:130, the cabinet shall notify the old owner or operator in writing that he no longer needs to comply with 401 KAR 35:080 through 35:130 as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility.

(e) Changes made in accordance with an interim status corrective action order issued by EPA under section 3008(h) of RCRA or other federal authority, by the cabinet, or by a court in a judicial action brought by EPA or by the cabinet. Changes under this subsection are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(2) Except as specifically allowed under this subsection, changes listed under subsection (1) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty (50) percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(a) Changes made solely for the purposes of complying with the requirements of 401 KAR 35:190, Section 4, for tanks and ancillary equipment.

(b) If necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition or replacement of surface impoundments that satisfy the standards of Section 3004(o) of RCRA.

(c) Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the regulation establishing the new listing or identification.

(d) Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

(e) Changes necessary to comply with an interim status corrective action order issued by EPA under section 3008(h) of RCRA or other federal authority, by the cabinet, or by a court in a judicial proceeding brought by EPA or the cabinet, provided that the changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(f) Changes to treat or store, in tanks or containers, hazardous wastes subject to land disposal restrictions imposed by 401 KAR Chapter 37 or KRS Chapter 224, provided that the changes are made solely for the purpose of complying with 401 KAR Chapter 37 or KRS Chapter 224. [~~(1) New hazardous wastes not previously identified in Part A of the permit application (or its equivalent, Registration of Intent to Apply for a Permit) may be treated, stored, or disposed at a facility if the owner or operator submits a revised Part A permit application (or its equivalent) prior to such a change.~~

~~(2) Increases in the design capacity of processes used at a facility may be made if the owner or operator submits a revised Part A permit application (or its equivalent) prior to such a change (along with a justification explaining the need for the change) and the cabinet approves the change because of a lack of available treatment, storage, or disposal capacity at other hazardous waste sites or facilities.~~

~~(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised Part A permit application (or its equivalent) prior to such a change (along with a justification explaining the need for the change) and the cabinet approves the change because:~~

~~(a) It is necessary to prevent a threat to human health or the environment to avert an emergency situation; or~~

~~(b) It is necessary to comply with cabinet regulations (including 401 KAR Chapter 35 or federal or local laws.~~

~~(4) Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A~~

~~permit application no later than ninety (90) days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 401 KAR 35:080 through 401 KAR 35:130, (financial requirements), until the new owner or operator has demonstrated to the cabinet that he is complying with 401 KAR 35:080 through 401 KAR 35:130. The new owner or operator must demonstrate compliance with 401 KAR 35:080 through 401 KAR 35:130 within six (6) months of the date of the change in the ownership or the operational control of the facility. Upon demonstration to the cabinet by the new owner or operator of compliance with 401 KAR 35:080 through 401 KAR 35:130, the cabinet will notify the old owner or operator in writing that he no longer needs to comply with 401 KAR 35:080 through 401 KAR 35:130 as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility.~~

~~(5) In no event shall changes be made to a hazardous waste site or facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty (50) percent of the capital cost of a comparable entirely new hazardous waste site or facility. Changes under this section do not include changes made solely for the purpose of complying with requirements of Section 4 of 401 KAR 35:190 for tanks and ancillary equipment.~~

~~(6) Closure of the facility during interim status shall, at a minimum, be in accordance with 401 KAR 34:060, Section 12.]~~

Section 4. Termination of Interim Status. Interim status terminates when:

(1) Final administrative disposition of a permit application is made; or

(2) Interim status is terminated as provided in Section 4 of 401 KAR 38:040.

(3) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(a) The owner or operator submits a Part B application for a permit for the [~~such~~] facility prior to that date; and

(b) The owner or operator certifies that the [~~such~~] facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

(4) For owners or operators of each land disposal facility which is in existence on November 8, 1984 or the date applicable amendments are made to 401 KAR Chapters 30 through 39 which render the facility subject to the requirements in 401 KAR Chapters 30 through 39 and which is granted interim status, twelve (12) months after the date on which the facility first becomes subject to the [~~such~~] permit requirement unless the owner or operator of the [~~such~~] facility:

(a) Submits a Part B application for a permit for the [~~such~~] facility before the date twelve (12) months after the date on which the facility first becomes subject to the [~~such~~] permit requirements; and

(b) Certifies that the [~~such~~] facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

(5) For owners or operators of any land disposal unit that is granted authority to operate under Section 3(1)(a), (b), and (c) of this regulation, on the date twelve (12) months after the effective date of the requirement, unless the owner or operator certifies that the unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(6) [~~(5)~~] For owners or operators of each incinerator facility on November 8, 1989, unless the owner or operator of the facility submits a Part B application for a permit for an incinerator facility by November 8, 1986.

(7) [~~(6)~~] For owners or operators of any facility (other than a land disposal or an incinerator facility) on November 8, 1992, unless the owner or operator of the facility submits a Part B application for a permit for the facility by November 8, 1988.

Section 5. Deadlines for Submission of Part B of the Application. All hazardous waste sites or facilities which have submitted Part A of the application or its equivalent shall [~~will~~] be required to submit Part B of the application within six (6) months of the cabinet's decision to require the [~~such~~] submittal, according to Section 2(4) of 401 KAR 38:070. The cabinet may base its decision to require Part B of the application upon receiving Phase II or final authorization from the US EPA. However, in accordance with KRS 224.46-520(1), the cabinet may require submission of Part B of the application at any time.

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

APPROVED BY AGENCY: June 15, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment affects owners and operators of hazardous waste storage, treatment, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendments may provide direct savings to those affected, by reducing the possibility of a potential delay for some facilities in complying with new requirements, and in some cases, reducing the possibility of increased risk to human health and the environment.

2. Continuing costs or savings: First year savings may continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There should be minor reporting and paperwork requirements necessary with the proposed amendments.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The promulgating administrative body may experience direct savings during the first year, due to the anticipated reduction of delays, and reduction of possible risk to human health and the environment at the affected facilities.

2. Continuing costs or savings: First year savings may continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There should be minor reporting and paperwork requirements necessary with the proposed amendments.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives

were rejected: (a) The proposed amendments contain changes at interim status and permitted facilities including redesignation of certain permit modifications as Class I.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 270.72 as published in the Federal Register on March 7, 1989.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste facilities which fall under the classification of interim status facilities and permitted facilities.

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 March 7, 1989, at 40 CFR 270.72.

2. State compliance standards. The proposed amendments involves changes at interim status and permitted facilities including redesignation of certain permit modifications as Class I.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate contain changes at interim status and permitted facilities including redesignation of certain permit modifications as Class I.

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 38:040. Changes to permits; expiration of permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99, 40 CFR 270.42

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530, 40 CFR 270.42

NECESSITY AND FUNCTION: KRS 224.40-305 and 224.46-520 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes permitting standards on duration, termination, renewal and deadlines.

Section 1. Transfer of Permits. A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under Section 2(2)(b) of this regulation) or a minor modification made (under Section 3(4) of this regulation) to identify the new permittee and incorporate such other requirements as may be necessary under KRS Chapter 224 and the waste management regulations.

Section 2. Major Modification or Revocation and Reissuance of Permits. When the cabinet receives any information (for example, if the cabinet inspects the facility, receives information submitted by the permittee as required in the permit under Section 1 of 401 KAR 38:030, receives a request for modification or revocation and reissuance under Section 2 of 401 KAR 38:050, or conducts a review of permit file), the cabinet may determine whether or not one (1) or more of the causes listed in subsections (1) and (2) of this section for modification or revocation and reissuance or both exist. If cause exists, the cabinet may modify or revoke and reissue the permit accordingly, subject to the limitations of subsection (3) of this section and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term (see Section 2(4) of 401 KAR 38:050). If cause does not exist under this section or Section 3 of this regulation, the cabinet shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in Section 3 of this regulation for "minor modifications," the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in 401 KAR 38:050 and, if applicable, 401 KAR 38:500 followed.

(1) Causes for modification. Paragraphs (a) through (d) of this subsection are causes for modification but not revocation and reissuance of permits. Paragraphs (a) through (d) of this subsection may be causes for revocation and reissuance as well as modification, when the permittee requests or agrees.

(a) Alterations. There are material and substantial alterations or additions to the permitted hazardous waste site or facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(b) Information. The cabinet has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(c) New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued. Except as provided in paragraph (e) of this subsection, permits may be modified during their terms for this cause as follows:

1. The cabinet may modify the permit when the standards or regulations on which the permit was based have been changed by statute or amended standards or regulations.

2. Permittee may request modification when:

a. The permit condition to be modified was based on an effective hazardous waste management regulation; and

b. The cabinet has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; or

c. A permittee requests modification in accordance with Section 2 of 401 KAR 38:050 within ninety (90) days after notice of the action on which the request is based.

3. For judicial decisions, a court of competent jurisdiction has

remanded and stayed cabinet promulgated regulations, if the remand and stay concern that portion of the regulations on which the permit condition was based or if a request is filed by the permittee in accordance with Section 2 of 401 KAR 38:050 within ninety (90) days of judicial remand.

(d) Compliance schedules. The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy (see also Section 3 of this regulation on minor modifications).

(e) The cabinet may modify a permit:

1. When modification of a closure plan is required under 401 KAR 34:070, Section 3(2) or 4(2).

2. When the cabinet receives notification of expected closure under 401 KAR 34:070, Section 4, and finds that any of the following previously granted permit conditions are no longer warranted:

a. Extension of the ninety (90) or 180 day periods under 401 KAR 34:070, Section 4;

b. Modification of an extended postclosure care period under 401 KAR 34:070, Section 7;

c. Continuation of security requirements under 401 KAR 34:070, Section 7(2); or

d. Permission to disturb the integrity of the containment system under 401 KAR 34:070, Section 7(3).

3. When the permittee has filed a request under 401 KAR 34:120, Section 4 for a variance to the level of financial responsibility or when the cabinet demonstrates under 401 KAR 34:120, Section 5 that an upward adjustment of the level of financial responsibility is required.

4. When the corrective action program specified in the permit under Section 11 of 401 KAR 34:060 has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable period of time.

5. To include a detection monitoring program meeting the requirements of Section 9 of 401 KAR 34:060, when the owner or operator has been conducting a compliance monitoring program under Section 10 of 401 KAR 34:060 or a corrective action program under Section 11 of 401 KAR 34:060 and the compliance period ends before the end of the postclosure care period for the unit.

6. When a permit requires a compliance monitoring program under Section 10 of 401 KAR 34:060, but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard.

7. To include the conditions applicable to units at a facility that were not previously included in the site or facility's permit.

8. When a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

9. To include conditions applicable in new or amended standards or regulations.

10. When modification is necessary to protect the public health or the environment.

11. To include conditions applicable as the result of a hearing or enforcement action as specified in 401 KAR Chapter 40.

(f) Not withstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the cabinet under Section 5(4) of this regulation, the cabinet shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in 401 KAR Chapters 30 through 39.

(2) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) Cause exists for termination under Section 4 of this regulation and the cabinet determines that modification or revocation and reissuance is appropriate.

(b) The cabinet has received notification (as required in the permit in Section 1(12)(c) of 401 KAR 38:030) of a proposed transfer of the permit.

(c) Cause exists for termination under Section 2(1)(e) and (f) of this regulation, and the cabinet determines that modification or revocation and reissuance is appropriate.

(3) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

(4) Major modifications that include changes in ownership and operational control of a facility may be made if the new owner or operator submits a revised permit application no later than ninety (90) days prior to the scheduled change. A change in ownership or operational control includes a transfer of twenty-five (25) or more percent interest in the corporation, joint venture, partnership, proprietorship, or entity designated to own or operate the hazardous waste site or facility. When a transfer of ownership or operational control of a site or facility occurs, the old owner or operator shall comply with the requirements of 401 KAR 34:080 through 401 KAR 34:176 (financial requirements), until the new owner or operator has demonstrated to the cabinet that he is complying with the requirements in 401 KAR 34:080 through 401 KAR 34:176. The new owner or operator shall demonstrate compliance with the requirements in 401 KAR 34:080 through 401 KAR 34:176 within six (6) months of the date of the change in the ownership or operational control of the site or facility. Upon demonstration to the cabinet by the new owner or operator of compliance with the requirements in 401 KAR 34:080 through 401 KAR 37:176, the cabinet shall notify the old owner or operator in writing that he no longer needs to comply with the requirements in 401 KAR 34:080 through 401 KAR 34:176 as of the date of demonstration. Past performance as specified in 401 KAR 38:090, Section 2(20) shall be considered. The provisions set forth in Section 3 of this regulation as amended on March 10, 1988, shall apply to requests for modification received by the cabinet prior to November 14, 1990, and including all additional information and documentation submitted subsequent to November 14, 1990, as requested by the cabinet.

Section 3. Minor Modifications of Permits. Upon consent of the permittee, the cabinet may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 401 KAR 38:050. Any permit modification not processed as a minor modification under this section shall be made for cause and with a 401 KAR 38:050 draft permit, public notice as required in Section 2 of this regulation and, if applicable, compliance with 401 KAR 38:500 shall be demonstrated. [~~Minor modifications may only:~~]

(1) The permittee shall put into effect minor modifications listed in subsection (3) of this section under the following conditions:

(a) The permittee shall inform the cabinet concerning the modification by certified mail or other means that establish proof of delivery within seven (7) calendar days after the change is put into effect. This notice must specify the changes being made to permit conditions or supporting documents referenced by the permit, and must explain why they are necessary. Along with the notice, the permittee must provide a completed notification of minor modifications to hazardous waste permits not requiring prior approval of the cabinet, as incorporated by reference in subsection (2) of this section. The permittee should also provide the applicable information from Parts A and B of the Kentucky Hazardous Waste Permit Application as it relates to the specific type of facility.

(b) The permittee shall send a notice of the modification to all persons on the facility mailing list and the appropriate units of local government. This notification shall be made within ninety (90) calendar days after the cabinet approves the request.

(c) Any person may request that the cabinet review, and the cabinet may for cause reject, any minor modification. The cabinet

shall inform the permittee by certified mail that a minor modification has been rejected, explaining the reasons for the rejection. If a minor modification has been rejected, the permittee shall comply with the original permit conditions.

(d) Minor modifications listed in subsection (3) of this section requiring "Prior Approval" shall be made only with the prior written approval of the cabinet.

(e) For a minor modification, the permittee may elect to follow the procedures for major modifications instead of the minor modifications procedures. The permittee shall inform the cabinet of this decision in the notice required in Section 2 of this regulation.

(2) Form DEP 7092 entitled "Notification of Minor Modifications to Hazardous Waste Permits Not Requiring Prior Approval of the Cabinet" is hereby incorporated by reference. This application is available at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601. The business hours of the division are from 8 a.m. to 4:30 p.m. Monday through Friday.

(3) The following shall be used to determine whether prior approval is required for a minor modification:

APPENDIX I TO 40 CFR 270.42
CLASSIFICATION OF PERMIT MODIFICATION (1 OF 6)

	TYPE OF MINOR MODIFICATION	PRIOR APPROVAL	NOTIFICATION
(a)	General Permit Provisions:		
1.	Administrative and informative changes.		X
2.	Correction of typographical errors.		X
3.	Equipment replacement or upgrading with functionally equivalent components (e.g. pipes, valves, pumps, conveyors, controls).		X
4.	Changes to provide for more frequent monitoring, reporting, sampling, or maintenance activities by the permittee.		X
5.	Changes in interim compliance dates.	X	
(b)	General Facility Standards:		
1.	Changes to waste sampling or analysis methods to conform with agency guidelines or regulations.	X	
2.	Changes to analytical quality assurance or the quality control plan to conform with agency regulations.	X	
3.	Changes in the training plan, except to decrease the amount of training or type of training.	X	
4.	Changes in names, address or phone number of coordinators or other persons or agencies identified in the contingency plan.	X	
(c)	Groundwater Protection:		
1.	Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.		X
2.	Changes in groundwater sampling or analysis procedures or monitoring schedule.	X	
3.	Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred.	X	
(d)	Closure:		
1.	Changes to the closure plan in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility.	X	
2.	Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period.	X	
3.	Changes in the expected year of final closure, where other permit conditions are not changed.	X	
4.	Changes in procedures for decontamination of facility equipment or structures.	X	
(e)	Postclosure:		
1.	Changes in name, address, or phone number of contact in postclosure plan.	X	
2.	Changes to the expected year of final closure, where other permit conditions are not changed.	X	
(f)	Containers:		
1.	Addition of a roof to a container unit without alteration of the containment system.		X
(g)	Tanks:		
1.	Addition of a new tank that will operate for up to ninety (90) days using any of the following physical or chemical treatment technologies: neutralization, dewaterizing, phase separation, or component separation.	X	
2.	Replacement of a tank with a tank that meets the same design standards and has a capacity within +/- ten (10) percent of the replaced tank provided:	X	
a.	The capacity difference is no more than 1500 gallons.		
b.	The facility's permitted tank capacity is not increased.		
c.	The replacement tank meets the same conditions in the permit.		
(h)	Enclosed Waste Piles:		
1.	Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit.	X	
(i)	Land Treatment:		
1.	Modification of a land treatment unit management practice to decrease rate of waste application.		X
2.	Changes in any condition speci-	X	

	fied in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met.	
3.	Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration conducted have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration. In addition, the land treatment waste application rate cannot exceed previously established waste application rates.	X
(j)	Incinerators - Shakedown and Trial Burn:	
1.	Authorization of up to an additional 720 hours of waste incineration during the shakedown period for determining operational readiness after construction.	X
2.	Minor changes in the operating requirements set in the permit for conducting a trial burn.	
3.	Minor changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn.	

[~~(1) Correct typographical errors;~~

~~(2) Require more frequent monitoring or reporting by the permittee;~~

~~(3) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or~~

~~(4) Allow for a name change where ownership or operational control of a site or facility is not affected. Name changes of a site or facility may be made if the owner or operator submits a revised permit application no later than ninety (90) days prior to the scheduled change. When a name change of a site or facility occurs, compliance with the requirements of 401 KAR 34:080 through 401 KAR 34:176 (financial requirements), shall be demonstrated by revising the financial instrument to reflect the correct facility name.~~

~~(5) Change the lists of facility emergency coordinators or equipment in the permit's contingency plan;~~

~~(6) Change estimates of maximum inventory under Section 3(1)(b) of 401 KAR 34:070;~~

~~(7) Change estimates of expected year of closure or schedules for final closure under Section 3(1)(d) of 401 KAR 34:070;~~

~~(8) Approve periods longer than ninety (90) days or 180 days under Section 4(1) and (2) of 401 KAR 34:070.~~

~~(9) Change the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided that the change is minor.~~

~~(10) Change the operating requirements set in the permit for conducting a trial burn, provided that the change is minor.~~

~~(11) Grant one (1) extension of the time period for determining operational readiness following completion of construction, for up to 720 hours operating time for treatment of hazardous waste.~~

~~(12) Change the treatment program requirements for land treatment units under Section 2 of 401 KAR 34:220 to improve treatment of hazardous constituents, provided that the change is minor.~~

~~(13) Change any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with Section 8 of 401 KAR 38:080, if the change is minor.~~

~~(14) Allow a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by Section 3(1) of 401 KAR 34:220, provided the conditions of the second demonstration are substantially the same as the conditions for the first demonstration.~~

~~(15) Allow treatment of hazardous wastes not previously specified in the permit if:~~

~~(a) The hazardous waste has been prohibited from one (1) or more methods of land disposal under 401 KAR 37:030 or KRS 224.46-520;~~

~~(b) Treatment is in accordance with Section 4 of 401 KAR 37:010 (if applicable), Section 3 of 401 KAR 37:010; and~~

~~1. Treatment is in accordance with applicable standards established under 401 KAR 37:040, Section 3, 4, and 5; or~~

~~2. Where no treatment standards have been established, treatment renders the waste no longer subject to the applicable prohibitions set forth in Section 4 of 401 KAR 37:030 and KRS 224.46-520.~~

~~(c) Handling and treatment of the restricted waste shall not present risks substantially different from those of wastes listed in the permit; and~~

~~(d) Cabinet approval of a minor permit modification request is granted. No permit changes can occur except for the addition of new waste codes and administrative or technical changes necessary to handle new wastes. Changes in treatment processes o]r physical equipment may not be made under this subsection.~~

Section 4. Termination of Permits. (1) The cabinet may terminate a permit during its term or deny a permit renewal application for the following causes:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(d) A violation of any requirement of KRS Chapter 224 or the respective regulations promulgated pursuant thereto (including 401 KAR 40:040).

(2) The cabinet shall follow the applicable procedures in this regulation and in 401 KAR 38:050 and 401 KAR Chapter 40 in terminating any permit under this section.

Section 5. Duration of Permit. (1) Term of permit. Hazardous waste site or facility permits shall be effective for a fixed term not to exceed ten (10) years. (See also Section 5 of 401 KAR 38:060, Interim permits for UIC wells.)

(2) Modification of term of permit. Except as provided in Section 6 of this regulation, the term of a permit shall not be extended by modification beyond the maximum duration specified in subsection (1) of this section.

(3) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsection (1) of this section.

(4) Each permit for a land disposal facility shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in Section 2 of this regulation.

(5) A permit for the nerve agents specified in KRS 224.50-130 shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in Section 2 of this regulation.

Section 6. Continuation of Expiring Permits. (1) The conditions of an expired permit continue in force until the effective date of a new permit if:

(a) The permittee has submitted a timely application under 401 KAR 38:090 and 401 KAR 38:100 and the applicable requirements in 401 KAR 38:150 through 401 KAR 38:210 and which is a complete (under Section 1(3) of 401 KAR 38:070) application for a new permit, paid the appropriate fees due (under 401 KAR Chapter 39); and

(b) The cabinet through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resources constraints).

(2) Effect. Permits continued under this section remain fully effective and enforceable.

(3) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the cabinet may choose to do any or all of the following:

(a) Initiate enforcement action based upon the permit which has been continued;

(b) Issue a notice of intent to deny the new permit under Section 3 of 401 KAR 38:050. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(c) Issue a new permit under 401 KAR 38:050 with appropriate conditions; or

(d) Take other actions authorized by 401 KAR Chapters 30 through 40.

(4) State continuation. As provided in 40 CFR 270.51(d), an EPA issued permit shall not continue in force beyond its expiration date under federal law if at that time the cabinet is the RCRA permitting authority.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment shall affect hazardous waste generators, transporters and treatment, storage, and disposal facilities. There are approximately 2,200 generators, 150 transporters, and 90 treatment, storage and disposal 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 any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Any minor modification of a hazardous waste permit will require the owner or operator to submit a completed "Notification of Minor Modifications to Hazardous Waste Permits Not Requiring Prior Approval of the Cabinet" (DEP 7092). This form is incorporated in this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are none.

2. Continuing costs or savings: There are none.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: The proposed amendment shall result in minimal additional reporting and paperwork for the promulgating administrative body, due to the introduction of form DEP 7092 - "Notification of Minor Modifications to Hazardous Waste Permits Not Requiring Prior Approval of the Cabinet".

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

ALTERNATIVES: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. There were no alternative which appeared more stringent that were rejected by the cabinet.

3. Present proposal. The present proposal requires the permittee to notify the cabinet of minor modifications to its hazardous waste permit not requiring prior approval of the cabinet.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no additional comments.

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 relates to federal regulations published in the Federal Register on September 28, 1988, at 40 CFR 270.42.

2. State compliance standards. The federal regulation amends the provisions concerning the modifications of hazardous waste permits. The rule categorizes selected permit modifications into three classes, and establishes administrative procedures for approving modifications in each of these classes.

3. Minimum or uniform standards contained in the federal mandate. This regulation is less stringent than existing requirements and therefore the cabinet is not required to adopt it in its entirety. Parts of "Appendix I to CFR 270.42 - Classification of Permit Modifications" shall be adopted and integrated into Section 3 of 401 KAR 38:040 entitled "Notification of Minor Modifications to Hazardous Waste Permits Not Requiring Prior Approval of the Cabinet". This section contains a table describing acceptable forms of minor modifications, and indicates the necessity of prior cabinet approval, when appropriate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation will require the permittee to file a form DEP 7092, "Notification of Minor Modifications to Hazardous Waste Permits Not Requiring Prior Approval of the Cabinet", when applicable modifications are made to the existing permit.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.The federal regulation is in conflict with KRS 224.40-310, which requires a public notice to be published immediately upon receipt of a permit application to modify an existing solid waste facility. Consequently the cabinet chooses not to accept the federal regulation in its entirety.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 38:050. Public information procedures.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.40-305, 224.46-520

NECESSITY AND FUNCTION: KRS 224.40-305 and 224.46-520 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. [~~An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010.~~] This regulation establishes standards on public information procedures and confidentiality.

Section 1. Application for a Permit. (1)(a) Any person who requires a hazardous waste site or facility permit under KRS Chapter 224 shall complete, sign, and submit to the cabinet an application for each permit required under Section 1 of 401 KAR 38:010. Applications are not required for hazardous waste site or facility permits by rule (Section 1 of 401 KAR 38:060) or underground injections authorized by rule. However, for all facilities, including underground injection wells, which meet the definition of a disposal facility (see 401 KAR 30:010), compliance with the requirements of 401 KAR 38:500 (Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility Siting Board), if applicable, shall be demonstrated to the cabinet prior to construction or operation under a permit by rule.

(b) The cabinet shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit (see Sections 1 through 6 of 401 KAR 38:070, 401 KAR 38:080 and the applicable requirements in 401 KAR 38:150 through 38:210).

(c) Permit applications shall comply with the signature and certification requirements of Section 7 of 401 KAR 38:070.

(2) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. When the application is for an existing hazardous waste site or facility, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet may notify the applicant that the application is complete upon receiving this information. Any application, complete or incomplete, may be denied based on the considerations set forth in KRS 224.46-520.

(3) If an applicant fails or refuses to correct deficiencies in the application or if the applicant fails or refuses to submit additional information, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision.

(4) If the cabinet decides that a site visit is necessary for any reason in conjunction with the processing of an application, a representative of the cabinet shall notify the applicant and a date shall be scheduled.

(5) The effective date of an application is the date on which the cabinet notifies the applicant that the application is complete as provided in subsection (2) of this section.

(6) For each application, the cabinet shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the cabinet intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing; and

(d) Issue a final permit.

Section 2. Modification, Revocation and Reissuance, or Termination of Permits. (1) A permit for a hazardous waste site or facility may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the cabinet's initiative. However, a permit may only be modified, revoked and reissued, or terminated for the reasons specified in Sections 2 and 4 of 401 KAR 38:040 and following the procedures of 401 KAR Chapter 40. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the cabinet decides the request is not justified, the cabinet shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(3)(a) If the cabinet tentatively decides to modify or revoke and reissue a permit under Section 2 of 401 KAR 38:040, the cabinet shall prepare a draft permit under Section 3 of this regulation incorporating the proposed changes. The cabinet may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the cabinet shall require the submission of a new application.

(b) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(c) "Minor modifications" as defined in Section 3 of 401 KAR 38:040 are not subject to the requirements of this section.

(4) If the cabinet tentatively decides to terminate a permit under Section 4 of 401 KAR 38:040, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Section 3 of this regulation.

(5) All draft permits (including notices of intent to terminate) prepared under Sections 3 through 5 of this regulation shall be based on the administrative record as defined in Section 6 of this regulation.

Section 3. Draft Permits. (1) Once an application is complete, the cabinet shall tentatively decide whether to prepare a draft permit or to deny the application. In making this determination the cabinet shall consider the requirements specified in the waste management regulations and in KRS 224.46-520.

(2) If the cabinet tentatively decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny

the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this subsection (see subsection (4)). If the cabinet's final decision is that the tentative decision to deny the permit application was incorrect, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.

(3) If the cabinet decides to prepare a draft permit, the draft permit shall contain the following information:

(a) All conditions under Sections 1 and 3 of 401 KAR 38:030;

(b) All compliance schedules under Section 4 of 401 KAR 38:030;

(c) All monitoring requirements under Section 2 of 401 KAR 38:030; and

(d) Standards for treatment, storage or disposal, and other permit conditions under Section 1 of 401 KAR 38:030.

(4) All draft permits prepared by the cabinet under this section shall be accompanied by a statement of basis (see Section 4 of this regulation) or fact sheet (see Section 5 of this regulation) and shall be based on the administrative record (see Section 6 of this regulation) and publicly noticed (see Section 7 of this regulation), and shall be made available for public comment (see Section 8 of this regulation). The cabinet shall give notice of the opportunity for a public hearing as required by KRS 224.40-310 (see Section 9 of this regulation), issue a final decision and respond to comments (see Section 11 of this regulation). An appeal may be taken under KRS 224.10-420. Draft permits shall be accompanied by a fact sheet if required under Section 5 of this regulation.

Section 4. Statement of Basis. The cabinet shall prepare a statement of basis for every draft permit for which a fact sheet under Section 5 of this regulation is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

Section 5. Fact Sheet. (1) A fact sheet shall be prepared for every draft permit for a hazardous waste site or facility which includes an incinerator, a surface impoundment, disposal facility (i.e., landfill, land treatment facility, injection well, etc.), or a research, development, and demonstration facility, and for every draft permit which the cabinet finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The cabinet shall send this fact sheet to the applicant and, on request, to any other person.

(2) The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by Section 6 of this regulation;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 7 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 by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

Section 6. Administrative Record for Draft Permits. (1) The provisions of a draft permit prepared by the cabinet under Section 3 of this regulation shall be based on the administrative record defined in this section.

(2) For preparing a draft permit under Section 3 of this regulation, the record shall consist of:

(a) The application, if required, and any supporting data furnished by the applicant;

(b) The draft permit or notice of intent to deny the application or to terminate the permit;

(c) The statement of basis (see Section 4 of this regulation) or fact sheet (see Section 5 of this regulation);

(d) All documents cited in the statement of basis or the fact sheet; and

(e) Other documents contained in the supporting file for the draft permit.

(3) Material readily available at the cabinet's office or published material that is generally available, and that is included in the administrative record under this subsection and subsection (2) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

(4) This section applies to all draft permits when public notice was given after the effective date of these regulations.

Section 7. Public Notice of Permit Application and Public Comment Period. (1) Scope.

(a) The cabinet shall give public notice under KRS 224.40-310(4) and (5) that the following actions have occurred:

1. A permit application has been tentatively denied under Section 3(2) of this regulation;

2. A draft permit has been prepared under Section 3(3) of this regulation;

3. A hearing has been scheduled under Section 9 of this regulation; and

4. An appeal has been granted under 401 KAR 40:030.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Section 2(2) of this regulation. Written notice of that denial shall be given to the requester and to the permittee.

(c) Public notices may describe more than one (1) permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under subsection (1) of this section shall allow at least forty-five (45) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.)

(3) Methods. Public notice of activities described in subsection (1)(a) of this section shall be given by the following methods:

(a) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subparagraph may waive his or her rights to receive notice for any classes and categories of permits):

1. The applicant;

2. Any other agency which the cabinet knows has issued or is required to issue an environmental permit for the same facility or activity (including United States Environmental Protection Agency);

3. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation

Officers, and other appropriate government authorities, including any other affected states;.

4. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. (The cabinet may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to such a request.)

5. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

6. To each state agency having any authority under state law with respect to the construction or operation of such facility.

(b) Publication of a notice in a daily or weekly major local newspaper of general circulation as required by KRS 224.40-310(2), (4), and (5) and broadcast over any commercial radio stations which have general coverage in the locality where the proposed site is located.

(c) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices. All public notices issued under this chapter shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

3. A brief description of the business conducted at the facility or activity described in the permit application;

4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application;

5. A brief description of the comment procedures required by Sections 8 and 9 of this regulation and the time and place of any hearing that shall be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

6. The location of the administrative record required by Section 6 of this regulation, the times at which the record shall be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record;

7. The statement contained in KRS 224.40-310(5)(e); and

8. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in subsection (4)(a) of this section, the public notice of a hearing under Section 9 of this regulation shall contain the following information:

1. Reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(5) In addition to the general public notice described in subsection (4)(a) of this section, all persons identified in subsection (3)(a) of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any). The cabinet shall charge for duplication cost and postage.

Section 8. Public Comments and Requests for Public Hearings. During the public comment period provided under Section 7 of this regulation, any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section 11 of this regulation.

Section 9. Public Hearings. (1)(a) The cabinet shall hold a public hearing on the basis of requests, when a significant degree of public interest in a draft permit(s) is found.

(b) The cabinet at its discretion may also hold a public hearing whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

(c) 1. The cabinet shall hold a public hearing whenever written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under Section 7(2)(a) of this regulation is received.

2. Whenever possible the cabinet shall schedule a hearing under this section at a location convenient to the population center nearest to the proposed facility provided the hearing location is in the same county as required by KRS 224.40-310.

(d) Public notice of the hearing shall be given as specified in Section 7 of this regulation.

(2) Whenever a public hearing shall be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section 7 of this regulation shall automatically be extended to the close of any public hearing under this regulation. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to any person upon payment of the actual cost of reproducing the original.

Section 10. Reopening of the Public Comment Period. (1) If any data, information or arguments submitted during the public comment period (including information or arguments that any condition of the draft permit or permit denial is inappropriate) appear to raise substantial new questions concerning a permit, the cabinet may take one (1) or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under Section 3 of this regulation;

(b) Prepare a revised statement of basis under Section 4 of this regulation and reopen the comment period under this section; or

(c) Reopen or extend the comment period under Section 7 of this regulation to give interested persons an opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 7 of this regulation shall define the scope of the reopening.

(3) The cabinet may also, in the circumstances described above, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in subsection (1) of this section.

(4) Public notice of any of the above actions shall be issued under Section 7 of this regulation.

Section 11. Response to Comments. (1) At the time that any final permit decision is issued, the cabinet shall issue a response to comments when a final permit is issued. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) For cabinet issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision. If new points are raised or new material supplied during the public comment period, the cabinet may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) In the case of a hazardous waste disposal site or facility, no permit shall be approved or issued by the cabinet prior to the approvals specified in KRS 224.40-310(5) and (6). 401 KAR 38:500 details the procedures that the applicant shall use in obtaining local government approval for incinerators or land disposal facilities or for a regional integrated waste treatment and disposal demonstration facility, the approval of the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board.

Section 12. Issuance and Effective Date of Permit. (1) After the close of the public comment period under Section 7 of this regulation on a draft permit, the cabinet shall issue a final permit decision (or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under Section 11 of 401 KAR 38:070). For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision shall become effective on the date issued by the cabinet.

Section 13. Past Performance Considered in Review. Past performance of the owner or operator shall be considered in the review and in the determination of any requirement for specialized conditions.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment affects the owners and operators of hazardous waste storage, treatment, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment will not provide direct or indirect costs or savings to those affected. It is merely a clarification of existing language.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment will not provide direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: 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 promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment provides a clarification designating the authority to deny permits for the active life of the facility while a permit decision with respect to the postclosure period remains open.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 124.15(a) as published in the Federal Register on March 7, 1989.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, storage, and disposal facilities.

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 March 7, 1989, at 40 CFR 124.15(a).

2. State compliance standards. The proposed amendment provides a clarification designating the authority to deny permits for the active life of the facility while a permit decision with respect to the postclosure period remains open.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate provides a clarification designating the authority to deny permits for the active life of the facility while a permit decision with respect to the postclosure period remains open.

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 38:060. Special types of permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: KRS 224.40-305 and 224.46-520 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes standards for special types of permits.

Section 1. Permit by Rule. Notwithstanding any other provision of this chapter the following shall be deemed to have a permit by rule if the conditions listed are met:

(1) Ocean disposal barges or vessels. The owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal, if the owner or operator:

(a) Has a permit for ocean disposal issued by the U.S. EPA;

(b) Complies with the conditions of that permit; and

(c) Complies with the following hazardous waste regulations:

1. Section 2 of 401 KAR 34:020, Identification Number;

2. Section 2 of 401 KAR 34:050, Use of Manifest System;

3. Section 3 of 401 KAR 34:050, Manifest Discrepancies;

4. Section 4(1) and (2)(a) of 401 KAR 34:050, Operating Record;

5. Section 6(1) and (2)(a) of 401 KAR 34:050, Annual Report; and

6. Section 7 of 401 KAR 34:050, Unmanifested Waste Report.

(2) Injection wells. The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(a) Has a permit for underground injection issued by the U.S. EPA;

(b) Complies with the conditions of that permit and the requirements of 40 CFR 144.14 (wells managing hazardous waste);

(c) For UIC permits issued after November 8, 1984:

1. Complies with Section 12 of 401 KAR 34:060; and

2. Where the UIC well is the only unit at a facility which requires a hazardous waste site or facility permit, complies with Section 3 of 401 KAR 38:100.

(d) Complies with the requirements of 401 KAR 38:500, if applicable.

(3) Publicly owned treatment works (POTW). The owner or operator of a POTW which accepts hazardous waste for treatment, if the owner
or operator:

(a) Has an NPDES permit or a KPDES permit issued under the authorized program;

(b) Complies with the conditions of that permit; and

(c) Complies with the following regulations:

1. Section 2 of 401 KAR 34:020, Identification Number;

2. Section 2 of 401 KAR 34:050, Use of Manifest System;

3. Section 3 of 401 KAR 34:050, Manifest Discrepancies;

4. Section 4(1) and (2)(a) of 401 KAR 34:050, Operating Record;

5. Section 6 of 401 KAR 34:050, Annual Report;

6. Section 7 of 401 KAR 34:050, Unmanifested Waste Report; and

7. For NPDES or KPDES permits issued after November 8, 1984, Section 12 of 401 KAR 34:060, Corrective action.

(d) If the waste meets all federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

(4) Elementary neutralization units. The owner or operator of an elementary neutralization unit which accepts hazardous waste for treatment, if the owner or operator complies with the national pretreatment standards (see Section 9 of 401 KAR 5:055).

(5) Wastewater treatment units. The owner or operator of a wastewater treatment unit which accepts hazardous waste for treatment, if the owner or operator:

(a) Has a NPDES permit or a KPDES permit [~~(after the state program receives authorization from EPA)~~]; and

(b) Complies with the conditions of the permit.

Section 2. Emergency Permits. (1) Notwithstanding any other provision of this chapter, in the event the cabinet finds an imminent and substantial endangerment to human health or the environment, the cabinet may issue an emergency permit to allow temporary treatment, storage, or disposal of hazardous waste for a nonpermitted facility, thus, granting the nonpermitted facility an effective temporary hazardous waste site or facility permit. An emergency permit shall be granted when the cabinet has issued an emergency order to discontinue, abate or alleviate pursuant to KRS 224.10-410, if applicable. However, an emergency permit may be issued whenever an imminent and substantial endangerment to human health and the environment exists, but the circumstances of the situation render an order for discontinuance, abatement or alleviation inappropriate.

(2) This emergency permit:

(a) May be oral or written. If oral, it shall be followed in five (5) days by a written emergency permit.

(b) Shall not exceed ninety (90) days in duration.

(c) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal.

(d) May be terminated by the cabinet at any time without process if the cabinet determines that termination is appropriate to protect human health and the environment.

(e) Shall be accompanied by a public notice published under Section 7(2) of 401 KAR 38:050 including:

1. Name and address of the office granting the emergency authorization;

2. Name and location of the permitted hazardous waste site or facility;

3. A brief description of the wastes involved;

4. A brief description of the action authorized and reasons for authorizing it; and

5. Duration of the emergency permit.

(f) Shall incorporate to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter, and 401 KAR Chapter 34 and 401 KAR 30:030.

(g) Shall specify that all remaining hazardous waste and residues are removed at the end of the term of the emergency permit to a properly permitted hazardous waste site or facility in order to be exempted from the financial requirements of Section 1 of 401 KAR 34:080.

(h) Shall specify that failure to comply with the conditions of the emergency permit shall cause the cabinet to sue for the recovery of the cost of proper closure (see Section 2 of 401 KAR 34:070 for closure performance standards and KRS Chapter 224 for the appropriate fines and penalties).

Section 3. Hazardous Waste Incinerator Permits. (1) For the purposes of determining operational readiness following completion of physical construction, the cabinet shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These

permit conditions shall be effective for the minimum time required to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The cabinet may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to Section 3 of 401 KAR 38:040 (minor modifications of permits).

(a) Applicants shall submit a statement, with Part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of Section 4 of 401 KAR 34:240 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in Section 6 of 401 KAR 34:240.

(b) The cabinet shall review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Section 4 of 401 KAR 34:240 based on engineering judgment.

(2) For the purposes of determining feasibility of compliance with the performance standards of Section 4 of 401 KAR 34:240 and of determining adequate operating conditions under Section 6 of 401 KAR 34:240, the cabinet shall establish conditions in the permit to a new hazardous waste incinerator to be effective during the trial burn.

(a) Applicants shall propose a trial burn plan, prepared in accordance with paragraph (b) of this subsection, with Part B of the permit application.

(b) The trial burn plan shall include the following information:

1. An analysis of each waste or mixture of wastes to be burned which includes:

a. Heat value of the waste in the form and composition in which it shall be burned.

b. Viscosity (if applicable) or description of physical form of the waste.

c. An identification of any hazardous organic constituents listed in 401 KAR 31:170, which are present in waste to be burned, except that the applicant need not analyze for constituents listed in 401 KAR 31:170, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (incorporated by reference in Section 3 of 401 KAR 30:010, or other equivalent analytical techniques.

d. An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in the "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (incorporated by reference in Section 3 of 401 KAR 30:010), or other equivalent analytical methods.

2. A detailed engineering description of the incinerator for which the trial burn permit is sought including:

a. Manufacturer's name and model number of incinerator (if available);

b. Type of incinerator;

c. Linear dimensions of the incinerator unit including the cross sectional area of the combustion chamber;

d. Description of the auxiliary fuel system (type/feed);

e. Capacity of prime mover;

f. Description of automatic waste feed cutoff system(s);

g. Stack gas monitoring and pollution control equipment;

h. Nozzle and burner design;

i. Construction materials; and

j. Location and description of temperature, pressure, and flow indicating and control devices.

3. A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

4. A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the cabinet's decision under paragraph (e) of this subsection.

5. A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that shall be varied to affect the destruction and removal efficiency of the incinerator.

6. A description of, and planned operating conditions for, any emission control equipment which shall be used.

7. Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

8. Such other information as the cabinet reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this subsection and the criteria in paragraph (e) of this subsection.

(c) The cabinet, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this subsection.

(d) Based on the waste analysis data in the trial burn plan, the cabinet shall specify as trial Principal Organic Hazardous Constituents (trial POHC's), those constituents for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHC's shall be specified by the cabinet based on the estimate of the difficulty of incineration of the constituents identified in the waste analysis, the concentration or mass in the waste feed, and, for wastes listed in 401 KAR 31:040, the hazardous waste constituent or constituents identified in 401 KAR 31:160 as the basis for listing.

(e) The cabinet shall approve a trial burn plan if it finds that:

1. The trial burn is likely to determine whether the incinerator performance standards required by Section 4 of 401 KAR 34:240 can be met;

2. The trial burn itself shall not present an imminent hazard to human health or the environment;

3. The trial burn shall help the cabinet to determine operating requirements to be specified under Section 6 of 401 KAR 34:240; and

4. The information sought in paragraph (e)1 and 2 of this subsection cannot reasonably be developed through other means.

(f) During each approved trial burn (or as soon after the burn as is practicable), the applicant shall make the following determinations:

1. A quantitative analysis of the trial POHC's in the waste feed to the incinerator;

2. A quantitative analysis of the exhaust gas to determine the concentration and mass emissions of the trial POHC's, oxygen (O_2), and hydrogen chloride (HCl);

3. A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHC's;

4. A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Section 4(1) of 401 KAR 34:240;

5. If the HCl emission rate exceeds one and eight tenths (1.8) kilograms of HCl per hour (four (4) pounds per hour), a computation of HCl removal efficiency in accordance with Section 4(2) of 401 KAR 34:240;

6. A computation of particulate emissions, in accordance with Section 4(3) of 401 KAR 34:240;

7. An identification of sources of fugitive emissions and their means of control;

8. A measurement of average, maximum, and minimum temperatures, and combustion gas velocity;

9. A continuous measurement of carbon monoxide (CO) in the exhaust gas; and

10. Such other information as the cabinet may specify as necessary to ensure that the trial burn shall determine compliance with the performance standard in Section 4 of 401 KAR 34:240 and to establish the operating conditions required in Section 6 of 401 KAR 34:240 to meet that performance standard.

(g) The applicant shall submit to the cabinet a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in paragraph (f) of this subsection. This submission shall be made within ninety (90) days of the completion of the trial burn, or later if approved by the cabinet.

(h) All data collected during any trial burn shall be submitted to the cabinet following the completion of the trial burn. The results of the trial burn shall be included with Part B of the permit application as specified in Sections 9 and 10 of 401 KAR 38:070 and this regulation, if a permit application is submitted.

(i) All submissions required by this subsection shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under Section 7 of 401 KAR 38:070.

(j) Based on the results of the trial burn, the cabinet shall set the operating requirements in the final permit according to Section 6 of 401 KAR 34:240. The permit modification shall proceed as a minor modification according to Section 3 of 401 KAR 38:040.

(3) For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the cabinet may establish permit conditions, including but not limited to allowable waste feeds and operating conditions, sufficient to meet the requirements of Section 6 of 401 KAR 34:240, in the permit to a new hazardous waste incinerator. These permit conditions shall be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the cabinet.

(a) Applicants shall submit a statement, with Part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of Section 4 of 401 KAR 34:240, during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in Section 6 of 401 KAR 34:240.

(b) The cabinet shall review this statement and any other relevant information submitted with Part B of the permit application and specify those requirements for this period most likely to meet the performance standards of Section 4 of 401 KAR 34:240, based on engineering judgment.

(4) For the purposes of determining feasibility of compliance with the performance standards of Section 4 of 401 KAR 34:240 and of determining adequate operating conditions under Section 6 of 401 KAR 34:240, the applicant for a permit for [~~to~~] an existing hazardous waste incinerator shall [~~may~~] prepare and submit a trial burn plan and perform a trial burn in accordance with 401 KAR 38:190, Section 2, and subsections (2)(b) through (i) of this section or, instead, submit other information as specified in Section 2(3) of 401 KAR 38:190. Applicants submitting information under Section 2(1) of 401 KAR 38:190 are exempt from compliance with Sections 4 and 6 of 401 KAR 34:240 and, therefore, are exempt from the requirement to conduct a trial burn. [~~regulation.~~] Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in subsection (2)(f) of this regulation, with Part B of the permit application. If completion of this process conflicts with the date set for the submission of the Part B application, the applicant shall contact the cabinet to establish a later date for submission of the Part B application or the trial burn results. Trial burn results shall be submitted prior to issuance of the permit. When [~~If~~] the applicant submits a trial burn plan with Part B of the permit application, the cabinet shall specify a time period prior to permit issuance in which the trial burn shall be conducted and the results submitted. [~~trial burn shall be conducted and the results submitted within a time period to be specified by the cabinet.~~]

(5) In accordance with Section 1 of 401 KAR 34:080, prior to issuance of a trial burn permit, the applicant shall establish financial assurance sixty (60) days before the date on which hazardous waste is first received for treatment or storage. The amount of financial assurance established for closure shall be in accordance with the closure plan prepared pursuant to 401 KAR 34:070 and 34:240.

Section 4. Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses. (1) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of Section 3 of 401 KAR 34:220, the cabinet may issue a treatment demonstration permit. The permit shall contain only those requirements necessary to meet the standards in Section 3(3) of 401 KAR 34:220. The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two (2) phase facility permit covering the field tests, or laboratory analyses, and design, construction, operation and maintenance of the land treatment unit.

(a) The cabinet may issue a two (2) phase facility permit if it is found that, based on information submitted in Part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(b) If the cabinet finds that not enough information exists upon which it can establish permit conditions to attempt to provide for compliance with all of the requirements of 401 KAR 34:220, the cabinet shall issue a treatment demonstration permit covering only the field test or laboratory analyses.

(2) If the cabinet finds that a phased permit may be issued, it shall establish, as requirements in the first phase of the facility permit, conditions for conducting the field test or laboratory analyses. These permit conditions shall include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, postdemonstration cleanup activities, and any other conditions which the cabinet finds may be necessary under Section 3(3) of 401 KAR 34:220. The cabinet shall include conditions in the second phase of the facility permit to attempt to meet all of 401 KAR 34:220 requirements pertaining to unit design, construction, operation, and maintenance. The cabinet shall establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application.

(a) The first phase of the permit shall be effective as specified by the cabinet in the permit.

(b) The second phase of the permit shall be effective as provided in subsection (4) of this section.

(3) When the owner or operator who has been issued a two (2) phase permit has completed the treatment demonstration, he shall submit to the cabinet a certification, signed by a person authorized to sign a permit application or report under Section 7 of 401 KAR 38:070, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in the first phase of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within ninety (90) days of completion of those tests or analyses unless the cabinet approves a later date.

(4) If the cabinet determines that the results of the field tests or laboratory analyses meet the requirements of Section 3 of 401 KAR 34:220, it shall modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with 401 KAR 34:220, based upon the results of the field tests or laboratory analyses.

(a) This permit modification may proceed as a minor modification under Section 3 of 401 KAR 38:040, provided any such change is

minor, or otherwise shall proceed as a modification under Section 2(1)(b) of 401 KAR 38:040.

(b) If no modifications of the second phase of the permit are necessary, or if only minor modifications are necessary and have been made, the cabinet shall give notice of the final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of final decision on the second phase of the permit. The second phase of the permit then shall become effective as specified by the cabinet in Section 12 of 401 KAR 38:050.

(c) If modifications under Section 2(1)(b) of 401 KAR 38:040 are necessary, the second phase of the permit shall become effective only after those modifications have been made.

(5) No permits shall be issued under this section unless the owner or operator has established adequate financial responsibility as specified in 401 KAR 34:080 through 34:176.

Section 5. Interim Permits for UIC Wells. The cabinet may issue a permit under this section to any Class I UIC well (defined in 40 CFR 144.7) injecting hazardous wastes within the state, if no UIC program has been approved by the U.S. EPA for Kentucky. Any such permit shall apply and insure compliance with all applicable requirements of 401 KAR Chapter 34 and 401 KAR 38:500 and shall be for a term not to exceed two (2) years. No such permit shall be issued after approval or promulgation of a UIC program in Kentucky. Any permit under this section shall contain a condition providing that it shall terminate upon final action by the cabinet under a UIC program to issue or deny a UIC permit for the facility.

Section 6. Research, Development, and Demonstration Permits. (1) The cabinet may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 or 36. Any such permit shall include such terms and conditions as shall assure protection of human health and the environment. Such permits:

(a) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one (1) year unless renewed as provided in subsection (4) of this section; and

(b) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the cabinet deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and

(c) Shall include such requirements as the cabinet deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action), and such requirements as the cabinet deems necessary regarding testing and providing of information to the cabinet with respect to the operation of the facility.

(2) For the purpose of expediting review and issuance of permits under this section, the cabinet may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in 401 KAR Chapter 38 except that there may be no modification or waiver of provisions in KRS Chapter 224 regarding financial responsibility (including insurance) or of procedures regarding public participation.

(3) The cabinet may order an immediate termination of all operations at the facility at any time it is determined that termination is necessary to protect human health and the environment.

(4) Any permit issued under this section may be renewed not more than three (3) times. Each such renewal shall be for a period of not more than one (1) year.

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

APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment affects the owners and operators of hazardous waste storage, treatment, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment may provide direct costs to the affected entities, due to the clarification that existing incineration facilities must either conduct a trial burn, or submit other required information before a permit can be approved.

2. Continuing costs or savings: First year costs will continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements may be included with the adoption of this proposed amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment may result in direct or savings for the promulgating administrative body during the first year.

2. Continuing costs or savings: First year savings may continue.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Additional reporting and paperwork may be required by the proposed amendment.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment clarifies the requirement that existing incineration facilities must either conduct a trial burn, or submit other required information before a permit can be approved.

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 270.62(d) as published in the Federal Register on January 30, 1989.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, storage, disposal, and recycling facilities.

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 January 30, 1989, at 40 CFR 270.62.

2. State compliance standards. The proposed amendment clarifies that existing incineration facilities must either conduct a trial burn, or submit other required information before a permit can be approved.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate clarifies that existing incineration facilities must either conduct a trial burn, or submit other required information before a permit can be approved.

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 38:070. Application procedures.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99, 15 USC 2601 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 15 USC 2601 et seq.

NECESSITY AND FUNCTION: KRS 224.40-305 and 224.46-520 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes the application procedures.

Section 1. General Application Requirements. (1) Permit application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the cabinet as described in Sections 1 through 6 of this regulation and 401 KAR 38:020. Persons currently authorized with interim status under 401 KAR 38:020 shall apply for permits when required by the cabinet. Persons covered by permits by rule, Section 1 of 401 KAR 38:060, need not apply except as required by 401 KAR 38:500 for disposal facilities permitted by rule. Procedures for applications, issuance and administration of emergency permits are found exclusively in Section 2 of 401 KAR 38:060. Procedures for application issuance and administration of research, development, and demonstration permits are found exclusively in Section 6 of 401 KAR 38:060.

(2) Applicant; who applies. When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit, and the owner shall also sign the permit application.

(3) Completeness. The cabinet shall not issue a permit before receiving a complete application for a permit except for permits by rule or emergency permits. An application for a permit is complete when the cabinet receives an application form and any supplemental information which are completed to the satisfaction of the cabinet. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in Section 9 of this regulation. However, failure by the applicant to submit exposure information may be grounds for denial of the permit or revocation of an issued permit. The cabinet may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.

(4) Information requirements. All applicants for permits shall provide the applicable information in compliance with 401 KAR 38:080 through 401 KAR 38:210 to the cabinet, using the application form provided by the cabinet.

(5) Number of copies. Any person who requires a hazardous waste site or facility permit shall submit two (2) copies of the application. If the application for a permit includes an incinerator or a facility which requires groundwater monitoring, three (3) copies of the application shall be submitted to the cabinet. Additional copies may be required prior to permit issuance.

Section 2. Existing Hazardous Waste Sites or Facilities and Interim Status Qualifications. (1) Owners and operators of existing hazardous waste sites or facilities or of hazardous waste sites or facilities in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a permit shall submit Part A of their permit application or its equivalent (Registration of Intent to Apply for a Permit) to the cabinet no later than:

(a) Six (6) months after the date of publication of regulations which first require them to comply with the standards set forth in 401 KAR Chapters 35 or 36; or

(b) Thirty (30) days after the date they first become subject to the standards set forth in 401 KAR Chapters 35 or 36, whichever first occurs.

(2) The cabinet may extend the date by which owners and operators of specified classes of existing hazardous waste management facilities shall submit Part A of their permit application or its equivalent if the cabinet finds that:

(a) There has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application; and

(b) Such confusion is attributable to ambiguities in the waste management regulations.

(3) The cabinet may by compliance order extend the date by which the owner and operator of an existing hazardous waste site or facility shall submit Part A of their permit application or its equivalent.

(4) Any time after promulgation of the appropriate regulatory requirement the owner and operator of an existing hazardous waste site or facility may be required to submit Part B of their permit application. Any owner or operator shall be allowed at least six (6) months from the date of request to submit Part B of the application. Any owner or operator of an existing hazardous waste site or facility may voluntarily submit Part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste site or facility shall submit a Part B permit application in accordance with the dates specified in Section 4 of 401 KAR 38:020. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments that render the

facility subject to the requirement to have a hazardous waste site or facility permit shall submit a Part B application in accordance with the dates specified in Section 4 of 401 KAR 38:020.

(5) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status under 401 KAR 38:050.

(6) Owners and operators of existing hazardous waste sites or facilities which close under interim status without submitting Part B of the permit application shall, at a minimum, comply with the corrective action requirements in Section 12 of 401 KAR 34:060.

Section 3. New Hazardous Waste Sites or Facilities. (1) Except as provided in subsection (3) of this section, no person shall begin physical construction of a new hazardous waste site or facility without having submitted Part A or its equivalent and Part B of the permit application and received an effective hazardous waste site or facility permit (see Section 12 of 401 KAR 38:050).

(2) An application for a permit for a new hazardous waste site or facility (including both Part A or its equivalent, and Part B) may be filed at any time after promulgation of the standards in 401 KAR 34:180 applicable to such facility. The application shall be filed with the cabinet. All applications shall be submitted at least 180 days before physical construction is expected to commence.

(3) Notwithstanding subsection (1) of this section, a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the Administrator of the U.S. Environmental Protection Agency under Section (6)(e) of [~~the Toxic Substances Control Act~~] 15 USC 2601-2655 (The Toxic Substances Control Act, as amended) and any person owning or operating such a facility may, at any time after construction or operation of such facility has begun, file an application for a permit to incinerate hazardous waste authorizing such facility to incinerate waste identified or listed under KRS 224.46-510(3) and the regulations promulgated pursuant thereto.

(4) An application for a permit for a new hazardous waste disposal facility shall be in compliance with the requirements specified in KRS 224.46-520 and 401 KAR 38:500 regarding approval by the local government or the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board.

Section 4. Updating Permit Applications. (1) If any owner or operator of a hazardous waste site or facility has filed Part A of a permit application or its equivalent and has not yet filed Part B, the owner or operator shall file an amended Part A application or its equivalent with the cabinet:

(a) No later than the effective date of regulatory provisions listing or designating wastes as hazardous in addition to those listed or designated previously in 401 KAR Chapter 31, if the facility is treating, storing or disposing of any of the newly listed or designated waste; or

(b) As necessary to comply with Section 3 of 401 KAR 38:020 for changes during interim status.

(2) The owner or operator of a facility who fails to comply with the updating requirements of subsection (1) of this section does not receive interim status as to the wastes not covered by a duly filed Part A application or its equivalent.

Section 5. Reapplications. Any hazardous waste site or facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the cabinet. (The cabinet shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

Section 6. Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under Section 1(4) of this regulation and 401 KAR 38:080 through 38:210, for a period of at least three (3) years from the date the application is signed.

Section 7. Signatures to Permit Applications and Reports. (1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

1. A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or

2. The manager of one (1) or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

1. The chief executive officer of the agency; or

2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA).

(2) Reports. All reports required by permits, and other information requested by the cabinet, shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) The written authorization is submitted to the cabinet.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section 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 subsections (1) or (2) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. 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 knowing violations."

Section 8. Confidentiality of Information. (1) Claims of confidentiality. In accordance with KRS 224.10-212 (Public Information) and 400 KAR 1:060, any information submitted to the cabinet pursuant to these regulations may be claimed as confidential by the submitter. Any such claim shall be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the cabinet may make the information available to the public without further notice. If a claim is

asserted, the information will be treated in accordance with the procedures in KRS 224.10-212 (Public Information) and any other provision of the waste management regulations relating to confidentiality of information.

(2) Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential will be denied.

Section 9. Exposure Information. (1) After August 8, 1985, any Part B application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or landfill shall be accompanied by information reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information shall address:

(a) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(b) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (a) of this subsection; and

(c) The potential magnitude and nature of the human exposure resulting from such releases.

(2) By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application shall submit the exposure information required in subsection (1) of this section.

(3) Information required by this section may in part satisfy the requirements of KRS 224.46-520(1) and Section 2(19) of 401 KAR 38:090.

Section 10. The cabinet may require a permittee or an applicant to submit information in order to establish permit conditions under Section 3 of 401 KAR 38:030 and Section 5 of 401 KAR 38:040.

Section 11. Permit Denial. The cabinet may, pursuant to the procedures of KRS Chapter 38, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: The proposed amendment to the regulation will not affect any type or number of entities in so far as the proposed amendment is a clarification of existing policy.

(a) Direct and indirect costs or savings to those affected:

1. First year: There should be no direct or indirect costs or savings to those affected since these amendments simply add a clarification designating the authority to deny permits for the active life of the facility.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(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 to the promulgating administrative body, since the cabinet has always had the authority to separate these two permit decisions under the permitting regulations, although those regulations did not specifically outline such an approach.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: 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 promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

ALTERNATIVE: 1. Less stringent. The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent. The proposed amendment is identical to the federal regulations which adequately protect human health and the environment.

3. Present proposal. The present proposal adopts federal regulations at 40 CFR 270.10(c) and 40 CFR 270.29 as published in the Federal Register on March 7, 1989.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, storage, and disposal facilities.

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 March 7, 1989, at 40 CFR 270.10(c) and 40 CFR 270.29.

2. State compliance standards. The proposed amendment provides a clarification designating the authority to deny permits for the active life of the facility while a permit decision with respect to the postclosure period remains open.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate provides a clarification designating the authority to deny permits for the active life of the facility while a permit decision with respect to the postclosure period remains open.

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 that the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 49:040. Solid waste planning assistance program.

RELATES TO: KRS 109.011 [~~to 109.280~~], 224.40-100, 224.43-340, 224.43-345

STATUTORY AUTHORITY: KRS 224.10-100, 224.43-340, 224.43-710, 224.43-720, 224.43-730

NECESSITY AND FUNCTION: KRS 224.43-710 establishes a program to provide technical and financial assistance to cities, counties, waste management districts, or any combination thereof [~~and urban county governments~~] for the purposes of encouraging the development of local strategies to address solid waste management opportunities and problems. This regulation establishes the procedures and criteria by which financial assistance shall [~~will~~] be provided [~~to counties, cities, solid waste management areas and waste management districts~~].

Section 1. Applicability. This regulation governs the general conditions, application procedures, approval criteria, and priority systems to implement the Kentucky solid waste management financial assistance program.

Section 2. Financial Assistance Program. Financial assistance provided under this program may be used for activities specified in KRS 224.43-720. [~~to employ staff, contract with other units of government or private consultants, and pay administrative costs involved in plan and study preparation. Financial assistance shall not be used for the acquisition of land or interest in land, equipment or any other capital improvements, or any annually recurring costs that are considered to be operation and maintenance expenses.~~] The financial assistance program shall include four (4) subparts including:

(1) Area solid waste management plans. Financial assistance may be used to prepare area solid waste management plans.

(2) Disposal site engineering and geotechnical studies. Financial assistance may be used to prepare disposal site engineering plans and conduct geotechnical studies required by KRS 224.855 for a new landfill or a major modification to an existing landfill.

(3) Resource recovery studies. Financial assistance may be used to investigate the feasibility of developing a resource recovery facility or implementing a resource recovery activity. Studies may include technological analyses of alternative recovery systems, preliminary engineering design, legal, economic, financial, environmental, administrative and institutional analyses.

(4) Relevant solid waste management studies. Financial assistance may be used to conduct specific studies and detailed analyses necessary to implement or improve a solid waste collection, transportation, processing, public education, enforcement, or resource conservation system.

Section 3. Eligibility. (1) Eligible recipients for financial assistance to prepare area solid waste management plans are cities, counties, waste management districts, or any combination thereof. [~~county governments, a group of county governments or urban county governments.~~] Where counties have delegated the responsibility for plan preparation to a waste management district, city or other entity, the county shall submit the application and retain primary responsibility for plan development. Counties that have received financial assistance from the cabinet to prepare an area solid waste management plan are ineligible to receive another grant to prepare an area solid waste plan for four (4) years from the date that a grant was awarded.

(2) Recipients eligible to receive financial assistance for other studies include counties, cities, [~~or urban county governments, and~~] waste management districts, or any combination thereof located within a designated solid waste management area. The proposed study shall be recommended in an approved area solid waste management plan or an approved and adopted plan update. Financial assistance shall [~~will~~] be limited to one (1) study for each designated solid waste management area per year. Eligibility to receive assistance for a disposal site engineering or geotechnical study is contingent on the applicant having the legal right to conduct the study and develop and operate a landfill at the specified site if the facility is approved by the cabinet.

Section 4. Application Process and Content. The general application procedures to be followed by all applicants and the cabinet are:

(1) Based on the availability of funds, the cabinet may administer two (2) to three (3) grant cycles each year. [~~Applications shall be submitted on a form provided by the cabinet.~~]

(2) Applications to prepare solid waste management plans shall [~~will~~] receive first consideration. In selecting the recipients in a grant cycle, the cabinet shall [~~will~~] consider the following factors:

(a) The current availability of a permitted municipal solid waste disposal facility [~~sanitary landfill~~];

(b) The adequacy of the current solid waste collection system;

(c) The volume of waste generated in the proposed service area;

(d) Whether the plan or proposed facility shall [~~will~~] serve a multicounty area;

(e) The mean annual income level of the residents to be served;

(f) The applicant's annual budget and its ability to finance the planning activity;

(g) The projected benefits of the proposed plan or facility;

(h) The promotion of resource conservation and recovery practices;

(i) The existence of an organizational framework capable of implementing any subsequent plan; [~~and~~]

(j) The innovative nature of the proposed facility or planning process; and

(k) Implementation of an approved universal collection system.

(3) Selection of recipients for financial assistance grants shall [~~will~~] be made using the criteria listed in subsection (2) of this section.

(4) The cabinet shall [~~will~~] notify applicants in writing within thirty (30) days after the close of a grant cycle of award acceptance or rejection.

(5) Applicants shall prepare a work program identifying study tasks to be completed, their estimated cost, who shall [~~will~~] conduct the study tasks, and timetable for plan development.

(6) Based on the work program the cabinet and the applicant shall [~~will~~] enter into a Memorandum of Agreement (MOA) identifying the level of financial assistance to be provided, activities to be performed, a timetable for study completion, and any other necessary conditions.

(7) Memorandums of Agreement shall [~~will generally~~] be written for periods of one (1) year or less. Those written for periods longer than one (1) year shall [~~will~~] be staged in phases of one (1) year or less with interim audits at the end of each stage. Planning studies shall be initiated within ninety (90) days of notice of award acceptance or the agreement to provide financial assistance may be

withdrawn.

Section 5. Financial Assistance Levels. (1) Eligible recipients may receive grants for up to fifty (50) percent of the cost of the planning or study activity. The local cost share may include in-kind services. Activities that cannot be considered as in-kind services include those associated with advertising for, selecting, or administering a contract for a consultant; costs incurred outside of the grant period; plan review activities or discussions of the plan or study conducted at normally scheduled public meetings; or any plan or study implementation activity.

(2) The maximum level of financial assistance available for:

(a) An area solid waste management plan for each [~~a single~~] county is $10,000[~~; two (2) counties is $12,500; three (3) counties is $13,500; four (4) counties is $14,500; and five (5) or more counties is $15,000~~].

(b) A disposal site engineering study or geotechnical studies is $15,000.

(c) Resource recovery studies is $25,000.

(d) Relevant solid waste management studies is $10,000.

(3) The recipient shall maintain appropriate records to document expenditures and in-kind services provided during development of the plan. These records shall be made available to the cabinet upon request.

(4) Payment shall [~~will~~] be on a reimbursable basis. Partial payments may be authorized by the cabinet during the course of plan development. Recipients shall [~~will~~] only receive total reimbursement only upon final approval by the cabinet of the plan or study.

(5) Any additional expenditures by the grant recipient over the amount of the original estimated project costs shall not be considered for matching payment by the cabinet.

(6) The cabinet may terminate the grant if the cabinet determines that there has been no substantial performance on the plan or study, unless good cause is shown.

(7) The cabinet may determine that any or all of the uncompleted portions of a study are not eligible for reimbursement where preliminary analyses indicates that project implementation would be infeasible for economic, environmental, technical or any other reason. When [~~such~~] a determination is made, the cabinet shall [~~will~~] notify the recipient and withdraw its agreement to cost share any additional portions of the study. This [~~Such a~~] determination shall [~~will~~] not effect the reimbursement of those parts of the study completed by the recipient prior to receiving the notification of ineligibility.

[~~Section 6. Severability. If any section, paragraph, phrase, sentence or clause of this chapter is declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.~~]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: June 3, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale

(1) Type and number of entities affected: Eligible recipients for financial assistance include counties, cities, waste management districts, or any combination thereof.

(a) Direct and indirect costs or savings to those affected:

1. First year: The assistance program established by this regulation could save counties and urban-county governments approximately 50 percent of the cost of preparing solid waste management plans. The allocation for assistance cannot exceed $10,000 per county. The financial assistance must be matched by the local government on a 50:50 basis.

2. Continuing costs or savings: The assistance program is used primarily to aid counties in the preparation of area solid waste management plans. The proposed amendment to this regulation removes the restriction of per county allocations being reduced if they regionalize to prepare their plans. This is inconsistent with statutory directives that the cabinet promote regionalization. The removal of this requirement enables the financial assistance to be pooled with each county contributing their full allocation to the planning process.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Applicants may decrease their "out-of-pocket" financial costs by providing in-kind services to meet the 50 percent matching requirements. Eligible in-kind services include staff costs, research, data collection, preparation of reports or maps, or studies.

(b) Reporting and paperwork requirements: In order to apply for financial assistance, applicants must prepare the following documents: (1) A Memorandum of Agreement (MOA) outlining the scope of service, funding, and terms of the agreement. The MOA must be accompanied by a work plan and verification of universal collection.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Implementation of this regulation has required minor commitment of manpower by personnel assigned to implement the solid waste management planning program. The level of assistance is dependent upon the amount of funding allocated in the budget bill to the program, the number of counties applying for assistance and the amount of financial assistance requested. The proposed amendment has no direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: The cabinet will continue to experience staff cost associated with program operation.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The proposed amendment does not increase the reporting or paperwork requirements. The cabinet shall continue to process MOAs and work plans as submitted during the assigned application cycles.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation. The proposed amendment will enable counties that regionalize for planning purposes to be eligible for the per county amount of financial assistance. The assistance will then be able to be pooled with each county contributing their full allocation to the planning process.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) Effective February 21, 1991, the General Assembly enacted by special session Senate Bill 2. This bill amended KRS 224.43-710 and 224.99-010 which outlines the requirements for technical and financial assistance for developing plans.

ALTERNATIVE: 1. Less stringent. The proposed amendments to the regulation cannot be less stringent than provisions outlined in statute.

2. More stringent. The proposed amendments to the regulation cannot be more stringent than provisions outlined in statute.

3. Present proposal. The present proposal corrects inconsistencies created with the passage of Senate Bill 2 between the statute and regulation. This change also removes the restriction of per county allocations being reduced if they regionalize to prepare their plans. This is inconsistent with statutory directives that the cabinet promote regionalization. The removal of this requirement enables the financial assistance to be pooled with each county contributing their full allocation to the planning process.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There are no additional comments.

Tiering: Was tiering applied? Yes. This regulation applies to counties, cities, waste management districts, or any combination thereof.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendment is consistent with the requirements of the Federal Resource Conservation and Recovery Act of 1976 as amended.

2. State compliance standards. The present proposal corrects inconsistencies created with the passage of Senate Bill 2 between the statute and regulation. This change also removes the restriction of per county allocations being reduced if they regionalize to prepare their plans. This is inconsistent with statutory directives that the cabinet promote regionalization. The removal of this requirement enables the financial assistance to be pooled with each county contributing their full allocation to the planning process.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate contains minimum standards for development and implementation of a state plan and the upgrading of open dumps.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes different requirements but is consistent with federal requirements for solid waste planning.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Counties and waste management districts are required to develop solid waste management plans and form solid waste management areas. Since each county is unique in resources and problems, planning as well as financial assistance will be tailored and implementation will be more efficient.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

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 June 15, [~~May 13,~~] 1992, are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

1.1	Legal Assistance for Corrections Staff (Amended 6/15/92)
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports (Amended 6/15/92)
1.9	Institutional Duty Officer (Amended 6/15/92)
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Corrections Cabinet Employees
2.1	Inmate Canteen (Amended 6/15/92)
2.2	Warden's Fund
2.10	Surplus Property
03-01-01	Code of Ethics
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits (Amended 6/15/92)
9.6	Contraband (Amended 6/15/92)
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy (Amended 6/15/92)
9.9	Transportation of Inmates
9.10	Security Inspections (Amended 6/15/92)
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property (Amended 6/15/92)
10.2	Special Management Inmates
10.3	[~~10-03-01~~] Safekeepers (Amended 6/15/92)
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services (Amended 6/15/92) [~~(Amended 5/13/92)~~]
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
13.9	Dental Services [~~(Added 5/13/92)~~]
14.2	Personal Hygiene Items
14.3	Marriage of Inmates (Amended 6/15/92)
14-04-01	Legal Services Program
14.6	Inmate Grievance Procedures
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties
15.3	Meritorious Good Time
15-05-01	Restoration of Forfeited Good Time
15.6	Adjustment Procedures and Programs (Amended 6/15/92)

15.7 [~~15 07 01~~] Inmate Account Restriction (Amended 6/15/92)
16.1 [~~16 01 01~~] Inmate Visits (Amended 6/15/92)
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages (Amended 6/15/92)
17-01-01 Inmate Personal Property
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-state Transfers
18-10-01 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories (Amended 6/15/92)
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
20-01-01 Educational Programs
22.1 Privilege Trips
25-01-01 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease Program
25.4 Inmate Furloughs
25.6 Community Center Program
25.7 Expedient Release
25.8 Extended Furloughs
25.10 Administrative Release of Inmates
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-08-01 Use of Force
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview
27-12-04 Conditions of Regular Supervision/Request for Modification
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions
27-13-02 Alcohol Detection
27-14-01 Interstate Compact Transfers
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
27-15-01 Supervision Report; Violations, Unusual Incidents
27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01 Absconder Procedures
27-18-01 Probation and Parole Issuance of Detainer/Warrant
27-19-01 Preliminary Revocation Hearing
27-20-01 Division of Probation and Parole Controlled Intake Program
27-20-02 Prisoner Intake Notification
27-20-03 Prisoner Status Change
27-21-01 Apprehension and Transportation of Probation and Parole Violators
27-22-01 Fugitive Unit - Apprehensions
27-22-02 Fugitive Unit - Transportation of Fugitives
27-23-01 In-state Transfer
27-24-01 Closing Supervision Report
27-24-02 Reinstatement of Clients to Active Supervision
27-25-01 Application for Final Discharge from Parole
27-26-01 Assistance to Former Clients and Dischargees
27-27-01 Restoration of Civil Rights
27-28-01 Firearms/Explosives: Application for Relief from Disability
27-29-01 Parole Review Dates Modification
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01 Expedient Release Program
28-03-01 Parole Plans/Halfway Houses/Extended Furlough/-Sponsorship/Gradual Release
28-04-01 Furlough Verifications
28-05-01 Out-of-state Investigations

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 22, 1992 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron or Ellen Tharpe, 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: 3,013 employees of the Corrections Cabinet, 8,461 inmates, 13,376 parolees and probationers, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

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 June 15 [~~April 15~~], 1992, are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 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 [~~(Revised 4/15/92)~~]
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 [~~(Revised 4/15/92)~~]
KSR 01-00-19	Personal Service Contract Personnel
KSR 01-00-20	Consent Decree Notification to Inmates
KSR 02-00-01	Inmate Canteen
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks (Revised 6/15/92)
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)
KSR 07-00-09	Inventory Control of Underground Storage Tanks
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 10-00-12	Unit D - Designated Staff Visits [~~(Revised 4/15/92)~~]
KSR 10-00-13	Unit D - Property Room Access
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
KSR 10-01-03	Unit D - Inmate Tracking System and Records System
KSR 10-01-04	Unit D - Administrative Segregation
KSR 10-01-05	Unit D - Disciplinary Segregation
KSR 10-01-06	Unit D - Protective Custody
KSR 10-01-07	Unit D - Geriatrics
KSR 10-01-08	Unit D - Safekeepers
KSR 10-01-09	Unit D - Hold Ticket Residents
KSR 10-00-10	Unit D - and Unit E - Special Management Inmate Legal Access
KSR 10-01-11	Unit D - Behavior Problem Control
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 [~~(Revised 4/15/92)~~]
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
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
KSR 16-00-03	Inmate Access to Telephones
KSR 16-01-01	Visiting Regulations (Revised 6/15/92)
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 6/15/92)
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
KSR 20-00-04	Criteria for Participation in A College Program
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 (Revised 6/15/92)
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, Commissioner

APPROVED BY AGENCY: June 15, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 27, 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: 480 employees of the Kentucky State Reformatory, 1368 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

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 June [~~May~~] 15, 1992, are incorporated by reference and shall be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

NTC 01-05-01 Extraordinary Occurrence Reports
NTC 01-10-01 Legal Assistance for Staff
NTC 01-11-01 Political Activities of Merit Employees
NTC 01-15-01 Establishment of the Warden as Chief Executive Officer
NTC 01-17-01 Relationships with Public, Media and Other Agencies
NTC 02-02-02 Warden's Participation in the Agency Budgeting Process
NTC 02-03-01 Fiscal Management: Audits
NTC 02-04-01 Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02 Chapel Fund
NTC 02-08-01 Inmate Canteen
NTC 02-10-01 Insurance Coverage
NTC 02-12-01 Inmate Personal Accounts
NTC 04-01-01 Training and Staff Development
NTC 04-04-01 Firearms and Chemical Agents Training
NTC 06-01-01 Offender Records
NTC 06-01-02 Records - Release of Information
NTC 06-01-03 Taking Offender Record Folders onto the Yard
NTC 08-05-01 The Fire and Safety Officer
NTC 08-05-02 Fire Procedures
NTC 08-05-03 Fire Prevention
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-07-01 Safety Standards
NTC 10-01-01 Special Management Unit (Revised 6/15/92) [~~Inmates (SMU)~~]
NTC 10-02-01 Protective Custody Unit (Revised 6/15/92) [~~Security Guidelines for Special Management Inmates~~]
NTC 10-03-01 Protective Custody (Revised 6/15/92)
NTC 11-03-01 Food Services: General Guidelines
NTC 11-04-01 Food Service: Meals
NTC 11-04-02 Menu, Nutrition and Special Diets
NTC 11-05-02 Health Standards and Regulations for Food Service Employees [~~(Revised 5/15/92)~~]
NTC 11-06-01 Inspection and Sanitation [~~(Revised 5/15/92)~~]
NTC 11-07-01 Purchasing and Storage of Food Products [~~(Revised 5/15/92)~~]
NTC 12-01-01 Institutional Inspection [~~(Revised 5/15/92)~~]
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens [~~(Revised 5/15/92)~~]
NTC 12-02-02 Issuance of Personal Hygiene Products [~~(Revised 5/15/92)~~]
NTC 13-01-01 Emergency Medical Care Plan [~~(Revised 5/15/92)~~]
NTC 13-01-02 Emergency and Specialized Health Services [~~(Revised 5/15/92)~~]
NTC 13-02-01 Administration and Authority for Health Services [~~(Revised 5/15/92)~~]
NTC 13-03-01 Sick Call and Pill Call [~~(Revised 5/15/92)~~]
NTC 13-04-01 Utilization of Pharmaceutical Products [~~(Revised 5/15/92)~~]
NTC 13-05-01 Dental Services
NTC 13-05-02 Health Maintenance Dental Services
NTC 13-05-03 Dental Radiation Levels (Revised 6/15/92)
NTC 13-05-04 Attest Steam Incubator (Revised 6/15/92)
NTC 13-06-01 Licensure and Training Standards (Revised 6/15/92)
NTC 13-07-01 Provisions for Health Care Delivery (Revised 6/15/92)
NTC 13-08-01 Medical and Dental Records (Revised 6/15/92)
NTC 13-09-01 Special Diets (Revised 6/15/92)
NTC 13-11-01 Inmate Health Screening and Evaluation (Revised 6/15/92)
NTC 13-12-01 Special Health Care Programs (Revised 6/15/92)
NTC 13-17-01 Inmates Assigned to Health Services (Revised 6/15/92)
NTC 13-19-01 Mental Health Care Program
NTC 13-19-03 Suicide Prevention and Intervention Program (Revised 6/15/92)
NTC 13-20-01 Infectious Disease
NTC 13-20-02 Infection Control
NTC 13-20-03 Disposal of Biohazard Waste (Revised 6/15/92)
NTC 13-21-01 Vision Care and [/] Optometry Services (Revised 6/15/92)
NTC 13-22-01 Informed Consent (Revised 6/15/92)
NTC 13-23-01 Special Needs Inmates (Revised 6/15/92)
NTC 14-01-01 Legal Services Program
NTC 14-01-02 Receiving and Viewing of Video Tapes
NTC 14-02-01 Inmate Grievance Procedure
NTC 14-03-01 Inmate Rights and Responsibilities
NTC 14-03-02 Board of Claims
NTC 14-04-01 Inmate Search Policy
NTC 15-01-01 Restoration of Forfeited Good Time
NTC 15-02-01 Due Process/Disciplinary Procedures
NTC 15-02-02 Extra Duty Assignments
NTC 15-02-03 Hearing Officer
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail
NTC 15-03-02 Rules and Regulations for General Population Dormitories
NTC 15-03-03 Rules and Regulations for Protective Custody Dormitories
NTC 15-04-01 Inmate Identification
NTC 16-01-01 Mail Regulations
NTC 16-02-01 Visiting
NTC 16-02-02 Extended and Special Visits
NTC 16-02-03 Honor Dorm Visiting
NTC 16-03-01 Inmate Furloughs
NTC 16-05-01 Telephone Use and Control
NTC 17-01-01 Personal Property Control
NTC 17-01-02 Authorized Inmate Personal Property
NTC 17-01-03 Unauthorized Inmate Property
NTC 17-01-04 Disposition of Unauthorized Property
NTC 17-01-05 State Issue and Required Inmate Clothing
NTC 17-03-01 Assessment/Orientation
NTC 18-01-01 Preparole Progress Report
NTC 18-02-01 Classification
NTC 18-02-02 Classification - 48 Hour Notification
NTC 18-03-01 Special Notice Form
NTC 18-05-01 Transfers of Inmates

NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01	Inmate Work Program
NTC 19-01-03	Temporary Leave from Job Assignment
NTC 19-02-01	Correctional Industries
NTC 19-02-02	Guidelines for Correctional Industries
NTC 20-01-01	Academic School Program
NTC 20-02-01	Vocational School
NTC 20-02-02	Live Work Projects in Vocational School Classes
NTC 21-01-01	Library Services
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01	Religious Services
NTC 23-03-01	Marriage of Inmates
NTC 24-04-01	Honor Status
NTC 24-05-01	Unit Management
NTC 25-01-01	Release Preparation Program
NTC 25-01-02	Temporary Release/Community Center Release
NTC 25-01-03	Graduated Release
NTC 25-02-01	Funeral Trips and Bedside Visits
NTC 25-03-01	Inmate Release Procedure
NTC 26-01-01	Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: June 15, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 27, 1992, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Tom Campbell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 274 employees of the Northpoint Training Center, 905 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 6:110. Roederer Correctional Complex [~~Farm Center~~].

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 regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, revised June 15, 1992 are incorporated by reference and shall [~~on May 15, 1990 and hereinafter should~~] be referred to as Roederer Correctional Complex [~~Farm Center~~] Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

[~~RFC 01-04-02~~	~~Extraordinary Occurrence Procedure (Deleted 6/15/92)~~]
RFC 01-06-01	Inmate Access to and Communication with RCC [~~FC~~] Staff (Revised 6/15/92)
[~~RFC 01-07-01~~	~~Institutional Legal Assistance (Deleted 6/15/92)~~]
RFC 01-08-01	Public Information and News Media Access (Revised 6/15/92)
RFC 01-09-01	Staff Participation in Professional Organization and Conferences; Provisions for Leave and Reimbursement for Expenses (Revised 6/15/92)
RFC 01-10-01	RFC Cooperation with Outside Bodies Including Courts, Governmental Legislative, Executive, and Community Agencies (Revised 6/15/92)
[~~RFC 01-12-01~~	~~Institutional Duty Officer Responsibilities (Amended 5/15/90) (Deleted 6/15/92)~~]
RFC 02-01-01	Fiscal Management: Organization (Revised 6/15/92)
RFC 02-01-02	Fiscal Management: Accounting Procedures (Revised 6/15/92)
RFC 02-01-03	Fiscal Management: Agency Funds (Revised 6/15/92)
RFC 02-01-04	Fiscal Management: Insurance (Revised 6/15/92)
RFC 02-02-01	Fiscal Management: Budget (Revised 6/15/92)
RFC 02-02-02	Inmate Control of Personal Funds (Revised 6/15/92)
RFC 02-02-03	Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays (Revised 6/15/92)
RFC 02-02-05	Inmate Canteen Services (Revised 6/15/92)
RFC 02-03-01	Fiscal Management: Audits (Revised 6/15/92)
RFC 02-04-01	Purchase Orders (Revised 6/15/92)
RFC 02-04-02	Processing of Invoices (Revised 6/15/92)
RFC 02-06-01	Property Inventory (Revised 6/15/92)
RFC 03-13-01	Staff/Visitor Meals (Revised 6/15/92)
RFC 04-01-01	Employee Training and Development (Revised 6/15/92) [~~(Amended 5/15/90)~~]
[~~RFC 05-01-01~~	~~Information System (Deleted 6/15/92)~~]
RFC 06-01-01	Offender Records (Revised 6/15/92) [~~(Amended 5/15/90)~~]
[~~RFC 06-02-01~~	~~Use of Inmate Records/Security of Inmate Records (Deleted 6/15/92)~~]
RFC 06-03-01	Records Release of Information (Revised 6/15/92)
RFC 06-03-02	Storage of Expunged Records (Revised 6/15/92)

RFC 06-03-04 Access to Psychological and Psychiatric Reports (Revised 6/15/92)
RFC 06-04-01 Court Trips (Revised 6/15/92)
RFC 06-04-02 Receipt of Order of Appearance (Revised 6/15/92)
RFC 08-01-01 Fire Prevention (Revised 6/15/92)
[~~RFC 08-02-01 Fire Procedures (Deleted 6/15/92)~~
~~RFC 08-02-02 Fire Extinguishers and Their Use (Deleted 6/15/92)~~]
RFC 08-08-01 Hazardous Communication Program (Revised 6/15/92)
RFC 09-04-03 Duties and Responsibilities of the Fire Safety Officer (Revised 6/15/92)
RFC 09-06-01 Disposition of Contraband From Outside Institutional Perimeter (Revised 6/15/92) [~~Search Policy/Disposition of Contraband~~]
RFC 09-09-02 Drug Abuse Testing (Revised 6/15/92)
RFC 09-09-03 Breathalyzer (Revised 6/15/92)
RFC 09-14-01 Restricted Areas (Revised 6/15/92)
[~~RFC 09-22-01 Use of Force (Amended 5/15/90) (Deleted 6/15/92)~~
~~RFC 09-24-01 Informants (Deleted 6/15/92)~~
~~RFC 10-01-01 Special Management Inmates (Amended 5/15/90) (Deleted 6/15/92)~~]
RFC 10-01-02 Temporary Holding Cell Guidelines (Revised 6/15/92)
RFC 11-01-01 Food Services: General Guidelines (Revised 6/15/92)
RFC 11-02-01 Food Service: Security (Revised 6/15/92)
RFC 11-03-01 Dining Room Guidelines (Revised 6/15/92)
RFC 11-04-01 Food Service: Meals
RFC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Revised 6/15/92)
[~~RFC 11-05-01 Food Service: Kitchen and Dining Room Inmate Work Responsibilities (Deleted 6/15/92)~~]
RFC 11-05-02 Medical Screening of Food Handlers (Revised 6/15/92)
RFC 11-06-01 Food Service: Inspections and Sanitation (Revised 6/15/92)
RFC 11-07-01 Food Service: Purchasing, Storage and Farm Products (Revised 6/15/92)
RFC 12-01-01 Sanitation, Living Conditions Standards, Clothing Issues (Revised 6/15/92)
RFC 12-01-02 Bed Areas (Revised 6/15/92)
RFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry (Revised 6/15/92) [~~Amended 5/15/90~~]
RFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule (Revised 6/15/92)
RFC 12-03-02 Barber Shop Services and Equipment Control (Revised 6/15/92)
RFC 12-04-01 Institutional Inspections (Revised 6/15/92) [~~Amended 5/15/90~~]
[~~RFC 12-05-01 Fire Safety (Deleted 6/15/92~~)]
RFC 12-05-02 Use of Noncombustible Receptacle (Revised 6/15/92)
RFC 12-06-01 Insect and Vermin Control (Revised 6/15/92)
RFC 13-01-01 Organization of Health Services [~~Amended 5/15/90~~]
RFC 13-02-01 Health Maintenance Services: Sick Call and Pill Call
RFC 13-03-01 Dental Policy/Sick Call [~~Amended 5/15/90~~]
RFC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical [~~Amended 5/15/90~~]
RFC 13-05-02 Licensure and Training Standards for Medical Department [~~Amended 5/15/90~~]
RFC 13-06-01 Suicide Prevention and Intervention Program
RFC 13-06-02 First Aid and CPR Training Program [~~Amended 5/15/90~~]
RFC 13-06-03 Emergency Medical and Dental Care Services (Revised 6/15/92)
RFC 13-06-04 First Aid/CPR Training Program
RFC 13-07-01 Health Records [~~Amended 5/15/90~~]
RFC 13-07-03 Use of Pharmaceutical Products
RFC 13-09-01 Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death
RFC 13-10-01 Health Education/Special Health Programs [~~Amended 5/15/90~~]
RFC 13-11-01 Informed Consent
RFC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC
RFC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center
RFC 13-13-01 Identification of Special Needs Inmates
RFC 13-15-01 Medical Restraints
RFC 13-16-01 Specialized Health Services
RFC 13-17-01 Vision Care and Optometry Services
RFC 13-18-01 Infection Control [~~Amended 5/15/90~~]
RFC 14-01-01 Inmate Rights and Responsibilities
[~~RFC 14-02-01 Legal Services Program (Deleted 6/15/92)~~]
RFC 14-03-01 Inmate Grievance Procedure
RFC 14-04-01 Inmate Participation in Authorized Research
RFC 15-01-01 Adjustment Procedures [~~Amended 5/15/90~~]
RFC 16-01-01 Inmate Visiting
RFC 16-02-01 Telephone Communications
RFC 16-03-01 Mail Regulations
RFC 16-03-02 Christmas Packages
RFC 17-01-01 Assessment/Orientation Procedure for Intrasystem Transfers
RFC 17-02-01 Inmate Reception Process
RFC 17-03-01 Inmate Personal Property and Property Control
RFC 17-04-01 Unauthorized Items
RFC 17-05-02 Housing Unit Assignment Assessment/ Classification Center
RFC 17-05-03 Notifying Inmate's Families of Admission and Procedures for Mail and Visiting
RFC 17-05-04 Assessment Center Operations Rules and Regulations
RFC 17-05-05 Assessment Center Operations and Reception Programs
RFC 18-01-01 Institutional Classification Committee
RFC 18-03-01 Classification Process
RFC 18-03-02 Classification Program Planning
RFC 18-04-01 Instructions for Case Reviews
RFC 18-05-01 Transfers to Other Institutions
RFC 18-06-01 Classification Document
RFC 19-01-01 Job Assignments
RFC 19-02-01 Government Service Details
RFC 20-01-01 Academic Education Program
RFC 20-01-02 Testing and Verification Procedure
RFC 21-01-01 Library Services [~~Amended 5/15/90~~]
RFC 22-01-01 Recreation and Inmate Activities
RFC 22-01-02 Recreational Equipment Check-in/Check-out Procedure
RFC 22-03-01 Inmate Clubs and Organizations
RFC 22-03-02 Privilege Trips
RFC 22-04-01 Conducting Inmate Organizational Meetings and Programs
RFC 23-01-01 Religious Services
RFC 23-03-01 Visitors for Religious Programs
RFC 23-04-01 Marriage of Inmates
RFC 24-01-01 Social Services and Counseling Program
RFC 25-01-01 Expedient and Prerelease Preparation Program Description
RFC 25-02-01 Temporary Release or Community Center Release
RFC 25-03-01 Furloughs
RFC 25-04-01 Preparole Progress Report
RFC 25-04-02 Parole Eligibility Dates

RFC 25-05-01 Inmate Discharge Procedure
RFC 26-01-01 Citizen Involvement and Volunteer Services Program [~~(Amended 5/15/90)~~]

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 27, 1992 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 172 employees of the Roederer Correctional Complex, 435 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:130. Western Kentucky 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. This regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, revised June 15, 1992 [~~October 15, 1991~~] are incorporated by reference and shall be referred to as Western 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.

WKCC 01-09-01 Duty Officers, External and Internal Inspections, and Staff Tours
WKCC 02-01-01 Inmate Funds (Revised 6/15/92)
WKCC 02-01-02 Inmate Canteen
WKCC 02-00-03 Invoice and Voucher Processing
WKCC 02-00-04 Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06 Purchasing Procedures
WKCC 02-01-01 Inmate Funds
WKCC 02-02-01 Agency Funds and Accounting Procedures
WKCC 02-08-01 Property Receipt and Inventory Procedures
WKCC 04-01-01 Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01 Employee Training and Development
WKCC 04-04-01 Educational Assistance Program
WKCC 05-01-01 Research, Consultants, and Student Interns
WKCC 06-00-01 Offender Records and Information Access
WKCC 06-00-02 Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01 Drug Abuse and Alcohol Testing
WKCC 10-02-01 Special Management Inmates
WKCC 11-00-02 Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03 Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04 Food Service Security
WKCC 11-00-05 Food Service General Guidelines
WKCC 11-03-01 Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01 Inmate Clothing (Revised 6/15/92)
WKCC 13-00-01 Special Health Programs [~~(Revised 10/15/91)~~]
WKCC 13-01-01 Use of Pharmaceutical Products
WKCC 13-02-01 Health Care Services
[~~WKCC 14-00-01 Inmate Rights and Responsibilities (Deleted 6/15/92)~~]
WKCC 14-04-01 Legal Services Program (Revised 6/15/92)
WKCC 14-06-01 Inmate Grievance Procedure
WKCC 15-01-01 Hair and Grooming Standards
WKCC 15-02-01 Inmate Offenses and Penalties
WKCC 15-03-01 Meritorious Good Time
WKCC 15-05-01 Restoration of Forfeited Good Time
WKCC 16-01-01 Visiting Policy and Procedures [~~(Revised 10/15/91)~~]
WKCC 16-02-01 Inmate Correspondence
WKCC 16-03-01 Inmate Access to Telephones
WKCC 16-04-01 Inmate Packages (Revised 6/15/92)
WKCC 17-01-01 Inmate Personal Property (Revised 6/15/92)
WKCC 17-02-01 Inmate Reception and Orientation
WKCC 18-01-01 Structure, Guidelines, and Functions of the Classification Committee (Revised 6/15/92)
[~~WKCC 18-03-01 Inmate Wage Program (Deleted 6/15/92)~~
~~WKCC 18-04-01 Work/Program Assignments (Deleted 6/15/92)~~]
WKCC 20-03-01 Vocational Education Program
WKCC 20-04-01 Academic Education Program
WKCC 22-00-01 Inmate Recreation and Leisure Time Activities
WKCC 22-00-02 Inmate Clubs and Organizations
WKCC 23-00-01 Religious Services [~~(Revised 10/15/91)~~]
[~~WKCC 25-01-01 Gratuities (Deleted 6/15/92)~~]
WKCC 25-02-01 Inmate Release Process
WKCC 25-03-01 Prerelease Programs
WKCC 26-01-01 Volunteer Services Program

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 27, 1992 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Tom Campbell, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones
(1) Type and number of entities affected: 145 employees of the Western Kentucky Farm Center, 401 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.

TRANSPORTATION CABINET
Department of Administrative Services
Division of Transportation Services
(Proposed Amendment)

600 KAR 1:070. Motor pool procedure.

RELATES TO: 1984 Acts, c. 344 §1 and c. 406 §6
STATUTORY AUTHORITY: KRS 174.080
NECESSITY AND FUNCTION: To implement the authority for administration of the state motor pool authorized by Executive Order[s] 83-70 confirmed by the 1984 Kentucky Acts, Chapter 406, Section 6 and Executive Order [~~and~~] 82-798 confirmed by the 1984 Kentucky Acts, Chapter 344, Section 1 [~~which were confirmed by the 1984 General Assembly~~].

Section 1. (1) In order to facilitate the administration and operation of the state motor pool, the "Transportation Services Guidance Manual", as revised through August 28, 1991 [~~May 11, 1987, published by the Transportation Cabinet, a copy of which is open for public inspection during business hours in the office of the Commissioner of Administrative Services in the State Office Building, High Street, Frankfort, Kentucky 40622~~], is incorporated herein by reference and made part hereof as fully as if set forth in length. The manual incorporated by reference contains information on the use and assignment of state motor pool vehicles, the operation and care of those vehicles, and the use of Transportation Cabinet credit cards.
(2) The guidance manual incorporated by reference is published by the Transportation Cabinet. It may be viewed at or purchased from the Transportation Cabinet's Division of Management Services, First Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number of the division is (502)564-6927. The office hours of the division are 8 a.m. to 4:30 p.m. Eastern time on those weekdays routinely worked by state government.

Section 2. Any employee who fails to adhere to the requirements of this administrative regulation is subject to disciplinary action.

MARK SUTER, Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: May 14, 1992
FILED WITH LRC: May 19, 1992 at 10 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 28, 1992 at 9 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, corner of High and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this hearing must in writing by July 23, 1992, so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until July 23, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1001 State Office Building, 501, High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: 30,000 state employees who are eligible to use motor vehicles from the state motor pool.
(a) Direct and indirect costs or savings to those affected: The requirement that Transportation Cabinet employees use lap/shoulder belts when driving or riding in a state-owned vehicle, should result in a savings to those employees involved in an accident. Those persons wearing seatbelts in an accident have fewer and less severe injuries than those not wearing them. Therefore, they incur lower medical costs.
1. First year: Impossible to calculate.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: The changes specify the items which are required on a charge ticket when using a state credit card.
(2) Effects on the promulgating administrative body: The change lists those gas stations which do not recognize the state credit card. By spelling those out, the paperwork involved when someone fills a gas tank at a station which does not accept a state credit card is reduced.
(a) Direct and indirect costs or savings: Virtually none.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Reduced paperwork because more state employees are aware of the companies which do

not accept state credit cards.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not requiring all passengers to "buckle up" was rejected because of the benefit to those persons involved in an accident.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. Carefully reviewed to ensure compatibility with the Finance Cabinet procedures on purchasing.

(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 because all state employees need to follow the same procedures and standards in the use of a state motor pool vehicle.

TRANSPORTATION CABINET
(Proposed Amendment)

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet.

RELATES TO: KRS 56.610 to 56.760, 49 CFR Part 24

STATUTORY AUTHORITY: KRS 56.690, 174.080, 183.024, 49 CFR Part 24

NECESSITY AND FUNCTION: The Transportation Cabinet is required to adopt administrative regulations and procedures to implement the provisions of KRS 56.610 to 56.760 with regard to providing for uniform relocation assistance services and compensation to persons displaced by the land acquisition programs of the Transportation Cabinet.

Section 1. Definitions. (1) "Average annual net earnings" means one-half (1/2) of the net earnings of the business or farm operation before federal, state, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced. If the business or farm operation was not in operation for the full two (2) taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when it is determined by the Transportation Cabinet to be more equitable.

(2) "Business" means any lawful activity, except a farm operation, conducted:

(a) Primarily for the purchase, sale, lease, or rental of personal or real property, or for the manufacture, processing, or marketing of products, commodities, or any other personal property; or

(b) Primarily for the sale of services to the public; or

(c) Primarily for outdoor advertising display purposes, when the display is required to be moved as a result of the project; or

(d) By a nonprofit organization.

(3) "Comparable replacement dwelling" means a dwelling which is:

(a) Decent, safe and sanitary;

(b) Functionally equivalent to the displacement dwelling;

(c) Adequate in size to accommodate the occupants;

(d) In an area not subject to unreasonable adverse environmental conditions, and is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities and reasonably accessible to the person's place of employment;

(e) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

(f) Currently available to the displaced person on the private market; and

(g) Within the financial means of the displaced person.

(4) "Contributes materially" means that during the two (2) taxable years prior to the taxable year in which displacement occurs the business or farm operation:

(a) Had average annual gross receipts of not less than $5,000; or

(b) Had average annual net earnings of not less than $1,000; or

(c) Contributed at least one-third (1/3) of the owner's or operator's average annual gross income from all sources.

(5) "Control of the property" means that the Transportation Cabinet has paid the owner for the property to be acquired or if acquisition is by condemnation, the Transportation Cabinet has posted the purchase price of the property with the circuit court.

(6) "Decent, safe and sanitary dwelling" means a dwelling which meets local housing and occupancy codes, but at a minimum shall:

(a) Be structurally sound, weathertight and in good repair;

(b) Contain a safe, electrical wiring system adequate for lights and other electrical devices;

(c) Contain a heating system capable of sustaining a healthful temperature of approximately seventy (70) degrees for a displaced person;

(d) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink and a toilet, all in good working order and properly connected to a source of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system and adequate space and utility service connections for a stove and refrigerator;

(e) Contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor shall have at least two (2) means of egress; and

(f) If the displaced person is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by the displaced person.

(7) "Displaced person" means a person who moves from the real property or moves his personal property from the real property, including a person who occupies the real property prior to its acquisition but who does not meet the length of occupancy requirements:

(a) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the initiation of negotiations for, or the acquisition of, the real property in whole or in part; or

(b) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the acquisition of, in whole or in part, other real property on which the person conducts a business or farm operation. However, eligibility under this subsection applies only for the purpose of obtaining relocation assistance advisory services and moving expenses.

(8) "Dwelling" means the place of permanent or customary and usual residence of a person including a single-family house; a single-family unit in a two (2) family, multifamily, or multipurpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

(9) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

(10) "Family" means two (2) or more individuals living together in a single-family dwelling unit who:

(a) Are related by blood, adoption, marriage, or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit; or

(b) Are not related by blood or legal ties but live together by mutual consent.

(11) "Farm operation" means any activity conducted solely or primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale or home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(12) "Furnished dwelling unit" means a unit in which the furnishings are owned by someone other than the displaced person.

(13) "Initiation of negotiations" means the delivery of the initial written offer of compensation to purchase the real property by the Transportation Cabinet to the owner or the owner's representative. If the Transportation Cabinet issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the date of "initiation of negotiations" is the date of the actual move of the person from the property.

(14) "Mortgage" means the classes of liens that are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the Commonwealth of Kentucky together with the credit instrument, if any, secured thereby.

(15) "Net earnings" means any compensation obtained from the business or farm operation by its owner or the owner's spouse and dependents.

(16) "No duplication of payment" means that no person shall receive any payment under this administrative regulation if that person receives a payment under federal, state or local law which is determined to have the same purpose and effect as the payment under this administrative regulation.

(17) "Nonprofit organization" means an organization incorporated in the Commonwealth of Kentucky as a nonprofit organization under the provisions of KRS Chapter 273 and which is exempt from paying federal income taxes under the Internal Revenue Code (26 U.S.C. 501).

(18) "Notice of intent to acquire" or "notice of eligibility for relocation assistance" means written notice furnished to a person who is to be displaced, which establishes eligibility for relocation benefits prior to initiation of negotiations.

(19) "Owner of a dwelling" means a person who has purchased or holds any of the following interest in the real property:

(a) Fee title, a life estate, a ninety-nine (99) year lease, or a lease including any options, for extension with at least fifty (50) years to run from the date of acquisition; or

(b) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(c) A contract to purchase any of the interests or estates described in paragraph (a) or (b) of this subsection; or

(d) Any other interest, including a partial interest, which warrants consideration as ownership.

(20) "Person" means any individual, family, partnership, corporation, or association.

(21) "Persons not displaced" means but is not limited to the following:

(a) One who moves before the initiation of negotiations, unless the Transportation Cabinet determines that the person was displaced as a direct result of the project; or

(b) One who initially occupies the property after the date of its acquisition by the Transportation Cabinet; or

(c) One who occupies the property for the purpose of obtaining assistance under this administrative regulation; or

(d) One who the Transportation Cabinet determines is not displaced as a direct result of partial acquisition of the property; or

(e) An owner-occupant who voluntarily conveys his property, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Transportation Cabinet does not intend to acquire the property. In these cases, however, any resulting displacement of a tenant is subject to the provisions of this administrative regulation; or

(f) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause, under applicable law; or

(g) A person determined by the Transportation Cabinet to not be displaced because of another special condition.

(22) "Purchases a dwelling" means, in addition to actually buying a dwelling, the following:

(a) Purchases and rehabilitates a substandard dwelling; or

(b) Relocates a dwelling which he owns or purchases; or

(c) Constructs a dwelling on a site he owns or purchases; or

(d) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(e) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(23) "Real property" means land, and generally whatever is erected or growing upon or affixed to land.

(24) "Salvage value" means the probable sale price of an item if offered for sale on the condition that it is to be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which the item is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(25) "Small business" means a business having at least one (1) but not more than 500 employees working at the site being acquired or displaced by the project.

(26) "Subsequent occupant" means any person who did not occupy the property at the time negotiations began for acquisition of the property and who is in occupancy at the time the property is acquired and who subsequently moves from the real property. Relocation assistance payments made to a subsequent occupant shall be through the provisions of Last Resort Housing in Section 29 of this regulation.

(27) "Tenant" means a person who has the temporary use and occupancy of real property owned by another.

(28) "Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Transportation Cabinet has determined has little or no value or utility to the owner.

(29) "Unlawful occupancy" means that a person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Transportation Cabinet to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property. The Transportation Cabinet may, at its discretion, consider a squatter to be in lawful occupancy.

(30) "Utility costs" means expenses for heat, light, water, and sewer.

Section 2. Applicability. The payments and services set forth in this administrative regulation which involve a Transportation Cabinet project in which a person, business, farm operation or nonprofit organization is required to relocate or discontinue operation shall be made regardless of whether federal funds are used or not used in the project. If the Transportation Cabinet acquires real property on behalf of another agency that agency may authorize the cabinet to follow the provisions of this administrative regulation.

Section 3. Relocation Notices - General. (1) Each relocation notice provided by the Transportation Cabinet shall be personally delivered or sent by certified or registered mail, return receipt

requested.

(2) As soon as feasible, a person scheduled to be displaced shall be notified of the possibility of his displacement. He shall also be furnished with a general written description of the relocation program which gives at least the following information:

(a) Informs the person that he may be displaced because of the project and generally describes any relocation payment for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment;

(b) Indicates that any person displaced shall be given reasonable relocation advisory services to help the person relocate successfully including housing referrals, help in filing payment claims and other necessary assistance;

(c) Informs any displaced person lawfully occupying the property that he shall not be required to move without at least ninety (90) days advance notice except under the most unusual of circumstances;

(d) Describes the person's right to appeal the determination of eligibility for, or the amount of, any relocation payment for which the person may be eligible;

(e) Informs the person that in order to be eligible for benefits he is required to occupy the property at the time of initiation of negotiations and includes a definition of initiation of negotiations; and

(f) Informs the displaced person that he cannot be required to move permanently unless at least one (1) comparable replacement dwelling has been made available.

(3) Eligibility for relocation assistance shall begin on the date of initiation of negotiations for acquisition of the occupied property. At this time the Transportation Cabinet shall notify each occupant or family to be displaced in writing of his eligibility for relocation assistance.

(4) No lawful occupant shall be required to move unless he has received at least ninety (90) days advance written notice of the earliest date by which he may be required to move. Only in unusual circumstances, such as a substantial danger to the person's health or safety, shall an occupant be required to vacate the property on less than ninety (90) days advance written notice.

(5) At the initiation of negotiations the Transportation Cabinet shall give the displaced person a ninety (90) day notice. Included in that notice shall be either a specific date which is the earliest date by which he shall be required to move or a statement that before the displaced person is required to move from the property, he shall be given a thirty (30) day written notice specifying the date by which the property shall be vacated.

(6) After the Transportation Cabinet gains control of the property to be acquired and after sixty (60) or more days have passed since the issuance of a ninety (90) day notice and if comparable replacement housing has been made available to the displaced person, the cabinet may issue a notice to the displaced person specifying the date by which he is required to vacate the acquired property. The required vacation date shall be at least thirty (30) days after this notice is issued.

Section 4. Notice at Initiation of Negotiations. (1) The Transportation Cabinet shall furnish an owner-occupant of 180 days or more no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of replacement housing computation and eligibility requirements to receive the payment;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The possibility of his eligibility to receive an increased interest payment, or payment of incidental expenses incurred in the purchase of replacement housing;

(d) His option to rent rather than purchase replacement housing;

(e) The availability of relocation assistance advisory services and how they may be obtained;

(f) A ninety (90) day notice; and

(g) His right to appeal.

(2) The Transportation Cabinet shall furnish an owner-occupant of less than 180 days no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of a rental replacement housing payment and the maximum amount of a down payment for the purchase of replacement housing, as well as the requirements to receive these payments;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice; and

(f) His right to appeal.

(3) The Transportation Cabinet shall furnish a tenant-occupant of ninety (90) days or more no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The amount of rental and purchase replacement housing payments and the eligibility requirements to receive these payments;

(b) The address of the comparable housing used to compute the rental and replacement housing payments;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice;

(f) His right to appeal; and

(g) The date of the initiation of negotiations for the property.

(4) The Transportation Cabinet shall furnish in writing to a subsequent tenant-occupant within seven (7) working days from the date the cabinet acquires the property the following information:

(a) His eligibility to receive moving expense payments;

(b) The availability of relocation advisory services and how they may be obtained;

(c) Assurance that comparable replacement housing is available within his financial means; and

(d) The ninety (90) day notice to vacate. This notice shall specify the date by which the property shall be vacated, and shall not be issued until comparable housing is available.

Section 5. Alternate Notices. (1) In some rare and unusual cases, an alternate method may be used in issuing the ninety (90) day or thirty (30) day notices. This is most likely to occur if the property has many tenant-occupied units and there are not sufficient rental units available to compute their replacement housing payments. In these cases, the requirement to make the replacement housing payment offer to the tenants within seven (7) working days could not be met. The alternate procedure used by the Transportation Cabinet shall be as follows:

(a) Contact the owner and make the fair market value offer for the property;

(b) Within seven (7) working days, contact the tenants and give each a written statement which shall include:

1. The date of initiation of negotiations for the parcel; and

2. An explanation of the eligibility requirements to receive a rental replacement housing payment, or a down payment.

(c) At the time the replacement housing payment is computed and the written statement required in paragraph (b) of this subsection is given the tenant, the ninety (90) day notice shall be included. The cabinet shall use the procedure in issuing the thirty (30) day vacation written notice that is used in normal type displacements.

(d) The thirty (30) day notice to vacate shall not be required if an occupant moves of his own volition prior to the date the Transporta-

tion Cabinet would have issued the notice.

(2) A notice of intent to acquire the property shall be furnished to an owner or tenant only if it becomes necessary to establish eligibility requirements prior to negotiations on the parcel. This notice shall not be issued until acquisition has been authorized for the project. The notice of intent to acquire the property shall contain the following:

(a) Statement of eligibility and any restrictions on eligibility;

(b) The anticipated date of the initiation of negotiations for acquisition of the property; and

(c) How additional information regarding relocation payments and services can be obtained.

(3) If a notice of intent to acquire the property is given to an owner, the tenant shall be issued the notice within fifteen (15) days. The owner shall be given a copy of the notice issued to the tenant.

(4) If no property is acquired and the occupant becomes eligible for relocation assistance because of landlocking, a ninety (90) day notice shall not be issued. In this case, the occupant shall have one (1) year from the date the Transportation Cabinet makes payment for damages to the property, either by successful negotiations with the owner, or posting the money in court, in which to obtain and occupy decent, safe and sanitary replacement housing. A letter outlining the eligibility requirements to receive relocation assistance payments shall be given to the displaced person when the damage payment is made to the nonresident owner of the property.

Section 6. Availability of Comparable Replacement Dwelling Prior to Displacement. (1) No person to be displaced shall be required to move from his dwelling unless at least one (1) comparable replacement dwelling has been made available to the person. When possible, three (3) or more comparable replacement dwellings shall be made available. A comparable replacement dwelling shall be considered to have been made available to a person if:

(a) The person is informed of its location;

(b) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(c) The person is assured of receiving the relocation assistance and acquisition compensation, subject to reasonable safeguards, to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(2) The requirements of subsection (1) of this section may be waived if the person is required to move in an emergency situation such as a major disaster as described in Section 102(c) of the National Disaster Relief Act of 1974, a presidentially declared national emergency, highway slides or floods or when continued occupancy would constitute a substantial danger to the health or safety or the occupants or the public.

(3) If a person is required by the Transportation Cabinet to relocate for a temporary period due to an emergency, the Transportation Cabinet shall do the following:

(a) Take the necessary steps to assure the person is temporarily relocated to decent, safe and sanitary housing;

(b) Pay actual reasonable out-of-pocket moving expenses and any reasonable increases in rent and utility costs incurred in connection with the temporary relocation; and

(c) Make available to the displaced person as soon as feasible at least one (1) comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling).

Section 7. Relocation Advisory Services. (1) The Transportation Cabinet Advisory Services Program shall include the measures, facilities, and services that may be necessary or appropriate in order to:

(a) Personally interview each family or person to be displaced, determine the person's relocation needs and preferences, and explain the relocation payments and other assistance for which the person may be eligible, including requirements for obtaining the assistance;

(b) Provide current and continuing information on the availability, price and rental cost of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one (1) comparable replacement dwelling is made available;

(c) Inform the displaced person, in writing, of the specific comparable replacement dwelling and the price and rent used as a basis for establishing the upper limit of the replacement housing payment and the basis for the determination in order that the displaced person is made aware of the amount of the replacement housing payment to which he may be entitled;

(d) If feasible, inspect the comparable housing prior to its being made available to assure that it is decent, safe and sanitary;

(e) If possible, give a minority displaced person an opportunity to relocate to a decent, safe and sanitary replacement dwelling which is not located in an area of minority concentration and that is within his financial means. This policy, however, shall not mandate that the Transportation Cabinet provide a person a larger payment than is required to enable him to relocate to a comparable replacement dwelling;

(f) Offer the displaced person transportation to inspect housing to which he is referred;

(g) Provide current and continuing information on the availability, location purchase price, and rental cost of comparable and suitable commercial and farm properties. Assist any person displaced from a business, farm operation, or nonprofit organization to obtain and become established in a suitable replacement location;

(h) Minimize hardships to persons in adjusting to relocation by providing counseling, advice about other sources of assistance that may be available, and other help that may be appropriate;

(i) Supply persons to be displaced with information concerning federal and state housing programs, disaster loans and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to persons to be displaced;

(j) Advise a displaced person that no payments received under the relocation assistance program shall be considered as income for the purposes of the federal Internal Revenue Code or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal or state law; and

(k) Maintain contact with other governmental agencies to determine the extent of other programs which might affect the Transportation Cabinet relocation program and the availability of housing resources.

(2) The amount and extent of the relocation advisory services rendered shall be determined by the needs of the displaced person.

(3) The Transportation Cabinet may offer relocation advisory services to a person occupying property adjacent to the real property acquired if that person is caused substantial economic injury because of the cabinet's acquisition of the real property.

(4) The Transportation Cabinet shall coordinate relocation activities with project work and other displacement-causing activities to ensure that persons displaced receive consistent treatment and duplication of functions is minimized.

Section 8. Claims for Relocation Assistance Payments. (1) Any claim for relocation assistance payment shall be accompanied by documentation to support expenses incurred. A displaced person shall be provided reasonable assistance in completing and filing a claim for payment. The Transportation Cabinet shall review claims in an expeditious manner and promptly notify the claimant if additional documentation is required. Payment for a relocation assistance claim shall ordinarily be made only after the displaced person has moved or after closing and as soon as feasible following receipt of sufficient documentation to support the claim. The payment for a claim may be processed in advance of a move or closing but shall not be made

until it can be reasonably expected that the objective of the payment has been or is to be accomplished.

(2) All claims for a relocation payment shall be filed based on the following unless the time limits have been waived for good cause by the Transportation Cabinet:

(a) For tenants, within eighteen (18) months after the date of displacement; or

(b) For owners, within eighteen (18) months of the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(3) If two (2) or more occupants of one (1) household of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a prorated share of all relocation payments that would have been made if the occupants had moved together to a comparable replacement dwelling. However, if it is determined that two (2) or more occupants maintained separate households within the same dwelling, the occupants shall have separate entitlements to relocation payments.

(4) If a person to be displaced owes rent to the Transportation Cabinet, the amount owed may be deducted from his relocation assistance payment unless the deduction would prevent the displaced person from obtaining comparable replacement housing. The Transportation Cabinet shall not withhold any part of a relocation assistance payment to a displaced person to satisfy an obligation to any other creditor.

(5) By written agreement between the displaced person, the mover and the Transportation Cabinet, the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover. The displaced person shall initially make this request on forms prescribed and furnished by the Transportation Cabinet.

(6) If the Transportation Cabinet denies a claim of eligibility for or the amount of a payment, the claimant shall be promptly notified in writing of the reason for denying the claim and his right to appeal.

Section 9. Moving and Related Expense Payments-General. Moving and related expense payments are types of relocation assistance payments. Any eligible individual, family, business, farm operation or nonprofit organization displaced by a Transportation Cabinet project and who qualifies as a displaced person is entitled to payment of his actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary.

(1) To be eligible for moving and related expense payments the displaced person shall:

(a) Be in legal occupancy at the initiation of negotiations for the real property or at the time the property is acquired, in whole or in part by the Transportation Cabinet or at the time he is given a written notice by the Transportation Cabinet of intent to acquire the real property; and

(b) Move from the real property, or move his personal property from the real property subsequent to the dates established in paragraph (a) of this subsection.

(2) If the acquisition of real property used for a business, farm operation, or nonprofit organization causes a person to vacate a dwelling or other real property not acquired by the Transportation Cabinet, the additional moving cost shall be eligible for reimbursement. Also, if it is necessary to move personal property that is legally located within the acquired property, the cost shall be eligible for reimbursement.

(3) A second move for a displaced person shall not be automatically authorized, nor generally eligible for payment. However, under exceptional circumstances, a second moving payment may be made. Prior to authorizing a second move, the Transportation Cabinet shall consider all special circumstances.

(4) The displaced person shall be informed in writing as soon as possible after the initiation of negotiations of the following requirements:

(a) The displaced person shall provide the Transportation Cabinet reasonable advance notice of the approximate date of the start of the move or disposition of his personal property and a list of the items to be moved; and

(b) The displaced person shall allow the Transportation Cabinet to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and allow the cabinet to monitor the move.

Section 10. Moving and Related Expense Payments for Residential Moves. A displaced person, owner-occupant or tenant of a dwelling who qualifies as a displaced person is entitled to receive payment for the actual, reasonable and necessary moving expenses of his personal property, himself, and his family. He has the option to receive reimbursement on the basis of actual, reasonable expenses, or from the fixed-rate schedule listed in subsection (5) of this section which is based on the number of rooms of personal property. An owner-occupant of a multiple-family dwelling may be entitled to a moving payment for a residential move for himself and moving payments for his personal property located in other units.

(1) In order to determine that more than one (1) household exists in a single dwelling unit, each family unit shall have separate baths, kitchen areas and bedrooms.

(a) Two (2) or more families occupying the same dwelling unit, who are required to relocate into separate dwelling units because a single comparable dwelling unit is not available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule.

(b) Two (2) or more families occupying the same dwelling unit, who relocate into separate dwelling units on a voluntary basis when a single comparable dwelling unit is available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule. A fixed-rate schedule move payment shall be based on the number of rooms actually occupied by each family, plus community rooms utilized by each family.

(c) Two (2) or more individuals who occupy the same dwelling unit are considered to be a single family and payments shall be made accordingly.

(2) When an owner retains his dwelling, the cost of moving it onto a different site is not eligible for reimbursement as a part of the cost of moving personal property. However, if he chooses to use his dwelling as a means of moving personal property, the cost of moving the personal property may be considered eligible for reimbursement. Payments in these cases shall be from the fixed-rate schedule.

(3) If the displaced person elects to move on an actual cost basis, the following expenses are eligible for payment:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond fifty (50) miles are not eligible, unless it is determined by the Transportation Cabinet that relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking, and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property;

(d) Storage of the personal property for a period not to exceed twelve (12) months, unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the property in connection with the move and necessary storage;

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee) where insurance covering

such loss, theft, or damage is not reasonably available; and

(g) Other moving related expenses not listed as ineligible in Section 13 of this regulation but which are determined by the Transportation Cabinet to be reasonable and necessary.

(4) The displaced person may elect to move by the use of a licensed commercial mover and receive reimbursement for the actual, reasonable expenses. These expenses shall be supported by receipted bills. The Transportation Cabinet may furnish the displaced person a list of licensed movers in the area. The displaced person shall select one (1) mover and the Transportation Cabinet shall select one (1). The Transportation Cabinet shall obtain from both movers an estimate of the moving costs. The estimates shall include any necessary utility service connections. The Transportation Cabinet shall base payment on the lower estimate. However, the displaced person may hire either company.

(5) The displaced person, including a person displaced from a seasonal residence, may elect to move his personal property according to the fixed-rate schedule. The separate items authorized under commercial and self moves have been included in establishing the fixed-rate schedule and no additional moving payments shall be authorized. The room count of furniture shall be based on the actual number of furnished rooms, plus basements, attics, garages and out buildings if such spaces contain sufficient personality as to constitute a room. Payment shall be based on the following schedule:

1 Room = $250	5 Rooms = $ 750
2 Rooms = $400	6 Rooms = $ 850
3 Rooms = $550	7 Rooms = $ 950
4 Rooms = $650	8 Rooms = $1050
	Each Additional Room = $100

(6) If the displaced person lives in a furnished dwelling unit, he shall be paid moving costs for moving his personal property according to the following schedule:

First Room = $225

Each Additional Room = $35

(7) The moving expenses of a person with minimal personal possessions who occupies a dormitory style room shared by two (2) or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to fifty (50) dollars.

Section 11. Moving and Related Expense Payments for Business, Farm Operations or Nonprofit Organizations. The owner of a displaced business, farm operation or nonprofit organization is entitled to receive a payment for moving and related expenses.

(1) Any business, farm operation or nonprofit organization which qualifies as a displaced person is entitled to payment for the actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary, including expenses for the following:

(a) Transportation of personal property. Transportation costs for a distance beyond fifty (50) miles are ineligible, unless it is determined by the Transportation Cabinet that the relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property including substitute personal property and including connection to utilities available nearby. Also, included are modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded);

(d) Storage of the personal property for a period not to exceed twelve (12) months unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the personal property in connection with the move and necessary storage;

(f) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be prorated, based on the remaining useful life of the existing license, permit or certification;

(g) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee), where insurance covering the loss, theft, or damage is not reasonably available; and

(h) Professional services necessary for planning the move of the personal property; moving the personal property; and installing the relocated personal property at the replacement location.

(2) The owner of a business, farm operation or nonprofit organization, may be paid the actual reasonable cost of moving his personal property as determined to be reasonable and necessary by using a qualified commercial mover. These expenses shall be supported by receipted bills. Prior to authorizing the move, the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items are to actually be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers when a replacement property has been found. The payment of moving expenses shall be authorized only on the basis of the lower of the bids.

(3) The owner of the business, farm operation or nonprofit organization, may elect to move himself. Under this circumstance the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items actually are to be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers after a replacement property has been found. The move may be authorized only on the basis of the lower of the bids. The Transportation Cabinet shall pay to the displaced person the amount of the lower bid once it is determined that all property was moved to the new location.

(4) If the cost of the move is not likely to exceed $5,000, a single estimate may be prepared by a qualified staff employee of the Transportation Cabinet other than the person preparing the claim.

(5) When the Transportation Cabinet obtains bids for a business, farm operation or nonprofit organization move, the bidder shall be instructed in writing that the amount of his bid shall be the property of the Transportation Cabinet and shall be considered confidential information. The bidder shall state in his letter transmitting his bid to the cabinet that he shall not divulge the amount of his bid to any other person, including the displaced person. Any bidder who does not adhere to these requirements shall not be permitted to submit future bids.

(6) If it is necessary to reprint available stationery because the business, farm operation or nonprofit organization, has been relocated, the Transportation Cabinet shall pay the actual cost for reprinting the number and type of item to be replaced. Payment shall be made for only the number of each item approved in advance of the reprinting by the Transportation Cabinet. The claim for payment shall be documented by receipted bills from the provider.

(7) If it is necessary to reletter a sign that has been made obsolete as a result of the move, if possible, only that portion of the sign which changes shall be eligible to be relettered. However, if necessary, the cost of relettering the complete sign shall be an eligible expense. The payment request shall be documented by receipted bills from the provider. Approval of the relettering shall be obtained from the Transportation Cabinet in advance of work being performed.

(8) The Transportation Cabinet shall reimburse the displaced business, farm operation, or nonprofit organization actual and reasonable expenses in searching for a new location. Payment shall be limited to $1,000. The items for which an invoice may be submitted are transportation; lodging and meals away from home; time spent in searching, based on reasonable salary or earnings, of the person conducting the search; and fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site. The claim for payment shall be documented by receipted bills for meals and lodging when away from home and an affidavit shall be required for mileage and time. The affidavit shall show persons contacted, places visited, activity involved and basis for the hourly rate charged for time.

(9)(a) Payment of actual direct losses of tangible personal property may be made when the business, farm operation or nonprofit organization owner moves or discontinues his operation. Payment for actual direct losses of tangible personal property may be made only after a bona fide effort has been made by the owner to sell the items involved. The payment shall consist of the lesser of:

1. The fair market value of the item for continued use at the displacement site less the proceeds from its sale. (The claimant shall make a good faith effort to sell the personal property, unless the Transportation Cabinet determines that the effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price); or

2. The estimated cost of moving the item, with no allowance for storage. If the business, farm operation, or nonprofit organization is discontinued, the estimate shall be based on a move of fifty (50) miles;

(b) The prompt purchase of substitute personal property to replace an item not to be moved in a business, farm operation or nonprofit organization move, yet which performs a comparable function at the replacement site. Payment shall be the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale or trade-in of the replaced item; or

2. The estimated cost of moving and reinstalling the replaced item, with no allowance for storage. If the estimated cost for the move is $5,000 or less, the estimated cost may be based on a single estimate prepared by a qualified Transportation Cabinet employee.

(c) If no offers are received for the property at the sale and the property is abandoned, payment for the actual direct loss of that item shall not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item fifty (50) miles, whichever is less, plus the reasonable costs of the attempted sale, irrespective of the cost to the Transportation Cabinet of removing the item.

(d) If personal property is abandoned with no effort made by the owner to dispose of the property by sale, the owner shall not be entitled to moving expenses, or losses, for the item involved.

(e) The cost of removal by the Transportation Cabinet of personal property shall not be considered as an offsetting charge against other payments to the displaced person.

(f) The sale price, if any, and the actual reasonable costs of advertising and conducting the sale shall be supported by a copy of the bill of sale or similar documents, and by copies of any advertisements, offers to sell, auction records, and other data which support the sale.

(g) The direct loss payment for an advertising sign which is personal property shall be the lesser of the depreciated reproduction cost of the sign less the proceeds from its sale; or the estimated cost of moving the sign as determined by the Transportation Cabinet but with no allowance for storage.

(10) An owner of a discontinued or relocated business otherwise eligible for payment of moving expenses may choose to receive a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses.

(a) The fixed payment shall not be less than $1,000 nor more than $20,000.

(b) For an owner of a business to be entitled to this payment, it shall be determined that:

1. The business owns or rents personal property which has to be moved in connection with the displacement and for which an expense would be incurred in the move and the business vacates or relocates from the displacement site;

2. The business cannot be relocated without a substantial loss of patronage (clientele or net earnings). A business is assumed to meet this test unless it is determined by the Transportation Cabinet that it will not suffer a substantial loss of its existing patronage;

3. The business is not part of a commercial enterprise having more than three (3) other entitles which are not being acquired, and which are under the same ownership and engaged in the same or similar business activities;

4. The business is not operated at a displacement dwelling solely for the purpose of renting the dwelling to others; and

5. The business contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement. The displaced person shall furnish the Transportation Cabinet copies of his income tax returns and other proof of net earnings.

(c) In determining whether two (2) or more displaced legal entitles constitute a single business which is entitled to only one (1) fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;

2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

3. The entities are held out to the public, to those customarily dealing with them, as one (1) business; and

4. The same person or closely related persons own, control, or manage the affairs of the entities.

(11) An owner of a displaced farm operation may choose to apply for a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses. This payment shall not be less than $1,000 nor more than $20,000. In the case of partial acquisition of land which was a farm operation before the acquisition, a fixed payment may be made only if the Transportation Cabinet determines that:

(a) The farm operation contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement;

(b) Acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(c) The partial acquisition caused a substantial change in the nature of the farm operation.

(12) A displaced nonprofit organization may choose to apply for a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses. The payment shall not be less than $1,000 nor more than $20,000. Any request for payment in excess of $1,000 shall be supported with financial statements for the two (2) twelve (12) month periods prior to the acquisition. The amount to be used in determining the payment is the average of two (2) years annual gross revenues less administrative expenses. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other fund raising activities. Administrative expenses include rent, utilities,

salaries, advertising and fund raising expenses. Operating expenses for carrying out the purpose of the nonprofit organization are not included in administrative expenses. Monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

Section 12. Miscellaneous Moves. There are entities to be relocated that meet none of the definitions of a business, a farm operation or a nonprofit organization. The moving expenses in these instances shall usually be paid as a self-move. Examples of moves of this type are:

(1) Partial taking of a farm or residential lot on which only a shed, barn or garage contains personal property;

(2) Acquisition of a tenant-occupied residence if the owner has some personal property in the building; or

(3) Acquisition of a tenant-occupied service station where the owner or distributor has personal property to be moved.

Section 13. Ineligible Moving and Related Expenses. A displaced person shall not be entitled to payment for the following:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;

(2) Interest on a loan to cover moving expenses;

(3) Loss of good will;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location (except as provided for under reestablishment expenses);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Transportation Cabinet;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business, farm, or nonprofit organization except as provided for under actual reasonable moving expenses and reestablishment expenses; or

(11) Costs for storage of personal property on real property already owned or leased by the displaced person.

Section 14. Reestablishment Expenses of Businesses, Farm Operations or Nonprofit Organizations. A small business, farm or nonprofit organization may be eligible to receive a payment not to exceed $10,000 for expenses actually incurred in relocating and reestablishing the small business, farm operation or nonprofit organization at the replacement site.

(1) Eligible expenses shall be reasonable and necessary as determined by the Transportation Cabinet and may include, but are not limited to the following:

(a) Repairs or improvements to the replacement real property as required by federal, state, or local law, code, regulation or ordinance;

(b) Modification to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;

(c) Construction and installation costs not to exceed $1,500 for exterior signing to advertise the business;

(d) Provision of utilities from the right-of-way to improvements on the replacement site;

(e) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting;

(f) Licenses, fees and permits when not paid as a part of moving expenses;

(g) Feasibility surveys, soil testing and marketing studies;

(h) Advertisement of the replacement location not to exceed $1,500;

(i) Professional services in connection with the purchase or lease of a replacement site;

(j) Increased cost of operation during the first two (2) years at the replacement site not to exceed $5,000 for items such as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees;

(k) Impact fees or one (1) time assessments for anticipated heavy utility usage; and

(l) Other items determined by the Transportation Cabinet to be essential to the reestablishment of the business.

(2) Expenses in excess of the maximums set forth in subsection (1)(c), (h) and (j) of this section may be considered eligible if large and legitimate disparities exist between the cost of operation at the displacement site and cost of operation at an otherwise similar replacement site. In these cases, the limitations for reimbursement of the cost may be waived by the Transportation Cabinet, but in no case shall the total costs payable for reestablishment expenses exceed the $10,000 maximum.

(3) A representative of the Transportation Cabinet and the displaced person shall meet at the replacement site prior to any work being done in order to determine what repair or changes are necessary. After the move has been completed, the displaced person shall submit to the Transportation Cabinet the itemized paid receipts for those reestablishment expenses he has incurred.

(4) The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(a) Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures;

(b) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operations;

(c) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in subsection (1)(e) of this section;

(d) Interest on money borrowed to make the move or purchase the replacement property;

(e) Payment to a part-time business in the home which does not contribute materially to the household income.

Section 15. Replacement Housing Payments - General. (1) In addition to other payments authorized by this administrative regulation, individuals and families displaced from dwellings, including condominium or cooperative apartments, acquired by the Transportation Cabinet are eligible for replacement housing payments. Recognizing that it is impossible to foresee every possible replacement housing situation which may arise, the Transportation Cabinet shall strive for consistency with the provisions of this administrative regulation when a situation not specifically set forth is encountered.

(2) The displaced individual or family shall not be required to relocate to the same occupancy (owner or tenant) status in order to receive the replacement housing payment, but has other options based on his ownership status and tenure of occupancy.

(3) The Transportation Cabinet shall not participate in more than one (1) replacement housing payment for each dwelling unit, except in the case of multifamily occupancy of a single family dwelling as described in Section 17 of this regulation. The claim for payment shall be filed with the cabinet no more than eighteen (18) months after the date of displacement for tenants. For owners, the claim for payment shall be filed no more than eighteen (18) months after the date of displacement or the date of the final payment for the acquisition of real property, whichever is later. Before the payment is made to the displaced person, the Transportation Cabinet shall determine that the replacement dwelling is decent, safe and sanitary.

(5) If a displaced person otherwise qualifies for a replacement housing payment, except that he has not yet purchased or occupied a suitable replacement dwelling, the Transportation Cabinet after inspecting the proposed dwelling and finding that it is a decent, safe

and sanitary dwelling shall, upon request of the displaced person who is purchasing the dwelling, state to any interested party, financial institution or lending agency that the displaced person is eligible for the payment of a specific amount, provided he purchases and occupies the inspected dwelling within the one (1) year time limit. This statement shall include the address of the property inspected and the amount of money the displaced person is required to spend for the replacement property in order to receive the full amount of his replacement housing payment.

(6) Replacement housing payments may be made directly to the relocated individual or family, or upon written instructions from the displaced person, directly to the lessor for rent or the seller for use toward the purchase of a dwelling. This written instruction from the displaced person shall be submitted with the application for payment. In cases where an applicant otherwise qualifies for a replacement housing payment, and upon his specific request in the application, the Transportation Cabinet may make the payment into escrow prior to the displaced person's moving.

(7) The Transportation Cabinet shall determine the probable selling price of a comparable dwelling by analyzing at least three (3) comparable dwellings representative of the dwelling unit to be acquired which are available on the private market. Less than three (3) comparable dwellings may only be used for this determination when sufficient comparable dwellings are not available. Selection of comparable dwellings and computation of payment shall be made by a qualified Transportation Cabinet employee other than the appraiser or review appraiser on the parcel involved. The selected comparable dwellings shall be the most nearly comparable available and equal to or better than the subject property.

(8) If the lapse of time between obtaining a listing of an available dwelling which is used to compute a replacement housing payment and the offer of the replacement housing payment amount to the displaced person exceeds thirty (30) days, the Transportation Cabinet shall determine that the property is still on the market. If a check of the market reveals the comparable dwelling relied upon is not available, a new comparable dwelling shall be selected and a new replacement housing payment computed.

(9) An adjustment shall be made to the asking price of the selected comparable dwelling only when the market reflects a [~~substantial~~] difference of more than five (5) percent in the asking price and the sale price of comparable housing in the area. To determine whether an adjustment to the asking price is needed the Transportation Cabinet may contact realtors or use multiple listings books for recent sales.

(10) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (for example, the site is significantly smaller or does not contain a swimming pool), the value of the attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment. If an uneconomic remnant of land remains after the Transportation Cabinet acquired only a portion of a tract of property and the owner of the remaining property refuses to sell it to the Transportation Cabinet, the fair market value of the uneconomic remnant shall be deducted from the before value of the displacement dwelling for purposes of computing the replacement housing payment.

(11) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(12) A person who occupies a property for less than ninety (90) days before initiation of negotiations or who occupies the property subsequent to the initiation of negotiations but before the property is acquired is entitled to moving expenses and advisory services. Any replacement housing payment if applicable shall be made under the provisions of Section 29 of this regulation.

(13) No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this administrative regulation for a reason beyond his control, such as a disaster, an emergency, or an imminent threat to the public health or welfare as determined by the President, the federal agency funding the project, or the Transportation Cabinet; or a delay in the construction of the replacement dwelling, military reserve duty, or a hospital stay.

(14) A displaced tenant who initially rents a replacement dwelling and receives a rental assistance payment is eligible to receive a purchase or down payment assistance payment if he meets the eligibility criteria for the payments, including purchase and occupancy within the prescribed one (1) year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment. A displaced owner-occupant who originally rents a replacement dwelling and receives a rent supplement payment is eligible to receive a replacement housing payment, if he purchases and occupies a dwelling within the prescribed one (1) year.

(15) A replacement housing payment is personal to the displaced person and upon his death, the undisbursed portion of any payment shall not be paid to the heirs or assigns, except that the amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid. The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy a decent, safe and sanitary replacement dwelling. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(16) In order to avoid duplicate compensation, the amount of any insurance proceeds received by a displaced person in connection with a loss to the displacement dwelling shall be included in the acquisition cost of the displacement dwelling when the Transportation Cabinet computes the replacement housing payment.

Section 16. Replacement Housing Payments - Partial Tract Acquisition. (1) If the acquired dwelling is located on a tract typical in size for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling on a tract typical in size for the area, less the difference in the before and after values of the residential property. This difference represents the acquisition price and shall include any damages to the portion of the tract not acquired by the Transportation Cabinet.

(2) If the acquired dwelling is located on a tract larger in size than typical for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the tract which is a typical size for computation of the maximum replacement housing payment. The maximum housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total tract.

(3) If the acquired dwelling is located on a farm and if only a portion of the farm is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the farm which is a typical size tract for a residential property in the area for computation of the maximum replacement housing payment. The maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total farm.

(4) If an outbuilding is located on the tract to be acquired and if the outbuilding is used for nonresidential purposes such as corncribs or implement storage, its value shall not be included in the computation of the replacement housing payment.

(5) If the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residen-

tial and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the difference in the before and after value of the typical size homesite using the value indicated by the higher and better use, or if larger than typical, the difference in the value before and after a portion is carved out. This difference shall represent the acquisition price.

Section 17. Replacement Housing Payments - Multiple Occupancy of Same Dwelling Unit. (1) If two (2) or more eligible families occupy the same single-family dwelling unit, and a comparable replacement dwelling is available, the occupants are entitled to only one (1) replacement housing or rent supplement payment. If a comparable replacement dwelling is not available, a replacement housing or rent supplement payment for each family shall be based on housing which is comparable to the quarters privately occupied by each family plus community rooms which have been shared with other occupants. For owner-occupants the acquisition price to be used as the basis for replacement housing payment computations is that amount each owner received from the total payment for the property to be acquired.

(2) If two (2) or more eligible individuals occupy the same single-family dwelling unit, they are considered one (1) family for replacement housing payment or rent supplement purposes. If all individuals do not relocate to decent, safe and sanitary housing, the Transportation Cabinet shall determine and pay those individuals who do relocate into decent, safe and sanitary housing a proportional share of the payment that would have been received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

(3) If a displaced individual or family occupies living quarters on the same premises as a displaced business, farm or nonprofit organization, the individual or family is a separate displaced person for purposes of determining entitlement to relocation payments. The Transportation Cabinet shall compute the replacement housing payment for joint residential and business use properties as follows:

(a) If the owner occupies living quarters in the building the replacement housing payment shall be determined by establishing the difference in the before and after value of the land using the appraised value (if acquiring the entire tract the cabinet shall use the total land value) adding the value of the living quarters portion of the building and then subtracting the total from the most comparable property to the living quarters available for sale on the market.

(b) If a tenant occupies living quarters in the building to be acquired, the replacement housing payment shall be determined by subtracting the base monthly rent of the displaced tenant in the acquired dwelling as determined in Section 23(2) of this regulation from the amount the displaced person actually pays per month for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities. That amount shall be multiplied by forty-two (42) to establish the replacement housing payment.

(c) A displaced person eligible for a rental replacement housing payment under Section 23(1) of this regulation may receive a down payment assistance payment not to exceed $5,250. In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses.

(4) The procedure for computing replacement housing payment amounts to an owner of a multifamily dwelling who occupies one (1) unit is as follows:

(a) The comparable dwellings considered in the computation shall be the same as that acquired, that is, if the property is a triplex, then the comparable dwellings shall be triplexes. If comparable dwellings are not available, structures of the next lowest density shall be used. If there are not any available comparable multifamily structures to be found, the comparison of the owner's living unit shall be to a single-family residence. A higher density structure shall never be used as a comparable structure.

(b) The value of the owner's unit shall be used as the basis for the replacement housing payment determination, not the entire fair market value of the property being acquired. The replacement housing payment determination is that difference, if any, between the value of the owner's living unit and the value of a living unit on the most comparable available property. If the comparable housing is a triplex, the replacement housing payment is based on the value of only one (1) of the three (3) units; if a duplex, the payment is based on the value of only one (1) of the two (2) units; if a single-family dwelling, the payment is based on the entire value of the dwelling. The other living units of a multifamily dwelling shall not be included in the value of a comparable unit because these are considered as income producing and not part of the owner's personal living area.

Section 18. Replacement Housing Payments - Owner-Occupants of 180 Days or More. (1) A displaced owner-occupant may receive replacement housing payments if the displaced person has actually owned and occupied the displacement dwelling for 180 days or more immediately prior to the initiation of negotiations and if he purchases and occupies a decent, safe and sanitary replacement dwelling within a one (1) year period, beginning on the later of the following dates:

(a) The date the person receives final payment from the Transportation Cabinet for the displacement dwelling; or

(b) In the case of condemnation, the date the full amount of the estimate of just compensation is deposited in court; or

(c) The date the person is advised by the Transportation Cabinet of the availability of comparable housing.

(2) The owner-occupant is eligible for a replacement housing payment when:

(a) He is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or part;

(b) He is in occupancy at the time he is given a written notice by the Transportation Cabinet of intent to acquire the property by a given date;

(c) His occupancy of the property has been for at least 180 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier; and

(d) He purchased and occupied a decent, safe and sanitary dwelling within the time period specified in subsection (1) of this section;

(3) The combined total of the replacement housing payments for an owner-occupant of 180 days shall not exceed $22,500 for the additional costs necessary to purchase replacement housing; for compensation to the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; and to reimburse the owner for expenses incidental to the purchase of replacement housing which are incurred.

(4) The amount of the replacement housing payment for the sole owner of a dwelling is the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his dwelling, equals the actual cost which the owner is required to pay for a decent, safe and sanitary replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling, whichever is less. When the displaced person obtains his decent, safe and sanitary replacement dwelling (not necessarily comparable to the dwelling from which he was displaced), his replacement housing payment shall be based on the amount spent for the replacement dwelling. If the replacement dwelling is not decent, safe and sanitary, he may be paid to correct the deficiencies if he maintains documented receipts. Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for decent, safe and sanitary replacement dwelling.

(5) If a single-family dwelling is owned by several persons, and occupied by only part of the owners, the replacement housing payment shall be the lesser of:

(a) The difference between the owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling; or

(b) The difference between the total acquisition cost of the acquired dwelling and the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling.

(6) If the displaced owner-occupant of 180 days or more does not purchase and occupy a decent, safe and sanitary dwelling, he shall be entitled to receive a rent supplement payment if he rents and occupies a decent, safe and sanitary dwelling.

(7) It shall be the Transportation Cabinet's responsibility to make available a comparable replacement dwelling unit and to relocate the displaced person to his original ownership status if this is his desire. If the displaced owner-occupant desires to rent, the Transportation Cabinet shall make a reasonable effort to accomplish the request.

(8) When an owner-occupant of 180 days or more retains and moves his dwelling to another location, the Transportation Cabinet shall determine if he is eligible for a replacement housing payment. If the dwelling meets the decent, safe and sanitary standards, improvements such as room additions or remodeling shall not be allowed in determining the amount of the replacement housing payment. If the dwelling retained and moved is not decent, safe and sanitary, the cost to improve it so that it complies with adequate standards shall be allowed if documented receipts are maintained. Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for a decent, safe and sanitary replacement dwelling.

(9) If an owner-occupant of 180 days or more has received a rental replacement housing payment and subsequently chooses to purchase a replacement dwelling, the amount of the rental replacement housing payment shall be deducted from the amount he would have been entitled to receive if he had purchased a replacement dwelling immediately. The combined payments shall not exceed $22,500.

(10) If the owner is allowed the option of retaining his dwelling, the replacement housing payment shall be computed in accordance with the appropriate paragraph below. The payments computed under paragraphs (a) through (c) of this subsection shall not exceed the amount the displaced person would have received if he had purchased a replacement dwelling.

(a) If the dwelling is decent, safe and sanitary, the payment, if any, shall be the amount by which the cost to relocate the retained dwelling exceeds the acquisition price of the dwelling and homesite. The cost to relocate may include the reasonable costs of acquiring a new site and other expenses incidental to retaining and moving the dwelling, and restoring it to a condition comparable to that before the move. Payment shall not exceed $22,500;

(b) If the owner chooses to move his dwelling to a part of the tract not acquired by the Transportation Cabinet, the current fair market value for purchase of a residential site, not to exceed a typical size homesite, may be included as a cost to relocate the dwelling; or

(c) If the retained dwelling is not decent, safe and sanitary, the payment shall be computed as shown above, except the costs to correct deficiencies shall be included in the costs to relocate.

(11) An owner-occupant of 180 days or more eligible for a purchase replacement housing payment who elects to rent a replacement dwelling is eligible for a rental replacement housing payment which shall not exceed $5,250 unless the conditions of subsection (12) of this section exist. To compute the eligible payment, from the amount the displaced person actually pays for a rental replacement dwelling, including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the fair market rent including monthly utilities of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(12) The rental payment authorized by subsection (11) of this section may only exceed $5,250 if the payment to purchase for an owner-occupant of 180 days could have been authorized as a last resort housing payment under Section 29 of this regulation and therefore, could have exceeded $22,500.

Section 19. Replacement Housing Payments - Owner-Occupants of Less Than 180 Days. (1) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days and who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed $5,250. To compute the rental payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the monthly fair market rent of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(2) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days, may elect to receive an amount to enable him to make a down payment on the purchase of a replacement dwelling including the actual expenses incidental to the purchase, not to exceed $5,250, or for additional costs to relocate his retained dwelling in accordance with the following:

(a) The full amount of the payment shall be applied toward the purchase of the replacement dwelling and related incidental expenses and the displaced person shall purchase and occupy the dwelling within the time frame specified in Section 23(1) of this regulation;

(b) The displaced person may be eligible for the entire $5,250 for a down payment including incidental expenses, when the amount of the rental replacement housing computation is less than $5,250 or is zero, except either payment shall not exceed the amount the displaced person would receive if he were an owner-occupant of 180 days or more.

(3) If an owner-occupant of less than 180 days retains his dwelling, then the replacement housing payment, if any, shall be determined in accordance with the provisions of Section 18 (10) of this regulation, but the payment shall not exceed $5,250. If an owner-occupant of less than 180 days has received a rental replacement housing payment, the amount of the rental payment shall be deducted from the amount to which he is entitled. The combined payments shall not exceed $5,250.

Section 20. Revisions to Replacement Housing Payment. (1) If the comparable housing used in the Transportation Cabinet's computation is not available at the time of the relocation offer, a new replacement housing payment shall be computed cased on available housing which is equal to or better than the dwelling acquired and meets the other comparable criteria. However, the new replacement housing payment amount shall not be less than the original computed amount.

(2) When an adjustment is made in the fair market value offer to the owner-occupant because of an administrative settlement, an appeal from the commissioners' award, jury award or similar reason the replacement housing payment shall be recomputed based on the new acquisition price.

Section 21. Replacement Housing Payments - Increased Interest Payments. Increased interest payments are provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling.

(1) The increased interest payment shall be allowed only when the dwelling acquired by the Transportation Cabinet was encumbered by a mortgage which was made in good faith without fraud or deceit and which was a valid lien on the dwelling for not less than 180 days

prior to initiation of negotiations for the acquisition of the real property, in whole or in part, or at the time a written notice is given of the Transportation Cabinet's intent to acquire the property and the displaced person obtains a mortgage on his replacement dwelling at a higher interest rate than the mortgage rate on the dwelling acquired by the Transportation Cabinet. All mortgages on the dwelling acquired by the Transportation Cabinet shall be considered in computing the increased interest cost portion of the replacement housing payment. In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) In determining the amount of the increased interest payment, the computation shall be based on the monthly payment of the old mortgage, the remaining term of the old mortgage or term of new mortgage, whichever is shorter, and the old and new interest rates. Most increased interest payments shall also be based on the unpaid mortgage balance on the displacement dwelling. However, if the new mortgage amount is less, the payment shall be reduced accordingly.

(3) Documentation of the terms, amount and interest rate for the existing and new mortgages shall be submitted on a form prescribed and furnished by the Transportation Cabinet. This form shall be completed for the existing and new mortgages and signed by a representative of the lending agency. When a loan is included in a land contract, a copy of the contract may be used for documentation.

(4) Payment for purchaser's points, loan origination fees or assumption fees but not seller's points, shall be paid to the extent that:

(a) They are not paid as incidental expenses;

(b) They do not exceed rates normal to real estate transactions in the area; and

(c) They are determined to be necessary; and

(d) The points and fees are based on the unpaid mortgage balance on the displacement dwelling, less the amount of the mortgage payment computed in this section. To document these charges, the Transportation Cabinet shall be provided a copy of the lending agency's closing statement.

(5) The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual interest rate but shall not exceed the prevailing fixed interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(6) Increased interest payments normally shall be made directly to the displaced person. However, upon written request from the displaced person the payment may be made directly to the mortgagee of the replacement dwelling or may be paid into escrow prior to the displaced person's moving.

(7)(a) If the dwelling acquired is located on a tract normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the mortgage balance shall be reduced by the percentage ratio the acquisition price bears to the before value of the total tract. The reduction shall not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

(b) If a dwelling is located on a tract larger than normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

(8) The interest payment on multiuse properties shall be reduced to the percentage ratio the residential value of the multiuse property bears to the before value.

(9)(a) If a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as shown in subsection (7)(b) of this section.

(b) If the mortgage interest rate is obviously based on the higher use, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value of the parcel.

Section 22. Replacement Housing Payments- Incidental Relocation Expenses. The incidental expenses which may be paid are those necessary and reasonable costs actually incurred by the displaced person incidental to the purchase of a replacement dwelling and customarily paid by the buyer.

(1) The type of incidental expenses eligible for payment include, but shall not be limited to, the following:

(a) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats and recording fees;

(b) Lender, Federal Housing Administration, or Veteran's Administration application and apprising fees;

(c) Loan origination or assumption fees that do not represent prepaid interest;

(d) Certification of structural soundness and termite inspection when required;

(e) Credit report;

(f) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for preparation of title insurance of a comparable replacement dwelling;

(g) Escrow agent's fee;

(h) State revenue or documentary stamps, sales on transfer taxes (not to exceed the costs for a comparable replacement dwelling); and

(i) Other costs as determined by the Transportation Cabinet to be incidental to the purchase.

(2)(a) An owner-occupant of 180 days or more who has a mortgage on the dwelling acquired and who places a mortgage on his replacement dwelling shall be reimbursed for the necessary and reasonable incidental expenses incurred when obtaining a mortgage on his replacement dwelling.

(b) An owner-occupant of 180 days or more who has no mortgage on the acquired dwelling, but who places a mortgage on his replacement dwelling shall not be reimbursed for the incidental expenses of obtaining his loan.

(c) An owner-occupant of less than 180 days, or a tenant-occupant of more than ninety (90) days who chooses to purchase a replacement dwelling may be reimbursed for eligible incidental expenses if they are included in the down payment. However, the total of the down payment and incidental expenses is limited to a maximum of $5,250.

Section 23. Replacement Housing Payments - Rental Payments. (1) A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, if the displaced person:

(a) Actually and lawfully occupied the displacement dwelling for at least ninety (90) days immediately prior to the initiation of negotiations; and

(b) Has rented or purchased and occupied a decent, safe and sanitary replacement dwelling within one (1) year after the date he moves from the displacement dwelling if he is a tenant; or

(c) In the case of an owner-occupant, has rented or purchased and occupied decent, safe and sanitary dwelling within one (1) year of the later of the date he received final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or the date he moved from the displacement dwelling.

(2) The base monthly rental for the displacement dwelling shall be the least of the three (3) computations below:

(a) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement using either actual or fair market rent. For a tenant who paid little or no rent for the displacement dwelling, fair market rent shall be used unless

it would result in a hardship due to his personal income or other circumstances; or

(b) Thirty (30) percent of the person's average monthly gross household income. If a person refuses to provide evidence of income or is a dependent, the base monthly rent shall be the average monthly cost for rent or utilities. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or

(c) The total of the amount designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amount for shelter and utilities. The base monthly rental shall include any rent supplement supplied by others unless the supplement is to be discontinued upon vacation of the property.

(3) To compute the rental assistance payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the base monthly rent of the acquired dwelling as determined in subsection (2) of this section. Then the cabinet shall multiply that amount by forty-two (42) to determine the actual payment. However, for owner-occupants the cabinet shall use the actual or fair market rent instead of the base monthly rent when computing the payment amount. In determining the amount necessary to rent a comparable dwelling the Transportation Cabinet shall examine, if available, three (3) comparable rental properties. Only when the local housing market does not contain three (3) comparable rental properties may the Transportation Cabinet determine the payment based on less than three (3).

(4) The disbursement of rental replacement housing payments may be in a lump sum payment, or in installments. The full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

Section 24. Replacement Housing Payments - Down Payment Assistance. Down payment assistance may be given to a tenant-occupant of ninety (90) days or more who purchases a replacement dwelling. A displaced person eligible for rental replacement housing payment under Section 23 of this regulation may receive a down payment assistance payment not to exceed $5,250. In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses. If the rental assistance payment computed under Section 23 of this regulation would be zero dollars, the displaced person is entitled to receive the $5,250 for a down payment. A displaced person eligible to receive a replacement housing payment as a 180 or more day owner-occupant is not eligible for this payment.

Section 25. Replacement Housing Payment - Sleeping Room Tenant. A displaced person who has occupied a sleeping room for ninety (90) days or more and who is eligible to receive a replacement housing payment, may receive an amount not to exceed $5,250 as a rent supplement, or to enable him to make a down payment on a replacement dwelling. The provisions of Sections 23 or 24 of this regulation shall be followed.

Section 26. Mobile Homes - General. (1) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall be applicable to owners or tenants of mobile homes.

(2) If it is determined that a sufficient portion of a mobile home park is taken that the remainder is not sufficient to continue the operation, and a mobile home in the remaining part of the park is required to be moved as a result of the project, the owner and any tenant shall each be considered a displaced person. A mobile home may be considered a replacement dwelling provided it is substantially a decent, safe and sanitary dwelling.

(3) The ownership or tenancy of the mobile home (not the land on which it is located) shall determine the occupant's status as an owner or a tenant. The length of ownership and occupancy of the mobile home or the mobile home site shall determine the occupant's status as a 180 day or ninety (90) day owner or tenant. The mobile home shall have been occupied on the same site (or in the same mobile home park) for the requisite 180 days or ninety (90) days to make the occupant eligible for a replacement housing payment or rent supplement.

(4) A nonoccupant-owner of a mobile home is eligible for an actual cost moving expense payment.

(5) If the person is displaced from a mobile home park, a nonreturnable mobile home park entrance fee is reimbursable provided it does not exceed the fee at a comparable park or if the Transportation Cabinet determines that it is necessary to pay the fee to effect relocation.

(6) There is no limit to the distance of the move of the displaced person. However, a relocation assistance moving expense payment shall be computed on a move of a distance of no more than fifty (50) miles, except when it is determined that the relocation cannot be accomplished within a fifty (50) mile radius. Beyond the fifty (50) mile radius, approval for a distance payment shall be limited to the nearest available mobile home site.

(7) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a comparable conventional dwelling. If it is determined that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the cost of a comparable replacement dwelling shall be assumed to be the sum of the value of the mobile home, the cost of any necessary repairs or modifications, and the estimated cost of moving the mobile home to a replacement site. If a mobile home is not actually acquired, but the occupant is considered displaced under this administrative regulation, the initiation of negotiations shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he is a displaced person for the purpose of these procedures. If the owner is reimbursed for the cost of moving the mobile home under this administrative regulation, he is not eligible for a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(8) There may be other combinations of ownership of occupancy relating to mobile homes not covered in these procedures. In these cases, the Transportation Cabinet shall make every effort to treat the displaced person in a manner consistent with the other provisions of this section.

Section 27. Mobile Home Moving Expense Payments. (1) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall also be applicable to owners and tenants of mobile homes. Displaced individuals or families occupying a mobile home may receive payment for the actual, reasonable expense of moving their personal property. If an owner-occupied mobile home is considered personal property, the cost of moving the mobile home is reimbursable. If the owner chooses to move the mobile home, it shall be moved by a commercial mobile home carrier licensed by the Department of Vehicle Regulation. The owner may choose the mover, and receive reimbursement for the actual, reasonable expenses. Request for payment of moving expenses shall be supported by receipted bills. Prior to authorizing a move of a mobile home, the Transportation Cabinet shall determine the items of personal property to be moved, including the mobile home and any items stored in accessory buildings, and determine that the mobile home mover is a licensed commercial mobile home carrier and obtain from him an estimate of the moving costs. This estimate shall include any necessary utility service connections. If this estimate is not reasonable, the cabinet may approach another mobile

home mover or renegotiate the price.

(2) If the mobile home is not acquired, but the mobile home owner-occupant obtains a replacement housing payment under one (1) of the circumstances described in Section 28 (2)(c) of this regulation, the owner shall not be eligible for payment for moving the mobile home, but may be eligible for payment for moving personal property from the mobile home.

(3) However, the following expenses shall be eligible for an actual cost moving expense payment:

(a) The reasonable cost of disassembling, moving, and reassembling any attached appurtenance, such as a porch, deck, skirting, or awning; anchoring of the unit; and utility hookup charges; and

(b) The reasonable cost of repairs or modifications if a mobile home requires repairs or modifications so that it can be moved or made decent, safe and sanitary, and it is determined that it would be economically feasible to incur the additional expense.

(3) Arrangements may be made between the Transportation Cabinet, the displaced person, and the mover so that the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover.

(4) An application for moving expense payments may be submitted in advance of the move so that payment is made available immediately upon completion of the move. In some unusual circumstances, and with prior approval of the Transportation Cabinet, moving expense payments may be made prior to the actual move.

(5) If a mobile home is considered real property, acquired by the Transportation Cabinet and included in the appraised value of the site, and if the owner repurchases the mobile home from the Transportation Cabinet, the cost of moving the mobile home shall not be eligible for moving expense payments.

(6) If the landowner occupies the mobile home and the mobile home is acquired by the Transportation Cabinet or if a tenant-occupant of a mobile home is displaced, the displaced person shall move his personal property from his mobile home by one (1) of the following methods:

(a) The displaced person may elect to move his personal belongings by the use of a commercial mover as prescribed in Section 10(4) of this regulation.

(b) The displaced person may elect to move his personal property from the mobile home according to the fixed-rate schedule set out in Section 10(5) of this regulation. The room count of furniture shall be based on the actual number of furnished rooms. A small detached shed or building used to store such things as lawn mowers, lawn chairs, hoses, etc., shall be considered as an additional room, if the shed or building contains sufficient personality as to constitute a room.

Section 28. Mobile Home Replacement Housing and Rent Supplement Payments. (1) The replacement housing or rent supplement payment for a mobile home shall be computed in two (2) parts:

(a) The replacement housing or rent supplement payment for the mobile home shall be computed in accordance with the procedures set forth in Sections 15 and 18 through 25 of this regulation.

(b) The replacement housing or rent supplement payment for the mobile home site shall be computed based on comparable sites, but the total payment shall be limited to the maximums established in this administrative regulation according to the displaced person's ownership or tenancy of the land.

(c) The sum of these two (2) parts cannot exceed the $5,250 or $22,500 limit set for rent supplement or replacement housing payments. The total of these two (2) parts cannot exceed $22,500.

(2) A mobile home owner-occupant who has owned and occupied the mobile home for 180 days or more shall be eligible for a replacement housing payment not to exceed $22,500 provided:

(a) The displaced person owns the displacement mobile home and occupied it on the displacement site at least 180 days immediately prior to the initiation of negotiations;

(b) The displaced person meets the other basic eligibility requirements in Section 18 of this regulation; and

(c) The Transportation Cabinet acquired the mobile home as real property, or the mobile home is not acquired by the Transportation Cabinet but the owner is displaced because it is determined that the mobile home:

1. Is not and cannot economically be made decent, safe and sanitary; or

2. Cannot be relocated without substantial damage or unreasonable cost; or

3. Cannot be moved because there is no available comparable replacement site; or

4. Cannot be relocated because it does not meet mobile home park entrance requirements.

If the mobile home is not actually acquired, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount, shall include the salvage value or trade-in value of the mobile home, whichever is higher.

(3) A displaced owner-occupant of 180 days or more of a mobile home and site who meets the provisions of subsection (2) of this section:

(a) Shall be eligible for replacement housing payments for the following specific items:

1. The additional costs necessary to purchase replacement housing in accordance with Section 18 of this regulation;

2. The amount necessary to compensate him for the loss of favorable financing on his existing mortgage in the financing of replacement housing under the provisions of Section 21 of this regulation; and

3. An amount to reimburse the owner for incidental expenses incurred in the purchase of replacement housing in accordance with Section 22 of this regulation.

(b) Who is eligible for a replacement housing payment and who elects to rent is eligible for a rental replacement housing payment, not to exceed $5,250.

(4) If the Transportation Cabinet acquires both the mobile home and site from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases replacement housing the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home and site equals the lesser of the amount the owner is required to pay for a decent, safe and sanitary replacement mobile home and site, or if a mobile home and site are not available, the cost of a conventional dwelling, and the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home and site or conventional dwelling in accordance with the provisions of Section 18 of this regulation.

(b) If the owner elects to rent, the Transportation Cabinet shall compute the rental replacement housing payment by subtracting the fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental replacement dwelling, including estimated average monthly utilities, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and mobile home site or conventional dwelling, including the estimated average monthly utilities multiplied by forty-two (42).

(5) If the Transportation Cabinet from the owner-occupant of 180 days or more described in subsection (2) of this section acquires the site, but not the mobile home situated upon the site, and the mobile home is required to be moved, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement site, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home site equals the lesser of the amount the owner is required to pay for a comparable site, or the amount determined by the Transportation Cabinet as necessary to

purchase a comparable mobile home site;

(b) If the owner elects to rent a replacement site, the rental replacement housing payment shall be computed by subtracting the fair market rent including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To compute the actual payment the cabinet shall multiply that amount by forty-two (42).

(6) If an owner-occupied mobile home situated on a rental site is acquired from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement mobile home, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired the mobile home equals the lesser of the actual amount the owner is required to pay for a replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home, plus a site rental payment computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To determine the actual payment the Transportation Cabinet shall multiply that amount by forty-two (42). The owner of the mobile home may choose to purchase a comparable mobile home site as an alternative to renting a site. If so, to receive the replacement housing payment, the full amount of the payment shall be applied toward the purchase price of the replacement lot and related incidental expenses. Also, the displaced person shall purchase the lot and place his mobile home on the replacement lot. This payment shall be limited to $5,250.

(b) If the owner elects to rent a replacement mobile home, the rent supplement payment shall be computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person pays for a rental mobile home and site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site including the estimated average monthly utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42) to compute the actual payment.

(7) If the Transportation Cabinet acquires the site where the owner-occupant of 180 days of a mobile home described in subsection (2) of this section rents the site but the cabinet does not acquire the mobile home, the replacement housing payment shall be determined as follows:

(a) If the owner of the mobile home elects to purchase a replacement site, the replacement housing payment shall be a down payment assistance payment not to exceed $5,250 if the owner of the mobile home purchases and occupies the replacement site within one (1) year. The full amount of the payment shall be applied to the purchase of a replacement mobile home site and related expenses.

(b) If the owner of the mobile home elects to rent a replacement site, the rental replacement housing payment shall be determined by subtracting the actual or fair market rent including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental mobile home site including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable mobile home site including utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42).

(8) A displaced owner-occupant of a mobile home who has occupied for less than 180 days the mobile home on the site from which he is being displaced, and who is otherwise eligible under the provisions of Section 18 of this regulation is eligible for a replacement housing payment not to exceed $5,250. The replacement housing payment may enable him to make a down payment on the purchase of replacement housing in accordance with the provisions of paragraph (a) of this subsection and reimburse him for the actual expenses incidental to the purchase. If he elects to rent, a rental replacement housing payment shall be determined as provided in paragraph (b) of this subsection. The payment is to be computed and disbursed in accordance with the provisions of Section 23 of this regulation.

(a) When the cabinet is acquiring both the mobile home and site from the owner-occupant, the displaced person eligible for a rental replacement housing payment may receive a down payment assistance payment not to exceed $5,250 only if the full amount of the payment is applied to the purchase price of the replacement dwelling and related incidental expenses. The amount for which he is eligible shall be limited to the amount he would receive if he were an owner-occupant of 180 days or more.

(b) If the Transportation Cabinet acquires the mobile home and site from the less than 180 days owner-occupant, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the mobile home and site including utilities as determined in by the cabinet from the amount the owner actually pays for a rental mobile home and site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site, including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall multiply this amount by forty-two (42).

(9) If the Transportation Cabinet acquires the site but not the mobile home from the owner-occupant described in subsection (2) of this section except that he had occupied the mobile home for less than 180 days, the replacement housing payment shall be determined as follows:

(a) If the owner purchases conventional replacement housing or purchases a site to which the mobile home is moved, the replacement housing payment shall be determined as in subsection 8(a) of this section.

(b) If the owner elects to rent replacement housing, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the acquired site, including utilities as determined by the cabinet from the amount the displaced person actually pays for a rental replacement mobile home site, including the estimated average monthly utilities, or if less, the amount determined by the Transportation Cabinet as necessary to rent comparable mobile home site including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall then multiply this amount by forty-two (42).

(10) A displaced tenant of a mobile home who has occupied for at least ninety (90) days the mobile home on the site from which he has been displaced and who is otherwise eligible under the provisions of Section 23(1) of this regulation, is eligible for a replacement housing payment, not to exceed $5,250. The rental replacement housing payment shall be determined in accordance with the provisions of Section 23 of this regulation. If the displaced person elects to purchase a replacement dwelling, he shall receive a payment in accordance with Section 24 of this regulation.

Section 29. Last Resort Housing. The last resort housing procedures of this section shall be implemented when it is determined that a Transportation Cabinet project cannot proceed to actual construction because comparable replacement sale or rental housing, within the monetary limits is not available and the housing cannot otherwise be made available. A person cannot be required to move from his dwelling unless at least one (1) comparable replacement dwelling is made available to the person.

(1) If comparable decent, safe and sanitary housing is not available, any decision to provide last resort housing assistance shall be justified either:

(a) On a case-by-case basis, during which consideration has been given to:

1. Availability of comparable housing in the area of the project;
2. Resources available to provide comparable housing; and
3. Individual circumstances of the displaced person; or

(b) It is determined that:

1. There is little, if any, comparable replacement housing available to a displaced person within an entire project area. Therefore, a case-by-case justification for last resort housing assistance is not necessary;

2. A project cannot be advanced to completion in a timely manner without last resort housing assistance; and

3. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project costs.

(2) No displaced person shall be deprived of any rights the person may have under KRS 56.610 to 56.760. No displaced person shall be required, without the person's written consent, to accept a dwelling provided by the Transportation Cabinet under the procedures described in subsection (3) of this section in lieu of any acquisition payment or any relocation payment for which the person may be eligible;

(3) The methods of providing last resort housing include, but are not limited to:

(a) A replacement housing payment in excess of the limits set forth in Sections 18 and 23 of this regulation. Rental assistance subsidy in last resort housing may be provided in installments or in a lump sum as determined by the Transportation Cabinet;

(b) Rehabilitation of or addition to an existing replacement dwelling;

(c) Construction of a new replacement dwelling;

(d) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may or may not be secured by the real property. The loan may or may not be interest free;

(e) The relocation and, if necessary, rehabilitation of a dwelling;

(f) The purchase of land or a replacement dwelling by the Transportation Cabinet and subsequent sale or lease to or exchange with a displaced person;

(g) Removal of barriers to the handicapped; and

(h) The change in status of the displaced person from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

(4) Under special circumstances, modified methods of providing housing of last resort permit consideration of:

(a) Replacement housing based on space and physical characteristics different from those in the displacement dwelling;

(b) Upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate the individuals or families displaced from marginal or substandard housing with probable functional obsolescence; or

(c) For the displaced person who is ineligible for a rent supplement or a replacement housing payment (for example, a tenant of less than ninety (90) days or a person who occupies the property subsequent to the initiation of negotiation) when comparable rental replacement housing is not available at rental rates within the person's financial means. The housing provided shall be comparable housing. To determine if a tenant in this category is entitled to a replacement housing payment, the Transportation Cabinet shall subtract thirty (30) percent of the person's gross monthly household income from the cost of a comparable replacement dwelling and multiply the difference by forty-two (42). There shall be no prohibition against making direct payments to a displaced person under last resort housing. Each case shall be reviewed to determine if it is the best interest of the person or family. The payment may be made to a third party or in installments.

Section 30. Appeals. (1) A person may file a written appeal and request for hearing with the Transportation Cabinet in any case in which the person believes that the cabinet has failed to properly determine his eligibility for, or the amount of the payment required under the provisions of this administrative regulation. The Transportation Cabinet shall consider a written appeal regardless of form. The appeal shall be filed within sixty (60) days of the date of his written notice from the Transportation Cabinet of the cabinet's determination on the person's claim.

(2) A person may be represented by legal counsel or other representative in connection with his appeal, but solely at his own expense.

(3) The Secretary of the Transportation Cabinet shall appoint a hearing officer for the purpose of conducting the hearing and making a recommendation to the secretary with reference to the appeal. At the hearing, technical rules of evidence shall not apply. However, the hearing officer shall be authorized to issue rulings regarding the competency, relevancy and materiality of the evidence to be presented at the hearing. A record of all evidence introduced at the hearing shall be made by the Transportation Cabinet.

(4) The hearing officer shall make findings of facts, conclusions of law and a recommended decision on the disposition of the appeal. A copy of this shall be made available to all parties concerned, including the person requesting the hearing and the attorney representing the Transportation Cabinet in this appeal procedure. They shall have twenty (20) days in which to comment on or object to the hearing officer's recommended decision. These comments or objections shall be presented in writing.

(5) The Transportation Secretary or his representative, who shall not have been directly involved in the action appealed, shall consider not only the hearing officer's recommended decision but also any written comments received from the involved parties in making his final ruling.

(6) If the full relief requested in the appeal is not granted, the Transportation Cabinet shall advise the person of his right to seek judicial review.

DON C. KELLY, Secretary/Commissioner
BOB G. BODNER, Executive Director
GLEN KELLY, Acting State Highway Engineer
APPROVED BY AGENCY: June 4, 1992
FILED WITH LRC: June 8, 1992 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 28, 1992 at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building. The State Office Building is located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by July 23, 1992 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until July 23, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: Three or four persons who own rental property which the Transportation Cabinet is acquiring.

(a) Direct and indirect costs or savings to those affected: None

1. First year: Savings not to exceed $10,000 per person.

2. Continuing costs or savings: Same

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: No alternative. The Federal Highway Administration determined that the indefinite phrase "substantial difference" should be changed to the "precise difference of more than 5 percent".

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. The entire administrative regulation is a tiering of the level of payments to relocated persons.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement
(Proposed Amendment)

601 KAR 1:005. Safety regulations.

RELATES TO: KRS Chapters 138, 281, Title 49, Code of Federal Regulations, Part 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.726, 281.730, 281.750, Title 49, Code of Federal Regulations, Part 390-397

NECESSITY AND FUNCTION: This regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using the vehicle to transport agricultural products from his farm or to transport farm machinery or farm supplies to his farm. It also includes any operation of a motor vehicle by a farmer which is generally thought of as farm machinery. The transportation of hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025, Transporting hazardous materials, permit, is not included in this definition.

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Load limit" means the rated seating capacity for which a passenger-carrying vehicle is licensed plus twenty-five (25) percent of the rated seating capacity.

Section 2. All commercial motor vehicles operated for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this regulation shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) Title 49, Code of Federal Regulations Part 390, General, effective as amended through July 27, 1992 [~~August 30, 1990~~];

(2) Title 49, Code of Federal Regulations, Part 391, Qualifications of Drivers, effective as amended through January 1, 1992 [~~February 1, 1990~~];

(3) Title 49, Code of Federal Regulations, Part 392, Driving of Motor Vehicles, effective as amended through November 15, 1988;

(4) Title 49 Code of Federal Regulations, Part 393, Parts and Accessories Necessary for Safe Operation, with a latest effective date of November 24, 1989;

(5) Title 49, Code of Federal Regulations, Part 394, Notification, Recording and Reporting of Accidents, effective as amended through December 21, 1988;

(6) Title 49, Code of Federal Regulations, Part 395, Hours of Service of Drivers, effective as amended through August 13, 1990;

(7) Title 49, Code of Federal Regulations, Part 396, Inspection, Repair and Maintenance, as effective [~~as amended through January 1, 1991. Section 396.25 relating to the qualifications of brake inspectors was effective on January 1, 1991, but is not required to be implemented by motor carriers until~~] January 1, 1992; and

(8) Title 49, Code of Federal Regulations, Part 397, Transportation of Hazardous Materials; Driving and Parking Rules, effective as amended through November 15, 1988.

Section 3. The following exemptions and exceptions to compliance with the provisions of Section 2 of this regulation are adopted:

(1) City buses, suburban buses, taxicabs, motorcycles and motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation. Except that any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (8) of this section.

(2) Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education and vehicles operating in interstate commerce which are specifically excluded by Title 49, Code of Federal Regulations, Part 390 are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation. Except that any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (8) of this section.

(3) Motor vehicles which are used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4) Motor vehicles which are used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(5) Except for transporters of hazardous materials under 601 KAR 1:025, motor vehicle operators who are operating a vehicle on an intrastate commerce basis are not required to be twenty- one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, they shall be at least eighteen (18) years of age.

(6) Electric utility motor carriers while operating exclusively in intrastate commerce shall be exempt from the maximum and on-duty hours for drivers set forth in 49 CFR 395.3 during an emergency which requires their employees to work to restore electric power.

(7) Motor carriers which operate exclusively in intrastate commerce shall be exempt from the drug testing requirements of 49 CFR Parts 391 and 394.

(8) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 CFR Part 391 under the provisions of 601 KAR 11:040. If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

Section 4. Buses. Buses shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired. Seats shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare. Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays. All operators shall take into consideration the health and welfare of their passengers and control their operations in the public interest. Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in such position as to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. No bus operated by an authorized carrier, except city or suburban buses, shall transport passengers in excess of its load limit. No passenger shall be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear door-well.

Section 6. Cargo Securement. (1) The "CVSA Cargo Securement Tie-down Guidelines" adopted in October,1990 by the Commercial Vehicle Safety Alliance is hereby incorporated by reference as part of this administrative regulation. The criteria in this document shall apply to the devices used in securing loads to commercial motor vehicles.

(2) The material incorporated by reference in this section may be reviewed at any of the weigh stations operated by the Transportation Cabinet. These weigh stations are generally in operation twenty-four (24) hours a day. Further, the material may be reviewed or copied at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours there are 8 a.m. through 4:30 p.m. eastern time on regular Kentucky state government work days.

Section 7. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial driver or vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" adopted on February 15, 1991 by the Commercial Vehicle Safety Alliance. The criteria are incorporated by reference as a part of this administrative regulation.

(2) If a commercial vehicle is being operated either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the motor vehicle is further operated. In accordance with Part II of the "North American Uniform Out-of- service Criteria", a law enforcement officer may impose restricted service conditions instead of placing the commercial motor vehicle out-of-service. Refusal of the vehicle operator to grant permission for a law enforcement officer to conduct a safety inspection of the vehicle shall be cause for the officer to place the vehicle out-of-service until the permission is granted. Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these regulations.

(3) If a commercial driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle. However, the commercial driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified. Refusal of the commercial driver to grant permission for a law enforcement officer to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted. Operating a commercial motor vehicle in violation of an out-of- service order shall constitute a separate violation of these regulations.

(4) The material incorporated by reference in this section may be reviewed at any of the weigh stations operated by the Transportation Cabinet. These weigh stations are generally in operation twenty-four (24) hours a day. Further, the material may be reviewed or copied at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours there are 8 a.m. through 4:30 p.m. eastern time on regular Kentucky state government work days.

NORRIS BECKLEY for LEWIS H. DOTSON, Commissioner
DON C. KELLY, Secretary

APPROVED BY AGENCY: May 26, 1992
FILED WITH LRC: June 3, 1992 at 11 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 28, 1992 at 10:30 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by July 23, 1992 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until July 23, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: 30,000 motor carriers operating in Kentucky.

(a) Direct and indirect costs or savings to those affected: The federal court injunction against random and postaccident drug testing for interstate drivers was lifted. FHWA made these drug tests mandatory for interstate drivers. The adoption of the federal requirement has no effect on cost to the motor carriers operating exclusively in Kentucky because it is not applicable to them. Since the federal drug testing regulation was already in effect for interstate carriers, Kentucky's adopting this change has no fiscal effect on the motor carriers. The second change adopted by the federal government was

to require identification markings on all commercial motor vehicles operating in interstate commerce. Most carriers already have identification markings. They have been required by 601 KAR 1:160 for all commercial vehicles with a weight of 26,000 pounds or greater for several years. Therefore, the cost of marking required by this change will only be for those intrastate commerce carriers operating motor vehicles with a gross weight between 10,000 and 26,000 pounds. It is unlikely that there will be more than 1000 vehicles still needing to be marked at a cost of $50 per truck.

1. First year: The cost the first year of the change to this administrative regulation should be $50,000 for the entire state.

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:

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: The do-nothing alternative was rejected because the remainder of the nation is now operating under the new federal regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 601 KAR 1:160 is somewhat similar but there is no 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: None

TIERING: Was tiering applied? Yes. The administrative regulation is tiered in that more stringent safety requirements are expected to be met on larger vehicles.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Department of Highways
Division of Motor Carriers
Division of Maintenance
(Proposed Amendment)

601 KAR 1:015. Special overweight or [/] overdimensional permits issued at highway district offices and the Transportation Cabinet in Frankfort.

RELATES TO: KRS 189.270, 189.274

STATUTORY AUTHORITY: KRS 174.080, 189.274

NECESSITY AND FUNCTION: KRS 189.274 allows for certain overweight or [~~and~~] overdimensional permits to be issued at the twelve (12) district offices of the Department of Highways and the Transportation Cabinet in Frankfort. These permits are for the movement of equipment used primarily for soil conservation purposes, residential construction purposes, and public utility purposes. The permit may only be issued for movement in the base county of the equipment and the adjoining counties. This administrative regulation establishes standards and procedures necessary to issue these permits.

Section 1. Definitions. (1) "Daylight hours" means the period of day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(2) "Base fee" means the initial fee of sixty (60) dollars charged for the issuance of an overweight or overdimensional permit to cover the cost of processing the permit application, including but not limited to a qualification check of the applicant, a statutory compliance check, and an initial bridge and weight analysis.

(3) "Additional fee" means the additional charge for overweight or overdimensional permits imposed by KRS 189.270. Vehicles with six (6) or more axles or with a width of ten (10) or more feet shall be charged the base fee as well as the additional fee as provided for by statute. This additional fee is to cover the additional administrative costs for processing the permit application, including specific bridge computer analysis, unique routing needs, axle spacing needs, additional enforcement and other necessary or incidental Transportation Cabinet costs.

Section 2. Permits. (1) In accordance with KRS 189.274 the twelve (12) district offices of the Department of Highways and the Transportation Cabinet in Frankfort may issue special overweight or [~~and~~] overdimensional permits for operators of equipment used for soil conservation purposes, residential construction purposes, and public utility service purposes and other specialized equipment, such as oil well and mine equipment and truck cranes and loaders. Only these overweight or overdimensional permits may be issued by the highway district offices.

(2) The permit application shall contain the following:

(a) A detailed description of the equipment to be moved;

(b) A description and vehicle identification number of the power unit moving the equipment;

(c) Registration weight and license plate number of the power unit;

(d) Equipment operator's name, telephone number and address;

(e) Routes requested for travel; and

(f) County in which the equipment is based or the applicant maintains headquarters [~~and any other information required by the Department of Vehicle Regulation~~].

(3) The permit issued for a movement of a specific vehicle, load, machine, or piece of equipment shall clearly identify or describe the load, machine, or piece of special equipment (for example, D-8 dozer).

(4) The base fee for the issuance of a special permit to a vehicle which is both overweight and overdimensional shall be sixty (60) dollars. The base fee for the issuance of a permit to a vehicle which is either overweight or overdimensional shall be sixty (60) dollars.

(5) An additional fee as set forth in KRS 189.270 shall be assessed:

(a) If the vehicle for which an overweight permit is applied has six (6) or more axles; or

(b) If the vehicle for which an overdimensional permit is applied has a width of ten (10) feet or more.

(6) [~~(5)~~] An issued permit shall be valid for ten (10) days and may be issued for more than one (1) movement.

Section 3. Divisible Loads. Except as allowed by KRS 189.274(6) a permit shall not be issued for a divisible load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

Section 4. Highway Right-of-way. A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the personal, written approval of the chief district engineer having jurisdiction over the property involved.

Section 5. Height. (1) All vehicles and load with a height in excess of thirteen and one-half (13.5) feet shall obtain a permit prior to movement.

(2) There is no set maximum height limit for the issuance of an overdimensional permit except as determined by underpasses and

bridges[; however, fifteen (15) feet in most cases is the highest practical for moves over Kentucky highways].

Section 6. Weight. (1) [No] Gross or axle overweight shall not be permitted:

(a) On combination units of less than five (5) axles; [nor]

(b) On a single unit except off-road equipment such as scraper, mobile cranes or other self-propelled units [and in no case shall axle weight exceed the product of 600 pounds times the aggregate width in inches of all of the tires on the axle].

(2) Kentucky licensed vehicles shall not be permitted weights exceeding that for which licensed unless licensed for the maximum of 80,000 lbs.

(3) [In no event shall] The weight on any single axle in any combination shall not exceed the product of 600 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single axle - 24,000 pounds;

(b) Tandem axle group if the combination vehicle has only five (5) axles total - 45,000 [48,000] pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(c) Tandem axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(d) [(c)] Tridem axle group - 60,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tridem axle group);

(e) [(d)] Five (5) axle combination units shall [are] not [to] exceed 96,000 pounds gross weight;

(f) [(e)] Six (6) axle combination units shall [are] not [to] exceed 120,000 pounds gross weight.

(4) Since bridge capacity is the weight controlling factor in most instances, these maximum weights shall not be permitted unless all bridges involved are of sufficient capacity to accommodate the load.

(5) No permit shall be issued by a district office of the Department of Highways, if the gross load exceeds 120,000 pounds.

Section 7. Permit Validity. Overdimensional permits shall only be valid during daylight hours from Monday through Saturday noon.

(2) [However,] On national holidays travel under the provisions of an overdimensional permit shall not be permitted from noon of the day preceding the holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or Monday, the restricted travel period for an overdimensional permit shall extend from noon of the preceding Friday to daylight of the following Tuesday.

Section 8. Width. An application for a single trip permit for a vehicle, equipment, or load which exceed fourteen (14) feet in width or where weight of the vehicle, equipment or load exceeds the limits set forth in this administrative regulation shall be made to the Department of Vehicle Regulation, Division of Motor Carriers. These applications shall be considered in accordance with KRS 189.270 and 603 KAR 5:075.

Section 9. Nothing in this administrative regulation shall prohibit the permit issuing office from further restricting movements or denying a permit for any movement which may cause damage to property or which may be detrimental to public safety and convenience.

Section 10. The permit shall be carried in the overweight or [/] overdimensional vehicle or equipment at all times. It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

Section 11. Escort Vehicles [and Flag Requirements]. (1) Required escort vehicles shall accompany the permitted vehicle at a distance of 300 feet on open highways.

(2) This interval shall be shortened in cities or congested areas to protect other traffic.

(3) An escort vehicle's headlamps shall be lit at all times. [Red flags which are a minimum of twelve (12) inches square shall be displayed on each side of an escort vehicle.]

(4) The escort vehicle shall maintain radio contact with the towing vehicle at all times.

(5) [(2)] On a two (2) lane highway the permit holder shall:

(a) Comply with the escort provisions of KRS 189.274(8); [. In addition]

(b) If the length of the vehicle and load is in excess of seventy-five (75) feet but no more than eighty-five (85) feet, provide [it shall have] one (1) lead escort;

(c) If the length of the vehicle and load exceed eighty- five (85) feet, provide [it shall have] one (1) lead and one (1) trail escort;

(d) If [(3) On a two (2) lane highway,] a vehicle and load traveling at speeds below the average driving speed of traffic on its route, provide [shall have] one (1) trail escort.

(6) [(4)] On a four (4) lane or wider highway:

(a) A vehicle and load with a width exceeding twelve (12) feet shall have one (1) trail escort;

(b) [.(5) On a four (4) lane or wider highway,] A vehicle and load with a length of 110 feet or greater shall have one (1) trail escort.

(c) A vehicle and load traveling at a speed less than forty-five (45) miles per hour shall have one (1) trail escort.

(7) Each required escort vehicle shall have one (1) of the following:

(a) An amber strobe or flashing light on the roof of the escort vehicle; or

(b) A warning sign which:

(1) Is clearly-legible;

(2) States "OVERSIZE LOAD" in black letters on a yellow background; and

(3) Shall be placed on the front of a front escort vehicle and on the rear of a trail escort vehicle.

Section 12. Other Safety Requirements. (1)(a) [(6)] Red or orange fluorescent flags which are a minimum of eighteen (18) [twelve (12)] inches square shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(b) Flags shall be displayed at the outside dimensions of the load at approximately bumper height.

(c) Additional flags shall be located at a minimum height of nine (9) feet above the pavement, on each of the four (4) top corners of the load.

[(7) All toll roads shall be considered four (4) lane for the purpose of determining the need for escort vehicles regardless of the actual number of lanes on the highway.]

(2) [(8)] As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles or red flags.

(3) All special equipment and towing vehicles operated pursuant to this administrative regulation shall be marked and lighted in accordance with the requirements of 601 KAR 1:005.

(4) A warning sign shall be fastened to both the front of the towing unit and the rear of the load if:

(a) The total overdimensional permitted vehicle exceeds ten and one-half (10.5) feet in width; or

(b) Has front or rear overhang of four (4) or more feet.

(5) Each warning sign shall:

(a) State "OVERSIZE LOAD" in black letters on a yellow background;

(b) Not be less than seven (7) feet long and eighteen (18) inches high; and

(c) Have a brush stroke of not less than one and four-tenths (1.4)

inches.

(6) If the overdimensional permitted vehicle has front or rear overhang of four (4) or more feet, a flag as described in subsection (1) of this section shall be placed at the outer extremity of the overhang.

Section 13. Liability. Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of the specialized equipment shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred of pay for the repair.

NORRIS BECKLEY, Deputy Commissioner
DON C. KELLY, Secretary
GLEN KELLY, Acting State Highway Engineer
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 8 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 28, 1992 at 1 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by July 23, 1992 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until July 23, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: The potential number of applicants for this permit issued at the highway district office is approximately 500. However, since an annual permit is available which provides the same benefits and at a greatly reduced per trip price, there have been no applicants for this permit in recent years.

(a) Direct and indirect costs or savings to those affected: The specific cost of the safety items imposed by this administrative regulation will vary with the tiered application and the distance traveled. In general, the cost of an escort vehicle will be $50/hour. The one-time cost of purchasing an overdimensional banner will be $10.

1. First year:

2. Continuing costs or savings: The specific cost of the safety items imposed by this administrative regulation will vary with the tiered application and the distance traveled. In general, the cost of an escort vehicle will be $50/hour. The one-time cost of purchasing an overdimensional banner will be $10.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Application for permits must be completed.

(2) Effects on the promulgating administrative body: The Department of Highways will be required to examine the roads over which some of the special equipment will be transported.

(a) Direct and indirect costs or savings: Each on-site examination will have a total cost of about $75 to $100.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Issuance of the annual permit.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected in order that if there were an applicant for the permit he would comply with the uniform safety criteria.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering of safety requirements was applied based on the type of highway, width and length of equipment, and weight of load.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Department of Highways
Division of Motor Carriers
Division of Maintenance
(Proposed Amendment)

601 KAR 1:016. Special annual overweight or [/] overdimensional permits issued for the transportation of specialized equipment.

RELATES TO: KRS 189.270, 189.273
STATUTORY AUTHORITY: KRS 174.080, 189.273
NECESSITY AND FUNCTION: KRS 189.273 allows annual overweight or [/] overdimensional permits to be issued for the movement of soil conservation equipment and other specialized equipment within the base county of the equipment or an adjacent county. To be eligible for this annual permit, the equipment and towing vehicle shall not exceed thirteen and one-half (13.5) in height, twelve (12) feet in width or ninety (90) feet in length. Certain weight limits are also established by KRS 189.273 and explained by this administrative regulation. This regulation establishes standards and procedures necessary to issue these permits.

Section 1. Definitions. (1) Additional fee" means the additional charge for overwidth or overdimensional permits imposed by KRS 189.270. Vehicles or equipment with six (6) or more axles or with a width of ten (10) or more feet shall be charged the base fee as well as the additional fees as provided for by statute. This additional fee is to cover the additional administrative costs for processing the permit application including specific bridge computer analysis, unique routing needs, axle spacing needs, additional enforcement and other necessary or incidental Transportation Cabinet costs.

(2) "Base fee" means the initial fee of sixty (60) dollars charged for the issuance of an overweight or overdimensional permit to cover the cost of processing the permit application, including but not limited to, a qualification check of the applicant, a statutory compliance check, and an initial bridge and weight analysis.

(3) [~~(1)~~] "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

~~[(2) "Base fee" means the initial fee of sixty (60) dollars charged for the issuance of an overweight or overdimensional permit to cover the cost of processing the permit application, including but not limited to, a qualification check of the applicant, a statutory compliance check, and an initial bridge and weight analysis.]~~

~~[(3) "Additional fee" means the additional charge for overweight or overdimensional permits imposed by KRS 189.270. Vehicles or~~

~~equipment with six (6) or more axles or with a width of ten (10) or more feet shall be charged the base fee as well as the additional fees as provided for by statute. This additional fee is to cover the additional administrative costs for processing the permit application including specific bridge computer analysis, unique routing needs, axle spacing needs, additional enforcement and other necessary or incidental Transportation Cabinet costs.~~]

Section 2. Permit Applications. (1) All applications for an annual permit to transport soil conservation or other specialized equipment in accordance with the provisions of KRS 189.273 shall be made to the Department of Vehicle Regulation, Division of Motor Carriers.

(2) The written permit application shall contain the following:

(a) A detailed description of the equipment to be moved;

(b) A description and vehicle identification number of the power unit moving the equipment;

(c) Registration weight and Kentucky license plate number of the power unit;

(d) The equipment operator's name and address;

(e) Routes requested for travel; and

(f) The county in which the equipment is based or the application maintains headquarters [~~and any other information required by the Department of Vehicle Regulation~~].

(3) The applicant shall certify that the towing unit has sufficient horsepower and braking capacity to handle all loads he transports.

Section 3. Permit Fee. (1) The base fee for the issuance of this annual permit shall be sixty (60) dollars as set forth in KRS 189.270.

(2) The additional fee as set forth in KRS 189.270 shall be assessed if the vehicle or equipment for which an overweight permit is applied:

(a) Has six (6) or more axles; or

(b) [~~if the vehicle or equipment for which an overdimensional permit is applied~~] Has a width of ten (10) feet or more.

Section 4. Divisible Loads. Except as allowed by KRS 189.273(5) a permit shall not be issued for a divisible load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

Section 5. Highway Right-of-way. A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the personal, written approval of the chief district engineer having jurisdiction over the property involved.

Section 6. Weight. (1) [~~No~~] Gross or axle overweight shall not be permitted:

(a) On combination units of less than five (5) axles;

(b) [~~nor~~] On a single unit except off-road equipment such as scraper, mobile cranes or other self-propelled units.

(2) [~~and in no case shall~~] The axle weight shall not exceed the product of 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement of all of the tires on the axle.

(3) [~~(2)~~] Kentucky licensed vehicles shall not be permitted weights exceeding that for which licensed unless licensed for the maximum of 80,000 lbs.

(4) [~~(3)~~] In no case shall the weight on any single axle in any combination exceed the product of 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single axle - 24,000 pounds;

(b) Tandem axle group if the combination vehicle has only five (5) axles total - 45,000 [~~48,000~~] pounds (minimum forty-two (42) inches spacing shall be required between the center of each of the axles of the tandem axle group);

(c) Tandem axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds (minimum forty-two (42) inches spacing shall be required between the center of each of the axles of the tandem axle group);

(d) [~~(c)~~] Tridem axle group - 60,000 pounds (minimum forty-two (42) inches spacing shall be required between the center of each of the axles of the tridem axle group);

(e) [~~(d)~~] Five (5) axle combination units shall not [~~are not to~~] exceed 96,000 pounds gross weight;

(f) [~~(e)~~] Six (6) axle combination units shall not [~~are not to~~] exceed 120,000 pounds gross weight.

(5) [~~(4)~~] Since bridge capacity is the weight controlling factor in most instances, these maximum weights shall not be permitted unless all bridges involved are of sufficient capacity to accommodate the load.

Section 7. Permit Validity. (1) Overdimensional permits shall only be valid:

(a) During daylight hours; and

(b) From Monday through Saturday noon.

(2) [~~However,~~] On national holidays travel shall not be permitted with an overdimensional permit from noon of the day preceding the holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or Monday, the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

Section 8. Nothing in this administrative regulation shall prohibit the permit issuing office from further restricting movements or denying a permit for any movement which may cause damage to property or which may be detrimental to public safety or convenience.

Section 9. Permit Availability. (1) The original of the annual permit shall be carried in the overweight or [~~/~~] overdimensional vehicle at all times.

(2) It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(3) A photocopy of the annual permit shall not be valid.

Section 10. Escort Vehicles, Safety and Flag Requirements. (1) Required escort vehicles shall accompany the permitted vehicle at a distance of 300 feet on open highways. This interval shall be shortened in cities or congested areas to protect other traffic.

(2) An escort vehicle's headlamps shall be lit at all times. [~~Red flags which are a minimum of twelve (12) inches square shall be displayed on each side of an escort vehicle.~~]

(3) [~~(2)~~] On a two (2) lane highway the permit holder shall:

(a) Comply with the escort provisions of KRS 189.273(7) or (8); or

(b) Supply one (1) lead escort vehicle [~~. In addition,~~] if the length of the vehicle and load exceeds seventy-five (75) feet but no more than eighty-five (85) feet;

(c) Or supply one (1) lead and one (1) trail escort [~~, it shall have one (1) lead escort.~~] if the length of the vehicle and load exceed eighty-five (85) feet[~~, it shall have one (1) lead and one (1) trail escort~~].

(d) If [~~(3) On a two (2) lane highway,~~] a vehicle and load are traveling at speeds below the average driving speed of traffic on its route, provide [~~shall have~~] one (1) trail escort.

(4) On a four (4)-lane highway, one (1) trail escort vehicle shall be provided for a vehicle and load traveling at a speed less than forty-five (45) miles per hour.

(5) The towing unit and its escort vehicles shall maintain radio contact at all times.

(6) Each required escort vehicle shall have one (1) of the

following:

(a) An amber strobe or flashing light on the roof of the escort vehicle; or

(b) A warning sign which:

1. Is clearly-legible; and

2. Is placed on the front of a front escort vehicle and on the rear of a trail escort vehicle.

(7) [~~(4)~~] Red or orange fluorescent flags which are a minimum of eighteen (18) [~~twelve (12)~~] inches square shall be displayed in the following ways:

(a) On each vehicle and load operating under the auspices of an overdimensional [~~either an overlength or an overweight~~] permit.

(b) [~~Flags shall be displayed~~] At the outside dimensions of the load at approximately bumper height; and

(c) [~~. Additional flags shall be located~~] At a minimum height of nine (9) feet above the pavement, on each of the four (4) top corners of the load.

[~~(5) All toll roads shall be considered four (4) lane for the purpose of determining the need for escort vehicles regardless of the actual number of lanes on the highway.~~]

(8) All vehicles exceeding ten and one-half (10.5) feet in width, or having front overhang shall display two (2) warning signs. The warning signs shall:

(a) State in black letter on a yellow background, "OVERSIZE LOAD";

(b) Not be less than seven (7) feet long and eighteen (18) inches high with a brush stroke of one and four-tenths (1.4) inches; and

(c) One (1) sign shall be fastened at the front of the power unit and the other at the rear of the towed unit or at the rear of the load.

(9) [~~(6)~~] As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lights or [~~red~~] flags.

Section 11. Liability. Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of this equipment shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

Section 12. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by a payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS Chapter 189.

NORRIS BECKLEY, Deputy Commissioner
DON C. KELLY, Secretary
GLEN KELLY, Acting State Highway Engineer
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 8 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 28, 1992 at 1 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by July 23, 1992 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until July 23, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant to the Secretary, Transportation Cabinet, 1001 State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: Approximately 500 applications have been received each year in the past. However, with the passage of HB 23 by the 1992 General Assembly, approximately 50 applications will be transferred to the type of overdimensional permit set forth in 603 KAR 5:260.

(a) Direct and indirect costs or savings to those affected: The specific cost of the safety items imposed by this administrative regulation will vary with the tiered application and the distance traveled. In general, the cost of an escort vehicle will be $50/hour. The one-time cost of purchasing an overdimensional banner will be $10.

1. First year:

2. Continuing costs or savings: The specific cost of the safety items imposed by this administrative regulation will vary with the tiered application and the distance traveled. In general, the cost of an escort vehicle will be $50/hour. The one-time cost of purchasing an overdimensional banner will be $10.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Application for annual permits must be completed.

(2) Effects on the promulgating administrative body: The Department of Highways will be required to examine the roads over which some of the farm equipment will be transported.

(a) Direct and indirect costs or savings: Each on-site examination will have a total cost of about $75 to $100.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Issuance of the annual permit.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The safety items imposed by this administrative regulation were jointly decided upon by the Departments of Highways and Vehicle Regulation. They are as uniform with the requirements of other states and other overdimensional permits as possible.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering of safety requirements was applied based on the type of highway and width of equipment.

TRANSPORTATION CABINET
Department of Highways
Division of Planning
(Proposed Amendment)

603 KAR 5:070. Motor vehicle dimension limits.

RELATES TO: KRS 189.222, 23 CFR Part 658
STATUTORY AUTHORITY: KRS 189.222(1), 23 CFR Part 658

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the State Primary Road System. The State Primary Road System consists of those roads maintained by the Department of Highways. Further, 23 CFR Part 658 requires that a five (5) mile access on state-maintained highways and a one (1) mile access on locally controlled highways be included with the list of highways over which motor vehicles with increased dimensions are allowed to operate. The federal regulation also requires that vehicles with increased dimensions which are transporting household goods and truck tractors towing only one (1) semitrailer which does not exceed twenty-eight (28) feet be provided statewide access unless a route is specifically excluded for safety reasons. This regulation is adopted to set the maximum motor vehicle dimensions for all classes of highways. However, bus dimension limits are set forth in 603 KAR 5:071.

Section 1. Except as provided in Section 2 of this regulation, the maximum dimensions for all motor vehicles except buses using all classes of highways shall be as follows:

(1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches.

(2) Width: including body and load, not to exceed eight (8) feet.

(3) Length.

(a) Single unit motor vehicle, including any part of the body or load, not to exceed forty-five (45) feet. However, if the front or rear overhang exceeds five (5) feet, an overdimensional permit shall be obtained prior to the operation of the vehicle. However, single unit motor vehicles transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet shall not be required to obtain an overdimensional permit.

(b) Motor vehicle and trailer or semitrailer combinations, including any part of the body or load, not to exceed fifty-five (55) feet, except for truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats is excluded in the measurement of the fifty-five (55) feet.

(c) If the front or rear overhang of a motor vehicle and trailer or semitrailer combination exceeds five (5) feet, an overdimensional permit shall be obtained prior to the operation of the vehicle. In truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats shall be excluded from this measurement.

(d) A tolerance of not more than five (5) percent shall be permitted on overall length before a motor carrier is deemed to be in violation of this section.

Section 2. (1) Motor vehicles except buses with dimensions greater than those specified in Section 1 of this regulation but which do not exceed the dimensions set forth in subsection (2) of this section may be operated without an overdimensional permit only on the highways listed in Section 3(1) of this regulation, on the five (5) mile access authorized in Section 3(2) of this regulation and on the one (1) mile access authorized in Section 3(3) of this regulation.

(2) Motor vehicles shall not exceed, without an overdimensional permit, the following width and length dimensions when operating on those highways listed in Section 3(1) of this administrative regulation:

(a) Width - 102 inches including any part of the body or load.

(b) Length.

1. Semitrailers - fifty-three (53) feet including body and load when operated in tractor semitrailer combination.

2. Trailers - twenty-eight (28) feet including body and load when operated in a tractor-semitrailer-trailer combination, not to exceed two (2) trailers per truck tractor. Twenty-eight (28) feet shall be the maximum length of a trailer including body and load when operated in a truck-trailer combination.

3. If the load overhangs the body of the trailer or semitrailer by more than five (5) feet an overdimensional permit shall be required regardless of the overall length of the unit, except in truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats shall be excluded in the measurement.

4. There shall be no overall length limitation on motor vehicles operating on highways listed in Section 3(1) of this regulation or on the five (5) mile local access authorized in Section 3(2) of this regulation as long as the requirements set forth in this subsection are met.

5. In a tractor semitrailer-trailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length; however, when there is no second semitrailer mounted to the fifth wheel, the length of the extension shall be included in the length measurement for the semitrailer.

(3) No dimension specified in this section shall be subject to any enforcement tolerances provided in any other section.

Section 3. (1) The following highways are designated to permit the operation of motor vehicles with increased dimensions but which do not exceed the limitations stated in Section 2(2) of this regulation:

The Interstate and National Defense Highway System.

Audubon Parkway - from Pennyrile Parkway at Henderson to US 60 Bypass in Owensboro.

Bluegrass Parkway - from I-65 in Elizabethtown to US 60 near Versailles.

Cumberland Parkway - from I-65 near Smiths Grove to US 27 west of Somerset.

Daniel Boone Parkway - from US 25 north of London to KY 15 north of Hazard.

Green River Parkway - From I-65 in Bowling Green to US 60 Bypass in Owensboro.

Purchase Parkway - from Tennessee state line to I-24 in Marshall County.

Mountain Parkway and Extension - from I-64 at Winchester to US 460 at Salyersville.

Pennyrile Parkway - From US 41A in Hopkinsville to US 41 near Henderson.

Western Kentucky Parkway - from I-24 south of Eddyville to US 31W in Hardin County.

KY 4 - The entire circle of Lexington.

KY 11 - from the junction with KY 32 in Fleming County to US 62-68 in Maysville.

KY 15 - from US 119 in Whitesburg to the Mountain Parkway at Campton.

KY 18 - from KY 338 at Burlington to KY 1017 in Florence.

KY 21 - from I-75 near Berea to US 25 south in Berea.

US 23 - from KY 1426 south of Pikeville to the Ohio state line.

US 23 - from the Virginia state line to US 119 near Jenkins.

US 23 Spur - from US 23/60 in Ashland to the Ohio state line.

US 25 - from KY 461 in Rockcastle County to I-75 in Rockcastle County.

US 25 - from US 421 south of Richmond to KY 876 in Richmond.

US 25 - from KY 418 southeast of Lexington to KY 4.

US 25 - from US 42 in Florence to Ohio state line.

US 25E - from Virginia state line to I-75 north of Corbin.

US 27 - from Tennessee state line to Ohio state line (via KY 4 in Lexington).

US 31E - from Tennessee state line to KY 90 at Glasgow (via the Scottsville Bypass and the Glasgow Bypass).

US 31W - from Tennessee state line to KY 73 north of Franklin.

US 31W - from the Green River Parkway to US 68 north of

Bowling Green.

US 31W - from US 31W Bypass in Elizabethtown to I-264 in Shively.

US 31W Bypass - from Western Kentucky Parkway to US 31W in Elizabethtown.

KY 32 - from KY 11 in Fleming County to US 60 at Morehead.

KY 35 - from US 127 at Bromley to I-71 north of Sparta.

KY 36 - from I-64 south of Owingsville to US 60 at Owingsville.

KY 36 - from the Kawneer Corporation Plant Road in Carroll County (running concurrently with US 42 in Carrollton) to KY 227.

US 41 - from US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.

US 41 - concurrent with Pennyrile Parkway from south of Nortonville to north of Madisonville.

US 41 - from Pennyrile Parkway at Henderson to Indiana state line.

US 41A - from Tennessee state line to Pennyrile Parkway at south city limits of Hopkinsville.

US 41A - from KY 112 in Earlington to KY 281 and KY 1751 in Madisonville.

US 42 - from I-264 northeast of Louisville to Oldham County line.

US 42 - from I-75 in Florence to US 25 in Florence.

US 42 - from KY 36 in Carroll County at milepoint 4.519 (running concurrently with KY 36 for 2.699 miles) north [~~55 at Carrollton~~] to KY 47 at Ghent.

US 45 - from the Jackson Purchase Parkway north of Mayfield to US 60 in Paducah.

US 45 Bypass - concurrent with the Jackson Purchase Parkway from southwest of Mayfield to US 45 north of Mayfield.

US 49 - Concurrent with KY 55 south of Lebanon to north of Lebanon.

US 51 - from Jackson Purchase Parkway in Fulton County to Illinois state line.

KY 52 - from KY 876 in Richmond to KY 499 at Irvine.

KY 55 - from Cumberland Parkway in Columbia to US 150 at Springfield, via US 68 and KY 49.

US 60 - from US 51 in Wickliffe to US 62 east of Paducah.

US 60 - from KY 109 at Sullivan in Union County to KY 425, the Henderson Bypass.

US 60 - from US 60 Bypass west of Owensboro to KY 69 at Hawesville.

US 60 - from KY 144 in Meade County to US 31W at Tip Top.

US 60 - from I-264 east of Louisville to KY 1531 at Eastwood.

US 60 - from US 421/460 at Frankfort to I-75 near Lexington (via Versailles and KY 4 in Lexington).

US 60 - from junction of KY 180 near Cannonsburg to US 23 in Ashland.

US 60 Bypass - from US 60 west of Owensboro to US 60 east of Owensboro.

KY 61 - from Tennessee state line to KY 90 at Burkesville.

KY 61 - from the junction with US 31E in Hodgenville to US 31W in Elizabethtown.

US 62 - from US 60 east of Paducah to Western Kentucky Parkway east of Eddyville.

US 62 - from US 150 at Bardstown to KY 245 at Bardstown.

US 62 - from US 421 west of Midway to US 421 in Scott County, concurrent with US 421.

US 62 - from KY 353 southwest of Cynthiana to US 27 at Cynthiana.

US 62 - from US 68 at Washington to the Ohio state line at Maysville.

US 68 - from US 62 at Reidland to KY 284 in McCracken County.

US 68 - from I-24 in Trigg County to Green River Parkway at Bowling Green via US 41 in Hopkinsville.

US 68 - from KY 55 southwest of Campbellsville to KY 55 in Lebanon.

US 68 - from its east intersection with US 150 in Perryville to its west intersection with US 150 in Perryville.

US 68 - from US 127 south in Harrodsburg to US 127 north in Harrodsburg.

US 68 - from US 27 at Paris to US 62 at Washington (via Paris Bypass).

KY 69 - from US 60 at Hawesville to Indiana state line.

KY 70 - from I-65 west of Cave City to KY 90 southeast of Cave City.

KY 79 - from KY 1051 in Brandenburg to Indiana state line.

KY 80 - from KY 80B at Somerset to US 25 north of London.

KY 80 - from KY 15 at Hazard to US 23 at Watergap.

KY 80B - From US 27 at Somerset to KY 80 east of Somerset.

KY 90 - from KY 70 at Cave City to Cumberland Parkway at Glasgow.

KY 90 - from KY 61 at Burkesville to US 27 at Burnside.

KY 109 - from KY 670 in Webster County to US 60 in Union County.

KY 114 - from US 460 east of Salyersville to US 23/460 at Prestonsburg.

KY 118 - from US 421 and KY 80 northwest of Hyden to the Daniel Boone Parkway.

US 119 - from KY 15 at Whitesburg to US 23 at Jenkins.

US 119 - from US 25E south of Pineville to US 421 at Harlan.

US 119 - from US 23 at Pikeville to KY 1441 northeast of Pikeville.

KY 121 - from the Jackson Purchase Parkway at Mayfield to US 51 in Wickliffe.

US 127 - from KY 90 west to KY 90 east in Clinton County (concurrent with KY 90).

US 127 - from US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.

US 127 - from I-64 west of Frankfort to US 421 in Frankfort.

US 127 - from KY 22 in Owenton to KY 35 at Bromley.

US 127 Bypass - from US 127 south of Danville to US 127 north of Danville.

US 127 Bypass - from US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.

KY 144 - from KY 448 south of Brandenburg to US 60.

US 150 - from US 62 at Bardstown to US 27 at north city limits of Stanford (via the US 150 Bypass in Danville).

US 150B - from US 127 south of Danville to US 150 east of Danville.

KY 151 - from US 127 near Lawrenceburg to I-64 near Graefenburg.

KY 180 - from I-64 near Cannonsburg to US 60 at Cannonsburg.

KY 191 - from KY 205 north to KY 205 south in Wolfe County, concurrent with KY 205.

KY 192 - from I-75 south of London to Daniel Boone Parkway east of London.

KY 205 - from Mountain Parkway at Helechawa to US 460 west in Morgan County, concurrent with KY 191.

KY 212 - from KY 20 to Greater Cincinnati Airport (Boone County).

KY 227 - from KY 355 near Worthville to KY 36 at Carrollton.

US 231 - from US 60 Bypass in Owensboro to Indiana state line.

US 231 - from I-65 east of Bowling Green to US 31W in Bowling Green.

KY 236 - from US 25 at Erlanger to KY 212 near the Greater Cincinnati Airport.

KY 237 - from KY 18 east of Burlington to I-275 in Boone County.

KY 245 - from I-65 south of Shepherdsville to US 150 [~~62~~] at Bardstown.

KY 259 - from Western Kentucky Parkway to US 62 in Leitchfield.

KY 281 - from US 41A in Madisonville to the Pennyrile Parkway, concurrent with US 41.

KY 341 - from US 62/421 near Midway north to I-64.

KY 348 - from Jackson Purchase Parkway west of Benton to US

641 in Benton.

KY 418 - from US 25 south of Lexington to I-75.

US 421 - from 0.1 mile south of Harlan Appalachian Regional Hospital.

US 421 & KY 80 - from Daniel Boone Parkway to 2nd Street in Manchester.

US 421 - from KY 4 in Lexington to US 62 east in Scott County.

US 421 - from US 460 in Frankfort to US 127 north.

US 421 - from KY 55 in Henry County to I-71 in Henry County.

KY 425 - from US 60 at Henderson to the Pennyrile Parkway.

US 431 - from US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.

KY 446 - from US 31W northeast of Bowling Green to I-65.

KY 448 - from KY 144 to KY 1051 at Brandenburg.

US 460 - from I-64 north of Mt. Sterling to KY 686.

US 460 - from Mountain Parkway Extension to US 23 near Paintsville.

KY 461 - from KY 80 in Pulaski County to US 25 in Rockcastle County.

KY 471 - from US 27 in Campbell County to the I-275/471 junction.

KY 546 - from I-275/KY 9 at Wilder to KY 59 south of Vanceburg.

KY 555 - from US 150 at Springfield to Bluegrass Parkway.

US 641 - from Tennessee state line to US 641A south of Benton.

US 641A - from US 641 south of Benton to the Jackson Purchase Parkway.

KY 645 - from US 23 south of Ulysses to KY 40 west of Inez.

KY 676 - from US 127 in Frankfort to US 60.

KY 686 - from US 460 north of Mt. Sterling to KY 11 south of Mt. Sterling.

KY 841 - from I-71 in Jefferson County to US 42 northeast of Louisville.

KY 841 - from US 31W (Dixie Highway) in southwestern Jefferson County to I-65.

KY 859/KY 57 - from I-64 east of Lexington to Lexington - Bluegrass Army Depot.

KY 876 - from I-75 at Richmond to KY 52 east of Richmond.

KY 922 - from KY 4 in Lexington north to I-64 and I-75.

KY 1017 - from US 25 in Florence to I-75.

KY 1051 - from KY 79 to KY 448 south of Brandenburg.

KY 1682 - from US 68 west of Hopkinsville to Pennyrile Parkway.

KY 1958 - from KY 627 south of Winchester to I-64 at Winchester.

KY 1998 - from US 27 at Cold Springs to KY 8 at Silver Grove.

(2) Motor vehicles with the increased dimensions specified in Section 2 of this regulation shall be allowed five (5) driving miles on state maintained highways from the highway segments specified in Section 3(1) of this regulation for the purpose of attaining reasonable access to terminals; facilities for food, fuel, repairs and rest.

(3) Motor vehicles with the increased dimensions specified in Section 2 of this regulation shall be allowed one (1) driving mile on nonstate maintained public use highways from the highway segments specified in Section 3(1) for the purpose of attaining reasonable access to terminals, facilities for food, fuel, repairs and rest.

Section 4. (1) Household Goods Transporters. Motor vehicles with the increased dimensions specified in Section 2 of this regulation and which are used to transport household goods by a motor carrier certificated by either the Interstate Commerce Commission or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

(2) Single unit semitrailers. Motor vehicles with the increased dimensions specified in Section 2 of this regulation and which consist of only a truck tractor and single semitrailer which does not exceed twenty-eight (28) feet shall have access to any public roadway in the Commonwealth of Kentucky.

Section 5. Nonstate Maintained Exceptions to One (1) Mile Automatic Access. The following local governments have adopted ordinances which exempt for safety reasons certain locally maintained roadways from the automatic one (1) mile access provision of Section 3(3) of this regulation: The city of Anchorage in Jefferson County - the streets all within the corporate city limits of Anchorage listed in the city ordinance which shall not be used by STAA-dimensioned vehicles are:

(1) Evergreen Road;

(2) Bellewood Road;

(3) Lucas Lane; and

(4) Old Harris Creek Road.

Section 6. State-maintained Exceptions to Automatic Five (5) Mile Access. The Department of Highways has found the following road segments for safety reasons to be exempt from the five (5) mile automatic access on state-maintained highways set forth in Section 3(2) of this regulation. These road segments shall not be used by STAA-dimensioned vehicles without an overdimensional permit: KY 146 - from the west boundary of the city of Anchorage at milepoint 4.258 to the east boundary of the city of Anchorage at milepoint 5.878.

NORRIS BECKLEY for LEWIS H. DOTSON, Commissioner
GLEN KELLY, Acting State Highway Engineer
DON C. KELLY, Secretary

APPROVED BY AGENCY: May 26, 1992

FILED WITH LRC: May 27, 1992 at 11 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 28, 1992 at 10 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by July 23, 1992 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until July 23, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All operators of STAA type vehicles in Kentucky are affected by the overall administrative regulation. However, only the operators of those STAA motor vehicles servicing Kawneer Corporation in Carroll County and those persons operating in Nelson County are affected by the proposed amendment.

(a) Direct and indirect costs or savings to those affected: As a result of more road segments in Carroll and Nelson Counties being made available to STAA-dimensioned vehicles, there will be a cost savings to the operators of some larger vehicles servicing Kawneer Corporation.

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

(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: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not accommodating the STAA vehicles on the two road segments in Carroll County was rejected because the vehicle operators requested access and the road appears to be designed to safely operate the STAA vehicles. The alternative of not accommodating the STAA vehicles on the new segment of KY 245 in Nelson County was rejected because the road segment was designed and constructed to accommodate those vehicles.

(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:

TIERING: Was tiering applied? Yes. Tiering was applied by allowing larger vehicles to operate on those highways with geometrics conducive to the safe operation of those vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 658, Truck Size and Weight; Reasonable Access requires each state to establish access provisions to the National Truck Network of Highways which meet the criteria set forth in the federal regulation and to get federal approval of the criteria.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. Specifically, five-mile access on state-maintained highways and one-mile access on locally-maintained highways are allowed from the National Truck Network of Highways. However, if there are reasonable safety grounds for excluding a road segment from the access provisions, the Transportation Cabinet in accordance with 603 KAR 5:250 may do so.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET
Department of Highways
Department of Vehicle Regulation
Division of Motor Carriers
Division of Maintenance
(Proposed Amendment)

603 KAR 5:075. Overweight and overdimensional permits.

RELATES TO: KRS 189.222, 189.270

STATUTORY AUTHORITY: KRS 174.080, 189.270

NECESSITY AND FUNCTION: KRS 189.270 authorizes the Secretary of the Transportation Cabinet to issue permits for the movement of motor vehicles with loads exceeding legal weights and dimensions. This regulation establishes the procedures and requirements necessary in the interest of highway safety for the issuance of an overweight or overdimensional permit which is not specifically addressed in another administrative regulation.

Section 1. Definitions. (1) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset, but it does not include any time when atmospheric conditions render visibility lower than is ordinarily the case during this period of the day.

(2) "National holiday" means:

(a) New Year's Day;

(b) Memorial Day (as observed on the last Monday in May);

(c) Independence Day;

(d) Labor Day;

(e) Thanksgiving Day; and

(f) Christmas Day.

(3) "Base fee" means the initial fee of sixty (60) dollars charged for the issuance of an overweight or overdimensional permit to cover the cost of processing the permit application, including but not limited to, a qualification check of the applicant, a statutory compliance check, and an initial bridge and weight analysis.

(4) "Additional fee" means the additional charge for overweight or overdimensional permits imposed by KRS 189.270. Vehicles with six (6) or more axles or with a width of ten (10) or more feet shall be charged the base fee as well as the additional fee as provided for by statute. This additional fee is to cover the additional administrative costs for processing the permit application, including specific bridge computer analysis, unique routing needs, axle spacing needs, additional enforcement and other necessary and incidental departmental costs.

(5) "Farm implement" means machinery, equipment or vehicle used exclusively in a farm operation and which is not required by KRS Chapter 186 to be registered.

(6) "Fully controlled access highway" means a highway which gives preference to through traffic and which shall have access only at selected public roads or streets and which shall have no highway grade crossing or intersection.

(7) "Toll road" means any turnpike project constructed under the provisions of KRS Chapter 175 or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet.

Section 2. Issuance of the Permit. (1) Special permits to allow the movement of motor vehicles with gross weights or gross dimensions in excess of the weights and dimensions specified by statutes and administrative regulations shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers when, in the discretion of the department, this movement is necessary to provide transportation for specified cargo in the interest of the health, welfare and economy of the people.

(2) Each special permit issued shall be limited to designated portions of the state primary road system and stated periods of time.

(3) A separate permit shall be required for each vehicle involved in a movement.

(4) A permit shall not be issued for a divisible load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

(5) An overweight permit shall not be issued to the following:

(a) A Kentucky licensed vehicle, for a gross weight exceeding that for which the truck is registered, unless registered for 80,000 pounds;

(b) [~~(6) No overweight permit shall be issued to~~] A tractor-trailer combination of less than five (5) axles;

(c) A vehicle not registered in Kentucky which has not met one (1) of the following conditions:

1. Has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds; or

2. has met the provisions of KRS 281.752;

(d) [~~(7) No overweight permit shall be issued to~~] A vehicle whose axle weight would exceed the product of 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle; or

(e) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load..

Section 3. Application for Permit. Applications for overweight or overdimensional permits shall be made to the Department of Vehicle Regulation, Division of Motor Carriers, Frankfort, Kentucky 40622. The application shall state the following:

(1) The name, telephone number and address of the applicant;

(2) The purpose of the movement for which a permit is requested;

(3) The portion of the state primary road system to be used;

(4) The cargo to be hauled;

(5) The period of time needed to complete the movement; and

(6) The description and the identity of the vehicle to be used [~~and any other information required by the Department of Vehicle Regulation~~].

Section 4. Permit Fee. (1) The base fee for the issuance of a special permit to a vehicle which is both overweight and overdimensional shall be sixty (60) dollars.

(2) The base fee for the issuance of a special permit to a vehicle which is either overweight or overdimensional shall be sixty (60) dollars.

(3) An additional fee shall be assessed if the vehicle for which the overweight permit is applied:

(a) Has [~~is~~] six (6) axles or more; or

(b) [~~if the vehicle for which an overdimensional permit is applied~~] Has a width of ten (10) feet or more.

Section 5. Movement Time Allowed. (1) A single trip permit shall be valid for a period not to exceed ten (10) days. A time extension shall only be granted if the permit holder proves extenuating circumstances.

(2) Permits shall be [~~are~~] valid:

(a) During daylight hours; and

(b) [~~only~~] From Monday through Saturday noon.

(3) Permits shall [~~However, permits are~~] not be valid on national holidays and travel shall [~~is~~] not permitted from noon the preceding day until daylight hours of the next permissible day. If the national holiday occurs on Saturday, Sunday or Monday the restricted period shall extend from noon of the preceding Friday to daylight hours of the following Tuesday.

(3) If satisfactory proof of an emergency is furnished the Department of Vehicle Regulation, the department may authorize moves during the restricted hours.

(4) The department may further prohibit movements in congested areas within the peak traffic hours. The additional restrictions shall be noted on the permit when issued.

Section 6. Highway Right-of-way. A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the personal, written approval of the chief district engineer having jurisdiction over the property involved.

Section 7. Farm Implements. (1) A [~~No~~] permit shall not be required to transport overdimensional farm implements, unless the movement occurs on an interstate highway, toll road, or fully controlled access highway in the following instances: [~~either self propelled or by another vehicle regardless of the vehicle owner or operator,~~]

(a) From one (1) farm to another;

(b) From a farm to a repair shop or dealer; or

(c) From a repair shop or dealer to a farm [~~unless the movement occurs on an interstate highway, toll road, or fully controlled access highway. However,~~]

(2) The following movements of farm implements shall only be made under the authority of an overdimensional permit:

(a) Manufacturer to dealer;

(b) Dealer to manufacturer; [~~or~~]

(c) Dealer to dealer; or

(d) Moves on an interstate highway, toll road or fully controlled access highway. [~~moves shall only be made under the authority of an overdimensional permit.~~

~~(2) A permit shall be required to transport an overdimensional farm implement on an interstate highway, toll road or fully controlled access highway. Self~~-]

(3) On an interstate highway, toll road or fully controlled access highway a self-propelled farm implement[~~s~~] shall not be:

(a) Operated; or [~~on an interstate highway, toll road or fully controlled access highway and shall not be~~]

(b) Issued a permit for movement [~~on these highways~~].

Section 8. Denial of Permit Application. The Department of Vehicle Regulation and the Department Highways shall have the right to deny a permit for any movement which may cause damage to public property or may be detrimental to public safety or convenience.

Section 9. Permit Availability. (1) The permit shall be carried in the overweight or [~~/~~] overdimensional vehicle at all times.

(2) It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(3) Only the original of an annual permit shall be valid.

Section 10. Escort Vehicle and Flag Requirements. (1) Required escort vehicles shall accompany the permitted vehicle at a distance of 300 feet on open highways.

(2) This interval shall be shortened in cities or congested areas to protect other traffic.

(3) An escort vehicle's headlamps shall be lit at all times.

(4) [~~(2)~~] On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches but [~~less than~~] twelve (12) feet or less shall have one (1) lead escort.

(5) [~~(3)~~] On a two (2) lane highway, a vehicle and load with a width exceeding twelve (12) feet shall have one (1) lead escort and one (1) trail escort.

(6) [~~(4)~~] On a two (2) lane highway, a vehicle and load traveling at speeds below the average driving speed of traffic on its route shall have one (1) trail escort.

(7) [~~(5)~~] On a four (4) lane or wider highway, a vehicle and load [~~with a width exceeding twelve (12) feet~~] shall have one (1) trail escort if:

(a) its width exceeds twelve (12) feet; or

(b) it does not maintain a speed of forty-five (45) miles per hour.

(8) [~~(6)~~] On a two (2) lane highway, a vehicle and load with a length in excess of seventy-five (75) feet but not more than eighty-five (85) feet shall have one (1) lead escort. If the vehicle and load exceed eighty-five (85) feet on a two (2)-lane highway, is shall have one (1) lead and one (1) trail escort.

(9) [~~(7)~~] On a four (4) lane or wider highway, a vehicle and load with a length of 110 feet or greater shall have one (1) trail escort.

(10) [~~(8)~~] Red or orange fluorescent flags which are a minimum of eighteen (18) inches square shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(a) Vehicles operating overwidth shall display two (2) warning flags, one (1) on each side of the vehicle or load at its widest extremities.

(b) Vehicles operating overlength or with a rear end overhang shall display two (2) warning flags at the extreme rear of the vehicle or load. These flags shall be located to indicate maximum width of the rear end.

[~~(9) All toll roads shall be considered four (4) lane for the purpose of determining the need for escort vehicles regardless of the actual~~

~~number of lanes on the highway.~~]

(11) [~~(10)~~] All vehicles exceeding ten and one-half (10.5) [~~(10)~~] feet in width or having front overhang shall display two (2) warning signs. The warning signs shall:

(a) State in black letters on a yellow background, "OVERSIZE LOAD";

(b) [~~The sign shall not~~] Be not less than seven (7) feet long and eighteen (18) inches high;

(c) Have [~~with~~] a brush stroke of one and four-tenths (1.4) inches; and

(d) [~~One (1) sign shall~~] Be fastened at the front of the power unit and the [~~other at the~~] rear end of the towed unit or at the rear of the load.

(13) [~~(11)~~] As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting or warning flags.

Section 11. Liability. (1) Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of overdimensional vehicles shall be the responsibility of the permit holder.

(2) The permit holder shall either repair all damage incurred or pay for the repair.

Section 12. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the annual permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

NORRIS BECKLEY, Deputy Commissioner
GLEN KELLY, Acting State Highway Engineer
DON C. KELLY, Secretary/Commissioner
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 8 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 28, 1992 at 1 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by July 23, 1992 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until July 23, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All transporters of overdimensional or overweight vehicles in Kentucky.

(a) Direct and indirect costs or savings to those affected: The safety changes for transporters of overdimensional vehicles will cost about $5 per transporter.

1. First year: $5 per transporter.

2. Continuing costs or savings: $5 per transporter.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The transporter applying for an annual permit will be required to submit a written application.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

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: The do-nothing alternative was rejected since so many administrative regulations relating to overweight or overdimensional permits were amended because of the 1992 Acts.

(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: The changes were accomplished to provide uniformity in the safety requirements between all permits for the transportation.

TIERING: Was tiering applied? Yes. The safety requirements imposed are tiered depending on the size and weight of the vehicle and the type of highway.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

603 KAR 5:105. Annual permits for moving wood trusses.

RELATES TO: KRS 189.270
STATUTORY AUTHORITY: KRS 189.270
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue annual permits for the movement of wood trusses exceeding legal dimensions. This regulation establishes the permit application procedures within the Transportation Cabinet and establishes movement requirements necessary in the interest of highway safety.

Section 1. Definitions. (1) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset. However, it does not include any time when atmospheric conditions such as heavy rain, snow, sleet or fog render visibility lower than is ordinarily the case during that period of the day.

(2) "National holiday" means:

(a) New Year's Day;

(b) Memorial Day (as observed on the last Monday in May);

(c) Independence Day;

(d) Labor Day;

(e) Thanksgiving Day; and

(f) Christmas Day.

Section 2. Permit Application. (1) Application for a permit to move an overdimensional [~~a~~] wood truss on a Kentucky state-maintained highway shall only be made to the Department of Vehicle Regulation, Division of Motor Carriers, Frankfort, Kentucky.

(2) An annual permit application or request shall:

(a) Be made in writing;

(b) Specify the following about the towing vehicle:

1. Make; [~~rated capacity;~~]

2. Vehicle identification number;
3. License plate number and state of registration;
4. [and] State of apportioned registration if registered in other than Kentucky;
5. The maximum weight for which it is registered; and
6. Name, telephone number and address of the owner[of the towing vehicle].

(3) The applicant [In addition, it] shall specify whether the motor carrier operating the towing vehicle is a for-hire or private carrier.

(4) The applicant shall certify that the towing vehicle has sufficient horsepower and braking capacity to safely transport the wood trusses.

Section 3. Permit Required. Without a permit issued by the Department of Vehicle Regulation, Division of Motor Carriers either under the provisions of this administrative regulation or 603 KAR 5:075, a [No] motor vehicle transporting wood trusses shall not operate on the following state-maintained highways with [of] a width greater than:

(1) Eight and one-half (8.5) feet [shall be operated] on any highway listed in 603 KAR 5:070, Section 2(2)(b); and

(2) [nor shall any vehicle with a width greater than] Eight (8) feet [be operated] on any other Kentucky highway [unless, and until, a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers either under the provisions of 603 KAR 5:075 or this administrative regulation].

Section 4. Annual Permits. (1) An annual permit shall not be issued for the movement of a motor vehicle transporting wood trusses under the following conditions:

(a) If the vehicle or load exceeds twelve (12) feet in width;

(b) If the length of the trailer and towing unit combination exceeds ninety-five (95) feet;

(c) If the length of the straight truck and load exceeds fifty-five (55) feet in length;

(d) If the height of the load exceeds thirteen and one-half (13.5) feet; or

(e) If the towing vehicle:

1. Is registered in another jurisdiction; and

2. Is not apportioned registered to operate in Kentucky.

(2) A movement of wood trusses under the provisions of an annual permit shall only be on highways:

(a) Specified on the annual permit;

(b) On the map included as part of the annual permit; or

(c) On the local access highways granted in subsection (5) of this section.

(3) The permit holder shall plan his route to stay on the routes shown on the map as acceptable whenever possible.

(4) A copy of the map which is included as a part of the annual permit is hereby incorporated by reference. This map was revised by the Transportation Cabinet in June, 1992.

(5)(a) The permit holder may have local access to facilities and construction or shipping sites up to thirty (30) miles beyond those routes shown as acceptable on the map incorporated by reference.

(b) Prior to travelling that thirty (30) miles, the permit holder shall ensure that the route can safety accommodate the overdimensional load.

(6)(a) If after scouting the local access highway to ensure safe accommodation of the overdimensional load, there is any doubt of the adequacy of the access highway segments specified in subsection (5) of this section, the permit holder shall:

1. Select a different route; or

2. Contact the jurisdictional highway office for clearance to move the overdimensional load over that specific load.

(b) If the highway district office does not issue clearance for the use of a particular route, that route shall not be used.

(7) If the permit holder needs to go further than the thirty (30) local access miles he shall apply for a single trip permit in accordance with 603 KAR 5:075.

[(3) An annual permit shall not be issued or used for the movement of wood trusses if the length of the trailer and towing unit combined exceeds ninety five (95) feet in length.

(4) An annual permit shall not be issued or used for the movement of wood trusses if the length of the straight truck and load exceeds fifty five (55) feet in length.]

Section 5. Permit Cost. The issuance of an annual permit, as set forth in KRS 189.270, shall apply to the towing vehicle and the cost shall not be prorated.

Section 6. Safety Features. (1) One (1) lead escort vehicle is required for the movement of wood trusses where the width of the vehicle or load exceeds ten and one-half (10.5) feet [the legal width] on all two (2) lane highways.

(2) A trail escort vehicle shall be provided when:

(a) The vehicle is operating below the average traffic speed on a two (2) lane highway; or

(b) The vehicle does not maintain a forty-five (45) mile per hour speed on a four (4)-lane highway.

(3) Escort vehicles, either front or rear, may be required by the Transportation Cabinet where highway conditions dictate the need.

(4) Escort vehicles shall maintain radio contact with the towing vehicle at all times.

(5) Escort vehicles shall have their headlamps on any time the escort vehicle is operating.

(6)(a) On open highways an escort vehicle shall be spaced approximately 300 feet from the towing vehicle.

(b) In cities or congested area this distance shall be shortened to protect other traffic.

(7) Each required escort vehicle shall have one (1) of the following:

(a) An amber strobe or flashing light mounted on the roof of the escort vehicle; or

(b) A warning sign which:

1. Is clearly visible;

2. States "OVERSIZE LOAD" in black letters on a yellow background; and

3. Is placed on the front of the front escort vehicle.

(8) [(3)] Red or orange warning flags at least eighteen (18) inches square shall be displayed on both sides of the vehicle at the widest extremities of the vehicle or load.

(9) If the vehicle and load exceeds ten and one-half (10.5) feet a [(4) A] warning sign shall:

(a) Be fastened to both the front of the power unit and the far end of the towed unit or at the rear of the load; [. Each warning sign shall]

(b) State "OVERSIZE LOAD" in black letters on a yellow background; [and shall not be less than]

(c) Be at least seven (7) feet long and eighteen (18) inches high; and

(d) Have [with] a brush stroke of not less than one and four-tenths (1.4) inches.

(10) [(5)] All overdimensional vehicles shall be marked and lighted in accordance with those requirements set forth in 601 KAR 1:005.

Section 7. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

Section 8. Route Deviation. Prior approval shall be secured from the Division of Motor Carriers for any vehicle transporting wood

trusses under an annual permit which deviates from the routes prescribed in the permit issued for the towing vehicle.

Section 9. Presentation of Permits. (1) The original of the annual permit [Permits] shall be carried in the towing vehicles at all times; [and]

(2) The permit shall be presented, upon request, to any law enforcement officer or any authorized personnel of the Department of Vehicle Regulation for inspection; and

(3) A photocopy of the annual permit shall not be valid.

Section 10. Permit Validity. (1) Permits shall be [are] valid during the following:

(a) [only] Daylight hours; and

(b) [as defined in Section 1 of this regulation,] From Monday through Saturday noon. [, except for these periods before, during and after national holidays. In connection with these holidays,]

(2) Travel is not permitted from noon of the day preceding a [the] national holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or Monday the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

(4) A annual permit issued under the provisions of this administrative regulation shall not be valid if the combined gross weight of the towing vehicle and the load of wood trusses exceeds:

(a) The registered weight of the towing vehicle; or

(b) The weight capacity of the highway on which it is being operated.

Section 11. Liability. The permit holder shall be responsible to pay for or replace any sign, traffic control device, guardrail or other property damaged or destroyed during the move of the wood truss.

NORRIS BECKLEY, Deputy Commissioner
DON C. KELLY, Secretary/Commissioner
GLEN KELLY, Acting State Highway Engineer
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 8 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 28, 1992 at 1 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by July 23, 1992 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until July 23, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: 4-6 transporters of wood trusses.

(a) Direct and indirect costs or savings to those affected: The specific cost of the new safety items imposed by this administrative regulation will vary with the tiered application and distance traveled. In general, the cost of an escort vehicle will be $50/hour. The one-time cost of purchasing an overdimensional banner will be $10.

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 applicant must submit an application for this annual permit which describes the vehicle for which he is requesting a permit.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None as a result of this administrative regulation.

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: The do-nothing alternative was rejected because a transporter of more than one commodity needs to have consistent safety requirements depending on load size and highway traveled.

(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: The safety requirements of this administrative regulation were slightly amended so that the requirements would be consistent between overdimensional permits regardless of the commodity transported.

TIERING: Was tiering applied? Yes. The safety requirements are tiered based on the width of the vehicle and load and the number of lanes and type of highway.

TRANSPORTATION CABINET
Department of Highways
Department of Vehicle Regulation
Division of Maintenance
Division of Motor Carriers
(Proposed Amendment)

603 KAR 5:112. Annual permits for moving utility poles or pipes.

RELATES TO: KRS 189.270
STATUTORY AUTHORITY: KRS 189.270

NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue annual permits for the movement of utility equipment, poles or pipes exceeding legal dimensions. This administrative regulation establishes the permit application procedures within the Transportation Cabinet and establishes movement requirements necessary in the interest of highway safety.

Section 1. Definitions. (1) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset. However, it does not include any time when atmospheric conditions such as heavy rain, snow, sleet or fog render visibility lower than is ordinarily the case during that period of the day.

(2) "National holiday" means:

(a) New Year's Day;
(b) Memorial Day (as observed on the last Monday in May);
(c) Independent Day;
(d) Labor Day;
(e) Thanksgiving Day; and
(f) Christmas Day.

(3) "Pole trailer" means the vehicle which is designed to be drawn by a motor vehicle and attached to the towing motor vehicle by

means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle and used for transporting long or irregularly shaped loads such as poles, pipes or structural members which generally are capable of sustaining themselves as beams between the supporting connections.

(4) "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes or utility electrical field equipment such as transformers or regulators. It shall not include any equipment necessary for the construction or operation of a power generation station.

Section 2. Permit Application. (1) Application for an annual permit to move overdimensional utility equipment, poles or pipes on Kentucky highways shall only be made to the Department of Vehicle Regulation, Division of Motor Carriers, Frankfort, Kentucky.

(2) An application for an annual permit to transport overdimensional utility equipment, poles or pipes shall include the following information:

(a) Name of the motor carrier applying for the permit;

(b) KYU identification number of the motor carrier;

(c) The full address of the motor carrier; and

(d) Description of the towing vehicle for which the annual permit is being applied specifically including the following:

1. Its length;
2. Number of axles;
3. Truck configuration; [~~style;~~]
4. Year;
5. Make;
6. Registration license plate number;
7. Vehicle identification number; and
8. Company unit number.

Section 3. Permit Required. A special single trip or annual permit shall be obtained from the Department of Vehicle Regulation, Division of Motor Carriers either under the provisions of this administrative regulation or another administrative regulation issued pursuant to KRS Chapter 189 prior to the following:

(1) Operation on any state-maintained highway of a [~~No utility pole or pipe and~~] straight truck style vehicle transporting utility equipment, pole or pipe with a total [~~combined~~] length greater than forty-five (45) feet; [~~shall be operated upon any state maintained Kentucky highway until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.~~]

(2) Operation on any state-maintained highway of a [~~No utility pole or pipe and~~] combination style vehicle, including a truck and pole trailer combination, transporting utility equipment, pole, or pipe which has a total [~~with a combined~~] length greater than fifty-five (55) feet; [~~shall be operated upon any state maintained Kentucky highway not listed in 603 KAR 5:070, Section 2(2) until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.~~]

(3) Operation on any highway listed in 603 KAR 5:070, Section 2(2) of a [~~No~~] vehicle and trailer combination, including a truck and pole trailer combination, transporting utility equipment, [~~and utility~~] pole or pipe which exceeds the length limitations set forth in 603 KAR 5:070, Section 2(1); [~~shall be operated upon any Kentucky highway listed in 603 KAR 5:070, Section 2(2) until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.~~]

(4) Operation on a state-maintained highway not listed in 603 KAR 5:070, Section 2(2) of a motor vehicle transporting utility equipment, pole or pipe which has an overall width greater than ninety-six (96) inches;

(5) Operation on a state-maintained highway listed in 603 KAR 5:070, Section 2(2) of a motor vehicle transporting utility equipment, pole or pipe which has an overall width greater than 102 inches; and

(6) Operation of a motor vehicle transporting utility equipment, poles, or pipe which has a combined gross weight in excess of the legal weight limit set forth for the highway in 603 KAR 5:096.

(7) [~~(4)~~] The procedures which shall be followed for the issuing of a single trip permit or an annual permit for the movement of overweight specialized equipment are set forth in 601 KAR 1:015, 601 KAR 1:016 and 603 KAR 5:075 [~~601 KAR 5:075~~].

Section 4. Annual Permits. (1) The movement of a vehicle transporting utility equipment, poles or pipe under the provisions of an annual permit shall only be on highways or in the geographical area specified on the annual permit.

(2) If the permit holder intends to transport overdimensional utility equipment, poles or pipes under the provisions of the annual permit but outside the area or highways specified on the annual permit, he shall contact the Division of Motor Carriers and receive approval for that move or series of moves prior to the move.

(3)(a) If the utility equipment, pole or pipe in excess of forty-five (45) feet overhangs the vehicle required to be permitted on both the front and rear by more than ten (10) feet each, the permit holder shall contact the Operations Branch of the Highway District Office having jurisdiction over the county in which the moves are scheduled to occur and receive permission for that move or series of moves prior to the move.

(b) The Highway District Office may require that the permit holder demonstrate his proposed method and route of operation prior to issuing or denying permission for the move.

(4) An annual permit issued under the provisions of this administrative regulation shall not be valid for the utility equipment, pole or pipe and transporting motor vehicle if it exceeds twelve (12) feet in width. In this instance, a permit shall be obtained pursuant to 603 KAR 5:075.

Section 5. Safety Items. (1) On all highways of four (4) or more lanes, one (1) rear street escort vehicle shall be required for the movement of a vehicle and trailer combination which:

(a) When combined with its load exceeds 110 feet in length; or

(b) When a minimum speed of forty-five (45) miles per hour is not maintained.

(2)(a) On highways of less than four (4) lanes, one (1) escort shall be required in the rear of each vehicle and trailer combination which when combined with its load exceeds seventy-five (75) feet in length.

(b) This requirement shall not be applicable if the utility equipment, pole or pipe being transported is fifty-five (55) feet or less in length.

(3) On highways of less than four (4) lanes, one (1) rear and one (1) lead escort shall be required for each vehicle and trailer combination which when combined with its load exceeds eighty-five (85) feet in length.

(4) If the utility equipment, pole or pipe being transported exceeds fifty-five (55) feet in length, a front escort vehicle shall accompany the vehicle required to be permitted when transporting utility equipment, poles or pipe if the front overhang exceeds ten (10) feet.

(5) If the utility equipment, pole or pipe being transported exceeds fifty-five (55) feet in length, a rear escort vehicle shall accompany the vehicle required to be permitted when transporting utility equipment, poles or pipe if the rear overhang exceeds ten (10) feet.

(6) On a two (2)-lane highway, utility equipment with a width in excess of ten and one-half (10.5) feet but twelve (12) feet or less in width shall have one (1) lead escort.

(7)(a) Required escort vehicles shall accompany the permitted vehicle at a distance of 300 feet on open highway.

(b) This interval shall be shortened in cities or congested areas to protect other traffic.

(8) An escort vehicle's headlamps shall be lit at all times.

(9) [~~(5)~~] An escort vehicle, either front or rear, may be required by

the Transportation Cabinet when the cabinet determines that highway conditions dictate the need.

(10) [~~(6)~~] An amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use any time the power unit is in operation.

(11) [~~(7)~~] An amber strobe or flashing light shall be placed on the extreme ends of the utility equipment, pole or pipe when the front or rear overhang exceeds four (4) feet. The light shall be in use any time the vehicle is on or beside a highway. No front overhang shall be allowed on a combination vehicle.

(12) Red or orange fluorescent warning flags at least eighteen (18) inches square shall be displayed on both sides of an overwidth vehicle at the widest extremities of the vehicle or load.

(13) A warning sign shall be fastened to both the front of the towing unit and the rear of the load if the towing vehicle and load exceeds ten and one-half (10.5) in width or has either a front or rear overhang of four (4) or more feet. Each warning sign shall:

(a) State "OVERSIZE LOAD" in black letters on a yellow background;

(b) Not be less than seven (7) feet long and eighteen (18) inches high; and

(c) Have a brush stroke of not less than one and four-tenths (1.4) inches.

(14) [~~(8)~~] All towing vehicles and loads shall be marked and lighted and operated in accordance with those requirements set forth in 601 KAR 1:005.

(15) [~~(9)~~] The towing unit shall maintain radio communication with its escort vehicles at all times.

(16) Each required escort vehicle shall have one (1) of the following:

(a) An amber strobe or flashing light on the roof of the escort vehicle; or

(b) A clearly-legible warning sign in black letters on a yellow background which states "OVERSIZE LOAD". The sign shall be placed on the front of a front escort vehicle and on the rear of a rear escort vehicle.

Section 6. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

Section 7. Presentation of Permits. (1) The original of the annual permit [~~Permits~~] shall be carried in the towing vehicles at all times. [~~;~~ ~~and~~]

(2) It shall be presented, upon request, to any law enforcement officer or any authorized personnel of the Department of Vehicle Regulation for inspection.

(3) A photocopy of the annual permit shall not be valid.

Section 8. Permit Validity. (1) Permits are valid only:

(a) During daylight hours; and

(b) [~~as defined in Section 1 of this regulation,~~] From Monday through Saturday noon. [~~, except for those periods before, during and after national holidays. If the national holiday occurs on Tuesday or Wednesday, travel shall not be allowed from noon of the day preceding the national holiday until daylight of the day following the national holiday.~~]

(2) Travel shall not be permitted from noon of the day preceding a national holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or Monday the restricted movement period shall extend from noon of the preceding Friday to daylight of the following Tuesday. [~~If the national holiday occurs on a Thursday, Friday or Saturday, the restricted period shall extend from noon of the preceding day to daylight of the following Monday.~~]

Section 9. Liability. Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of utility poles or pipes shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

NORRIS BECKLEY, Deputy Commissioner
DON C. KELLY, Secretary/Commissioner
GLEN KELLY, Acting State Highway Engineer
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 8 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 28, 1992 at 1 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by July 23, 1992 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until July 23, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant to the Secretary, Transportation Cabinet, 1001 State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All utility companies in Kentucky and the motor carriers which contract with the utility companies to transport their overdimensional utility poles, pipes or equipment.

(a) Direct and indirect costs or savings to those affected: The specific cost of the safety items imposed by this administrative regulation will vary with the tiered application and distance traveled. In general, the cost of an escort vehicle will be $50/hour. The one-time cost of purchasing an overdimensional banner will be $10.

1. First year:

2. Continuing costs or savings: The specific cost of the safety items imposed by this administrative regulation will vary with the tiered application and distance traveled. In general, the cost of an escort vehicle will be $50/hour. The one-time cost of purchasing an overdimensional banner will be $10.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Application for annual permits must be completed.

(2) Effects on the promulgating administrative body: The Department of Highways will be required to examine the roads over which some of the poles, pipes or equipment will be transported.

(a) Direct and indirect costs or savings: Each on-site examination will have a total cost of about $75 to $100.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Issuance of the annual permit.

(3) Assessment of anticipated effect on state and local revenues:

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The safety items imposed by this administrative regulation were jointly decided upon by the Departments of Highways and Vehicle Regulation and representatives from the industry.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering of safety requirements was applied based on the type of highway, width of equipment and length of pole.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:015. General industry standards.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Consistent with this authority the following regulations contain those standards to be enforced by the Division of Occupational Safety and Health Compliance. The Occupational Safety and Health Standards Board hereby adopts the following regulations applicable to general industry. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011).

Section 1. (1) Batteries. Scope and application. This standard applies to the changing of storage batteries, charging of batteries in and out of vehicles, and jump starting of vehicles. Note: This standard does not apply to those charging operations where the battery terminals are protected by physical barriers and no electrolyte is being manipulated.

(2) Definitions.

(a) "Corrosive" means any solid, liquid, or gaseous substance that burns, irritates, or destructively attacks organic tissues, most notably the skin, eyes, and when taken internally, the lungs and gastrointestinal tract.

(b) "Establishment" means a single physical location where work is performed, industrial operations are conducted, or where services are rendered. Examples include but are not limited to factories, mills, stores, automotive service centers, and warehouses. Note: This definition includes those facilities that serve as satellites or in a backup/support role for the primary establishment.

(c) "Field operation" means activity occurring outside of an existing structure.

(d) "Remote work area" means any work area in which a person may become visibly or audibly separated from coworkers by the nature of the environment and thus unable to summon/elicit help from coworkers in the event of an exposure to "corrosive" materials.

(3) Establishments.

(a) In "establishments," facilities shall be provided and used when necessary for flushing electrolyte from the eyes and skin with water when changing or charging storage batteries. The emergency eyewash and emergency shower facilities shall be provided in accordance with 29 CFR 1910.151(d)(3)(a) or (b) and (c) as adopted by 803 KAR 2:310. Note: Operations that occur outside of the confines of an existing structure, ("field operations") are exempt from this paragraph. These operations shall be done in accordance with this paragraph.

(b) Employees shall be instructed and required to:

1. Turn off the battery charger to connect or disconnect the battery.

2. Wash acid spills as soon as practicable.

3. Flush electrolyte from eyes and skin with potable water for fifteen (15) minutes, as soon as possible.

(c) No battery shall be charged or discharged within a closed or unvented container. The batteries shall be charged:

1. In the open; or

2. In a mechanically-vented space; or

3. In a space providing at least twenty (20) cubic feet per ampere of charging capacity.

The requirements of this paragraph apply to both "establishments" and operations outside the "establishment" ("field operations").

(d) A face shield or goggles shall be provided and available at each charging unit. The use of the face shield or goggles shall be required for connection and disconnection of vehicle or charger leads to the battery terminals and for the handling of electrolyte. The requirements of this paragraph apply to both establishments" and operations outside the "establishment" ("field operations").

(e) Before manipulation of the storage battery, the charging apparatus shall be turned off. Employees shall wear face shields or goggles during installation and removal of batteries from vehicles, while connecting and disconnecting battery charger or jumper cable leads, and while handling electrolyte. The requirements of this paragraph apply to both "establishments" and operations outside the "establishment" ("field operations").

(f) These requirements are effective October 1, 1992.

~~[Changing and charging storage batteries (for automotive type battery charging installations, in vehicle charging of batteries, and battery jump starting of vehicles).~~

~~(1) Facilities shall be provided for flushing electrolyte from the eyes and skin with water when changing or charging storage batteries. An adequate water supply shall be within twenty five (25) feet of the work area.~~

~~(2) No battery shall be charged or discharged within a closed or unvented container. The batteries shall be charged:~~

~~(a) In the open; or~~

~~(b) In a mechanically ventilated space; or~~

~~(c) In a space providing at least twenty (20) cubic feet per ampere of charging capacity.~~

~~(3) A face shield or goggles shall be provided and available at each charging unit. The use of the face shield or goggles shall be required for connection and disconnection of vehicle or charger leads to the battery terminals and for the addition or pouring of electrolyte.~~

~~(4) Employees shall wear face shields or goggles during installation and removal of batteries from vehicles, while connecting and disconnecting battery charger or jumper cable leads, and while handling electrolyte.~~

~~(5) Employees shall be instructed to:~~

~~(a) Turn off the battery charger to connect or disconnect the battery;~~

~~(b) Wash acid spills immediately; and~~

~~(c) Flush electrolyte from eyes and skin with water for ten (10) minutes.]~~

Section 2. Safety and Testing of Supply Lines in Excess of 600 Volts. (1) Definitions.

(a) Disconnected means disconnected from any electrical source of supply;

(b) Guarded: protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or

contact by persons or objects. (Note: Wires, which are insulated but not otherwise protected, are not considered as guarded);

(c) Hold cards (also called "hold tags"): a card or tag-type device, usually having a predominant color of white or red which warns against or which cautions against the operation of a particular switch, device, circuit, tool, machine, etc.;

(d) Near: a distance no closer than that shown in the table in subsection (3)(c) of this section;

(e) Qualified person: a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.

(2) Purpose.

(a) The intent and purpose of this regulation is to provide and establish safety procedures for testing equipment to protect electrical workers from hazards resulting from exposure to high voltage;

(b) This regulation shall apply to nonutility electrical workers who are engaged in electrical construction or maintenance of electrical conductors and equipment rated at 600 volts and above.

(3) Energized conductors and equipment.

(a) Only qualified employees shall work on or near high voltage conductors or equipment;

(b) Personal protective equipment shall be provided by the employer and used by the employee when working on or near energized, ungrounded high voltage conductors or equipment;

(c) No employee shall approach or take any conductive object, without an approved insulating handle, within the minimum distance specified in the table below, unless the energized part is insulated or guarded from the employee, or the employee is effectively insulated from the live parts. Rubber gloves (sleeves if necessary) rated for the voltage involved shall be considered effective insulation of the employee from the energized part.

Minimum Clear Distance From Live Parts

Voltage Phase to Phase (Kilovolts)	Distance Phase to Employee
0.6 to 34.5	2'
34.5 to 46	2 1/2'
46 to 69	3'
69 to 115	3' 4"
115 to 138	3' 6"
138 to 169	3' 8"

(4) Deenergized conductor or equipment.

(a) Existing conditions shall be determined before starting work on electrical conductor and/or equipment;

(b) Before any work is performed, all electrical switches, breakers and associated disconnecting devices shall be opened, made inoperable and hold tagged out by the person in charge. Employees shall be trained and thoroughly instructed in the tagging procedure. One (1) qualified person, for example: foreman, general foreman or first class electrician, of each crew shall be responsible for attaching hold tags and/or hold cards to the disconnecting means. When more than one (1) crew is involved in the work, multiple hold tags or hold cards shall be placed in the handle of the disconnecting equipment. The use of such tags must be respected. Equipment or items so tagged must not be activated or used without full and proper authority of a responsible person whose signature appears on the tag;

(c) Conductors shall be short circuited and grounded wherever possible;

(d) Capacitors may be components of apparatus of the disconnected electrical system. Before employees are allowed to work, the capacitors shall be discharged, short circuited and grounded;

(e) When deenergizing conductors and equipment and the means of disconnecting from the energy source is not visible open, a voltage test shall be made before starting work. An operational check shall be made of the voltage tester prior to and following the voltage test to determine reliability of the testing device. The test device must be handled and used while wearing or using approved protective equipment during the test;

(f) All conductors and equipment shall be treated as energized until tested, short circuited and effectively grounded except when the circuit involved is isolated from all possible sources of energizing voltage from another circuit, induced voltage or back feed;

(g) The voltage condition of deenergized conductors and/or equipment shall be determined with testing equipment designed for the applicable voltage;

(h) Upon completion of work on deenergized conductors and equipment, the person responsible shall ascertain that all employees under his jurisdiction are clear and that all protective short circuit and grounding lines are removed. The qualified person(s) shall then remove his hold tag(s). Only at this time shall conductors and equipment be reenergized.

Section 3. Safety Belts, Lanyards and Life Lines. (1) Employees working from open-sided unguarded floors, pipe racks, and ledges, platforms, walkways, machinery, stock shelves, or similar unguarded working surfaces which are elevated ten (10) feet or more above a lower level shall be secured by safety belts and lanyards, life lines where necessary, or shall be protected by safety nets.

(2) Lanyards shall have a nominal breaking strength of 5,400 lbs. The combination of safety belts and lanyards, life lines where necessary, shall be designed to permit a fall of not more than five (5) feet.

(3) All safety belt and lanyard hardware, except rivets, shall be capable of withstanding a tensile loading of 4,000 lbs. without cracking, breaking or taking a permanent deformation.

(4) Life lines, where necessary, shall be secured above the point of operation to an anchorage of structural member capable of supporting a minimum dead weight of 5,400 lbs.

(5) This standard shall not preempt any applicable standard now in effect.

Section 4. Off-highway Motor Vehicles and Equipment. (1) General requirements.

(a) Heavy machinery, equipment, or parts thereof, which are suspended or held aloft by use of slings, hoists, or jacks shall be substantially blocked or cribbed to prevent falling or shifting before employees are permitted to work under or between them. Bulldozers and scraper blades, end-loader buckets, dump bodies, and similar equipment, shall be either fully lowered or blocked when being repaired or when not in use. All controls shall be in a neutral position, with the motors stopped and brakes set, unless work being performed requires otherwise.

(b) Whenever the equipment is parked, the parking brake shall be set. Equipment parked on inclines shall have the wheels chocked and the parking brake set.

(c) All cab glass shall be safety glass, or equivalent, that introduces no visible distortion affecting the safe operation of any machine covered by this subpart.

(d) All equipment covered by this subpart shall comply with the requirements of §29 CFR 1910.180(j)(l) when working or being moved in the vicinity of power lines or energized transmitters.

(2) Motor vehicles.

(a) Coverage. Motor vehicles as covered by this part are those vehicles that operate within an off-highway job site. The requirements of this section do not apply to equipment for which rules are prescribed in subsection (3) of this section.

(b) General requirements. All vehicles shall have a service brake system, an emergency brake system, and a parking brake system. These systems may use common components, and shall be main-

tained in operable condition.

(c) Whenever visibility conditions warrant additional light, all vehicles, or combinations of vehicles, in use shall be equipped with at least two (2) headlights and two (2) taillights in operable condition.

(d) All vehicles, or combination of vehicles, shall have brake lights in operable condition regardless of light conditions.

(e) All vehicles shall be equipped with an adequate audible warning device at the operator's station and in an operable condition.

(f) No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:

1. The vehicle has a reverse signal alarm audible above the surrounding noise level; or

2. The vehicle is backed up only when an observer signals that it is safe to do so.

(g) All vehicles with cabs shall be equipped with windshields and powered wipers. Cracked and broken glass shall be replaced. Vehicles operating in areas or under conditions that cause fogging or frosting of the windshields shall be equipped with operable defogging or defrosting devices.

(h) All haulage vehicles, whose pay load is loaded by means of cranes, power shovels, loaders, or similar equipment, shall have a cab shield and/or canopy adequate to protect the operator from shifting or falling materials.

(i) Tools and material shall be secured to prevent movement when transported in the same compartment with employees.

(j) Vehicles used to transport employees shall have seats firmly secured and adequate for the number of employees to be carried.

(k) The employer will provide and insure the use of seat belts and anchorages meeting the requirements of 49 CFR Part 571 (Department of Transportation, Federal Motor Vehicle Safety Standards).

(l) Trucks with dump bodies shall be equipped with positive means of support, permanently attached, and capable of being locked in position to prevent accidental lowering of the body while maintenance or inspection work is being done.

(m) Operating levers controlling hoisting or dumping devices on haulage bodies shall be equipped with a latch or other device which will prevent accidental starting or tripping of the mechanism.

(n) Trip handles for tailgates of dump trucks shall be so arranged that, in dumping, the operator will be in the clear.

(o) Each employer shall assure that the following parts, equipment, and accessories are in safe operating condition and free of apparent damage that could cause failure while in use: service brakes, including trailer brake connections; parking system (hand brake); emergency stopping system (brakes); tires; horn; steering mechanism; coupling devices; seat belts; operating controls; and safety devices. All defects shall be corrected before the vehicle is placed in service. These requirements also apply to equipment such as lights, reflectors, windshield wipers, defrosters, fire extinguishers, etc., where such equipment is necessary.

(3) Material handling equipment.

(a) Equipment; general. These rules apply to the following types of equipment: scrapers, loaders, crawler or wheel tractors, bulldozers, off-highway trucks, graders, agricultural and industrial tractors, and similar equipment. The promulgation of specific rules for compactors and rubber-tired "skid-steer" equipment is reserved pending consideration of standards currently being developed.

(b) Seating and seat belts. Each employer shall insure safe seating with seat belts on all equipment covered by this section, and shall meet the requirement of J386, Society of Automotive Engineers Handbook, 1986, Seat Belts for Construction Equipment. Seat belts for agricultural and light industrial tractors shall meet the seat belt requirements of Society of Automotive Engineers J1194, Society of Automotive Engineers Handbook, 1986, Operator Protection for Agricultural and Light Industrial Tractors.

(c) Seat belts need not be provided for equipment which is designed only for stand-up operation.

(d) Seat belts need not be provided for equipment which does not have rollover protective structure (ROPS) or adequate canopy protection.

(e) Brakes. All equipment mentioned in subsection (a) of this section shall have a service braking system capable of stopping and holding the equipment fully loaded, as specified in Society of Automotive Engineers SAE J237, Loader Dozer, Society of Automotive Engineers Handbook, 1986, J236, Graders, Society of Automotive Engineers Handbook, 1986, and J319b, Scrapers, Society of Automotive Engineers Handbook, 1986. Brake systems for self-propelled rubber-tired off-highway equipment manufactured after January 1, 1987 shall meet the applicable minimum performance criteria set forth in the following Society of Automotive Engineers Recommended Practices:

Self-propelled Scrapers	SAE J319B, Society of Automotive Engineers Handbook, 1986.
Self-propelled Graders	SAE J236, Society of Automotive Engineers Handbook, 1986.
Trucks and Wagons	SAE J166, Society of Automotive Engineers Handbook, 1986.
Front-end Loaders and Dozers	SAE J237, Society of Automotive Engineers Handbook, 1986.

(f) Rollover protective structures for off-highway trucks. The promulgation of standards for rollover protective structures for off-highway trucks is reserved pending further study and development.

(g) Audible alarms.

1. All bidirectional machines, such as rollers, compactors, front-end loaders, bulldozers, and similar equipment, shall be equipped with a horn, distinguishable from the surrounding noise level, which shall be operated as needed when the machine is moving in either direction. The horn shall be maintained in an operative condition.

2. No employer shall permit material handling equipment or compacting equipment which has an obstructed view to the rear to be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so.

(h) Scissor points. Scissor points on all front-end loaders, which constitute a hazard to the operator during normal operation, shall be guarded.

Section 5. Rollover Protective Structures; Overhead Protection. (1) Rollover protective structure (ROPS) for material handling equipment.

(a) Coverage. This section applies to the following types of material handling equipment: To all rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler tractors, crawler-type loaders, and motor graders, with or without attachments, that are used in general industry work. This requirement does not apply to sideboom pipe-laying tractors.

(b) The promulgation of specific standards for rollover protective structures for compactors and rubber-tired skid-steer equipment is reserved pending consideration of standards currently being developed.

(c) Equipment manufactured on or after January 1, 1987. Material handling machinery described in paragraph (a) of this subsection and manufactured on or after January 1, 1987, shall be equipped with rollover protective structures which meet the minimum performance standards prescribed in subsections (2) and (3) of this section as applicable.

(d) Equipment manufactured before January 1, 1987. All material handling equipment described in paragraph (a) of this subsection and manufactured or placed in service (owned or operated by the

employer) prior to January 1, 1987, shall be fitted with rollover protective structures no later than January 1, 1988. Machines manufactured before July 1, 1969: Reserved pending further study, development, and review.

(e) Rollover protective structures and supporting attachment shall meet the minimum performance criteria detailed in subsections (2) and (3) of this section, as applicable or shall be designed, fabricated, and installed in a manner which will support, based on the ultimate strength of the metal, at least two (2) times the weight of the prime mover applied at the point of impact.

(f) The design objective shall be to minimize the likelihood of a complete overturn and thereby minimize the possibility of the operator being crushed as a result of a rollover or upset.

(g) The design shall provide a vertical clearance of at least fifty-two (52) inches from the work deck to the ROPS at the point of ingress or egress.

(h) Remounting. ROPS removed for any reason, shall be remounted with equal quality, or better, bolts or welding as required for the original mounting.

(i) Labeling. Each ROPS shall have the following information permanently affixed to the structure:

1. Manufacturer or fabricator's name and address;

2. ROPS model number, if any;

3. Machine make, model, or series number that the structure is designed to fit.

(j) Machines meeting certain existing governmental requirements. Any machine in use, equipped with rollover protective structures, shall be deemed in compliance with this subsection if it meets the rollover protective structure requirements of the state of California, the U.S. Army Corps of Engineers, or the Bureau of Reclamation of the U.S. Department of the Interior in effect on April 5, 1972. The requirements in effect are:

1. State of California: Construction Safety Orders, issued by the Department of Industrial Relations pursuant to Division 5, Labor Code, §6312, state of California.

2. U.S. Army Corps of Engineers: General Safety Requirements, EM-385-1-1 (March 1967).

3. Bureau of Reclamation, U.S. Department of the Interior: Safety and Health Regulations for Construction. Part II (September 1971).

(2) Minimum performance criteria for rollover protective structures for designated scrapers, loaders, dozers, graders, and crawler tractors.

(a) General. This section prescribes minimum, performance criteria for rollover protective structures (ROPS) for rubber-tired self-propelled scrapers; rubber-tired front-end loaders and rubber-tired dozers; crawler tractors, crawler-type loaders, and motor graders. The vehicle and ROPS as a system shall have the structural characteristics prescribed in paragraph (f) of this subsection for each type of machine described in this paragraph.

(b) The static laboratory test prescribed herein will determine the adequacy of the structures used to protect the operator under the following conditions:

1. For rubber-tired self-propelled scrapers, rubber-tired front-end loaders, and rubber-tired dozers: operating between zero and ten (10) miles per hour over hard clay were rollover would be limited to a maximum roll angle of 360 degrees down a slope of thirty (30) degrees maximum.

2. For motor graders: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to 360 degrees down a slope of thirty (30) degrees maximum.

3. For crawler tractors and crawler-type loaders: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to a maximum roll angle of 360 degrees down a slope of forty-five (45) degrees.

(c) Facilities and apparatus.

1. The following material is necessary:

a. Material, equipment, and tie-down means adequate to insure that the ROPS and its vehicle frame absorb the applied energy.

b. Equipment necessary to measure and apply loads to the ROPS. Adequate means to measure deflections and lengths should also be provided.

c. Recommended, but not mandatory, types of test setups are illustrated in Figure W-1 for all types of equipment to which this section applies; and in Figure W-2 for rubber-tired self-propelled scrapers; Figure W-3 for rubber-tired front-end loaders, rubber-tired dozers, and motor graders; and Figure W-4 for crawler tractors and crawler-type loaders.

2. Table W-1 contains a listing of the required apparatus for all types of equipment described in paragraph (a) of this subsection.

TABLE W-1

Means to Measure	Accuracy
Deflection of ROPS, inches	+5% of deflection measured.
Vehicle weight, pounds	+5% of the weight measured.
Force applied to frame pounds	+5% of force measured.
Dimensions of critical zone	+0.5 inches.

(d) Vehicle conditions. The ROPS to be tested must be attached to the vehicle structure in the same manner as it will be attached during vehicle use. A totally assembled vehicle is not required. However, the vehicle structure and frame which support the ROPS must represent the actual vehicle installation. All normally detachable windows, panels, or nonstructural fittings shall be removed so that they do not contribute to the strength of the ROPS.

(e) Test procedure. The test procedure shall include the following, in the sequence indicated:

1. Energy absorbing capabilities of ROPS shall be verified when loaded laterally by incrementally applying a distributed load to the longitudinal outside top member of the ROPS, as shown in Figure W-1, W-2, or W-3, as applicable. The distributed load must be applied so as to result in approximately uniform deflection of the ROPS. The load increments should correspond with approximately five-tenths (0.5) inches ROPS deflection increment in the direction of the load application, measured at the ROPS top edge. Should the operator's seat be off-center, the load shall be applied on the off-center side. For each applied load increment, the total load (lb.) versus corresponding deflection (in.) shall be plotted, and the area under the load-deflection curve shall be calculated. This area is equal to the energy (in.-lb.) absorbed by the ROPS. For a typical load-deflection curve and calculation method, see Figure W-5. In Figure W-1, incremental loading shall be continued until the ROPS has absorbed the amount of energy and the minimum applied load specified under paragraph (f) of this subsection has been reached or surpassed. (See Figures for this section following the regulation.)

2. To cover the possibility of the vehicle coming to rest on its top, the support capability shall be verified by applying a distributed vertical load to the top of the ROPS so as to result in approximately uniform deflection (see Figure W-1). The load magnitude is specified in paragraph (f)2a of this subsection.

3. The low temperature impact strength of the material used in the ROPS shall be verified by suitable material tests or material certification (see paragraph (f)2d of this subsection).

(f) Performance requirements.

1. General performance requirements.

a. No repairs or straightening of any member shall be carried out between each prescribed test.

b. During each test, no part of the ROPS shall enter the critical zone as detailed in SAE J397b, Society of Automotive Engineers Handbook, 1986. Deformation of the ROPS shall not allow the plane of the ground to enter this zone.

2. Specific performance requirements.

a. The energy requirement for purposes of meeting the require-

ments of paragraph (e)1 of this subsection is to be determined by referring to the plot of the energy versus weight of vehicle (see Figure W-6 for rubber-tired self-propelled scrapers; Figure W-7 for rubber-tired front-end loaders and rubber-tired dozers; Figure W-8 for crawler tractors and crawler- type loaders; and Figure W-9 for motor graders). For purposes of this subsection, force and weight are measured as pounds (lb.); energy (U) is measured as inch-pounds.

b. The applied load must attain at least a value which is determined by multiplying the vehicle weight by the corresponding factor shown in Figure W-10 for rubber-tired self-propelled scrapers; in Figure W-11 for rubber-tired front-end loaders and rubber-tired dozers; in Figure W-12 for crawler tractors and crawler-type loaders; and in Figure W-13 for motor graders.

c. The load magnitude for purposes of compliance with paragraph (e)2 of this subsection is equal to the vehicle weight. The test of load magnitude shall only be made after the requirements of subparagraph 2a of this paragraph are met.

d. Material used in the ROPS must have the capability of performing at zero degrees Fahrenheit, or exhibit Charpy V notch impact strength of eight (8) foot-pounds at minus twenty (20) degrees Fahrenheit. This is a standard Charpy specimen as described in American Society of Testing and Materials A 370, Methods and Definitions for Mechanical Testing of Steel Products (available at the Central Office of the Kentucky Occupational Safety and Health Program). The purpose of this requirement is to reduce the tendency of brittle fracture associated with dynamic loading, low temperature operation, and stress raisers which cannot be entirely avoided on welded structures.

(g) Definitions. For purposes of this subsection, "vehicle weight" means the manufacturer's maximum weight of the prime mover for rubber-tired self-propelled scrapers. For other types of equipment to which this subsection applies, "vehicle weight" means the manufacturer's maximum recommended weight of the vehicle plus the heaviest attachment.

(h) Source of standard. This standard is derived from, and restates, the following Society of Automotive Engineers Recommended Practices: SAE J1349, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired, Self-propelled Scrapers; SAE J394, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired Front-end Loaders and Rubber-tired Dozers; SAE J395, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Crawler Tractors and Crawler-type Loaders; and SAE J396, Society of Automotive Engineers handbook, 1986, Minimum Performance Criteria for Rollover Protective Structures for Motor Graders. These recommended practices shall be resorted to in the event that questions of interpretation arise. The recommended practices appear in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

(3) Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction.

(a) General.

1. The purpose of this section is to set forth requirements for frames for the protection of operators of wheel type agricultural and industrial tractors to minimize the possibility of operator injury resulting from accidental upsets during normal operation. With respect to agricultural and industrial tractors, the provisions of subsections (2) and (4) of this section for rubber-tired dozers and rubber-tired loaders may be utilized in lieu of the requirements of this section.

2. The protective frame which is the subject of this standard is a structure mounted to the tractor that extends above the operator's seat and conforms generally to Figure W-14.

3. If an overhead weather shield is attached to the protective frame, it may be in place during tests: provided, that it does not contribute to the strength of the protective frame. If such an overhead weather shield is attached, it must meet the requirements of paragraph (i) of this subsection.

4. For overhead protection requirements, see subsection (4) of this section.

5. If protective enclosures are used on wheel-type agricultural and industrial tractors, they shall meet the requirements of Society of Automotive Engineers Standard J1249, Society of Automotive Engineers Handbook, 1986, Protective Enclosures, Test Procedures, and Performance Requirements. This standard appears in the 1986 SAE Handbook and may be examined in the Central office of the Kentucky Occupational Safety and Health Program.

(b) Applicability. The requirements of this subsection apply to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work. See paragraph (j) of this subsection for definitions of agricultural tractors and industrial tractors.

(c) Performance requirements.

1. Either a laboratory test or a field test is required in order to determine the performance requirements set forth in this paragraph.

2. A laboratory test may be either static or dynamic. The laboratory test must be under conditions of repeatable and controlled loading in order to permit analysis of the protective frame.

3. A field upset test, if used, shall be conducted under reasonably controlled conditions, both rearward and sideways to verify the effectiveness of the protective frame under actual dynamic conditions.

(d) Test procedures - general.

1. The tractor used shall be the tractor with the greatest weight on which the protective frame is to be used.

2. A new protective frame and mounting connections of the same design shall be used for each test procedure.

3. Instantaneous and permanent frame deformation shall be measured and recorded for each segment of the test.

4. Dimensions relative to the seat shall be determined with the seat unloaded and adjusted to its highest and most rearward latched position provided for a seated operator.

5. If the seat is offset, the frame loading shall be on the side with the least space between the centerline of the seat and the upright.

6. The low temperature impact strength of the material used in the protective structure shall be verified by suitable material tests or material certifications in accordance with subsection (2)(f)2d of this section.

(e) Test procedure for vehicle overturn.

1. Vehicle weight. The weight of the tractor, for purposes of this subsection, includes the protective frame, all fuels, and other components required for normal use of the tractor. Ballast must be added if necessary to achieve a minimum total weight of 130 lbs. (59 kg.) per maximum power takeoff horsepower at rated engine speed. The weight of the front end must be at least thirty-three (33) lb. (15 kg.) per maximum power takeoff horsepower. In case power takeoff horsepower is unavailable, ninety-five (95) percent of net engine flywheel horsepower shall be used.

2. Agricultural tractors shall be tested at the weight set forth in subparagraph 1 of this paragraph.

3. Industrial tractors shall be tested with items of integral or mounted equipment and ballast that are sold as standard equipment or approved by the vehicle manufacturer for use with the vehicle where the protective frame is expected to provide protection for the operator with such equipment installed. The total vehicle weight and front end weight as tested shall not be less than the weights established in subparagraph 1 of this paragraph.

4. The test shall be conducted on a dry, firm soil bank as illustrated in Figure W-15. The soil in the impact area shall have an average cone index in the 0-6 inch (153 mm.) layer not less than 150 according to American Society of Agricultural Engineers Recommendation ASAE R313, Soil Cone Penetrometer (available in the Central Office of the Kentucky Occupational Safety and Health Program). The

path of travel of the vehicle shall be 12°+2° to the top edge of the bank.

5. The upper edge of the bank shall be equipped with an eighteen (18) inch (457 mm.) high ramp as described in Figure W-15 to assist in tipping the vehicle.

6. The front and rear wheel tread settings, where adjustable, shall be at the position nearest to halfway between the minimum and maximum settings obtainable on the vehicle. Where only two (2) settings are obtainable, the minimum setting shall be used.

7. Vehicle overturn test - sideways and rearward.

a. The tractor shall be driven under its own power along the specified path of travel at a minimum speed of ten (10) m.p.h. (16 km./hr.) or maximum vehicle speed if under ten (10) m.p.h. (16 km./hr.) up the ramp as described in subparagraph 5 of this paragraph to induce sideways overturn.

b. Rear upset shall be induced by engine power with the tractor operating in gear to obtain 3-5 m.p.h. (4.8-8 km./hr.) at maximum governed engine r.p.m. preferably by driving forward directly up a minimum slope of two (2) vertical to one (1) horizontal. The engine clutch may be used to aid in inducing the upset.

(f) Other test procedures. When the field upset test is not used to determine ROPS performance, either the static test or the dynamic test, contained in paragraph (g) or (h) of this subsection, shall be made.

(g) Static test.

1. Test conditions.

a. The laboratory mounting base shall include that part of the tractor chassis to which the protective frame is attached including the mounting parts.

b. The protective frame shall be instrumented with the necessary equipment to obtain the required load deflection data at the location and directions specified in Figures W-16, W-17, and W-18.

c. The protective frame and mounting connections shall be instrumented with the necessary recording equipment to obtain the required load-deflection data to be used in calculating FSB (see paragraph (j)3 of this subsection). The gauges shall be placed on mounting connections before the installation load is applied.

2. Test procedure.

a. The side load application shall be at the upper extremity of the frame upright at a ninety (90) degree angle to the centerline of the vehicle. This side load "L" shall be applied according to Figure W-16. "L" and "D" shall be recorded simultaneously. The test shall be stopped when:

(i) The strain energy absorbed by the frame is equal to the required input energy (E_{ir}); or

(ii) Deflection of the frame exceeds the allowable deflection; or

(iii) The frame load limit occurs before the allowable deflection is reached in the side load.

b. The L-D diagram, as shown by means of a typical example in Figure W-19, shall be constructed, using the data obtained in accordance with clause a of this subparagraph.

c. The modified L_m-D_m diagram shall be constructed according to clause (ii) of this subparagraph and according to figure W-20. the strain energy absorbed by the frame (E_u) shall then be determined.

d. E_{ir}, FER, and FSB shall be calculated.

e. The test procedure shall be repeated on the same frame utilizing L (rear input; see Figure W-18) and E_{ir} Rear load application shall be uniformly distributed along a maximum projected dimension of twenty-seven (27) inches (686 mm.) and a maximum area of 160 square inches (1,032 sq. cm.) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.

(h) Dynamic test.

1. Test conditions.

a. The protective frame and tractor shall meet the requirements of paragraph (e)2 or 3 of this subsection, as appropriate.

b. The dynamic loading shall be produced by use of a 4,410 lb. (2,000 kg.) weight acting as a pendulum. The impact face of the weight shall be twenty-seven (27) plus, or minus one (1) inch by twenty-seven (27) plus or minus one (1) inch (686 + or - 25 mm.) and shall be constructed so that its center of gravity is within one (1) inch (25.4 mm.) of its geometric center. The weight shall be suspended from a pivot point 18-22 feet (5.5-6.7 m.) above the point of impact on the frame and shall be conveniently and safely adjustable for height. (See Figure W-21).

c. For each phase of testing, the tractor shall be restrained from moving when the dynamic load is applied. The restraining members shall be of 0.5-0.63 inch (12.5-16 mm.) steel cable and points of attaching restraining members shall be located an appropriate distance behind the rear axle and in front of the front axle to provide a 15°-30° angle between a restraining cable and the horizontal. The restraining member shall either be in the plane in which the center gravity of the pendulum will swing or more than one (1) restraining cable shall give a resultant force in this plane. (See Figure W-22).

d. The wheel tread setting shall comply with the requirements of paragraph (e)6 of this subsection. The tires shall have no liquid ballast and shall be inflated to the maximum operating pressure recommended by the tire manufacturer. With specified tire inflation, the restraining cables shall be tightened to provide tire deflection of 6-8 percent of nominal tire section width. After the vehicle is properly restrained, a wooden beam 6 x 6 in. (15 x 15 cm.) shall be driven tightly against the appropriate wheels and clamped. For the test to the side, an additional wooden beam shall be placed as a prop against the wheel nearest the operator's station and shall be secured to the floor so that it is held tightly against the wheel rim during impact. The length of this beam shall be chosen so that when it is positioned against the wheel rim, it is at an angle of 25°-40° to the horizontal. It shall have a length 20-25 times its depth and a width two (2) to three (3) times its depth. (See Figures W-22 and W-23.)

e. Means shall be provided indicating the maximum instantaneous deflection along the line of impact. A simple friction device is illustrated in Figure W-23.

f. No repair or adjustments may be carried out during the test.

g. If any cables, props, or blocking shift or break during the test, the test shall be repeated.

2. Test procedure.

a. General. The frame shall be evaluated by imposing dynamic loading to rear followed by a load to the side on the same frame. The pendulum dropped from the height (see definition "H" in paragraph (j)3 of this subsection) imposes the dynamic load. The position of the pendulum shall be so selected that the initial point of impact on the frame shall be in line with the arc of travel of the center of gravity of the pendulum. A quick release mechanism should be used but, if used, shall not influence the attitude of the block.

b. Impact at rear. The tractor shall be properly restrained according to subparagraphs 1c and d of this paragraph. The tractor shall be positioned with respect to the pivot point of the pendulum such that the pendulum is twenty (20) degrees from the vertical prior to impact, as shown in Figure W-22. The impact shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright of a new frame.

c. Impact at side. The block and restraining shall conform to subparagraphs 1c and d of this paragraph. The point of impact shall be that structural member of the protective frame likely to hit the ground first in a sideways accidental upset. The side impact shall be applied to the side opposite that used for rear impact.

(i) Performance requirements.

1. General.

a. The frame, overhead weather shield, fenders, or other parts in the operator area may be deformed but shall not shatter or leave sharp edges exposed to the operator, or violate dimensions as shown in Figures W-16 and W-17 as follows:

D = 2 in. (51 mm.) inside of frame upright to vertical centerline of seat.
E = 30 in. (762 mm.).
F = Not less than 0 in. and not more than 12 in. (305 mm.), measured at centerline front of seat backrest to crossbar along the line of load application as shown in Figure W-17.
G = 24 in. (610 mm.).

b. The material and design combination used in the protective structure must be such that the structure can meet all prescribed performance tests at zero degrees Fahrenheit in accordance with subsection (2)(f)2d.

2. Vehicle overturn performance requirements. The requirements of this paragraph must be met in both side and rear overturns.

3. Static test performance requirements. Design factors shall be incorporated in each design to withstand an overturn test as prescribed in this paragraph. The structural requirements will be generally met if FER is greater than one (1) and FSB is greater than K-1 in both side and rear loadings.

4. Dynamic test performance requirements. Design factors shall be incorporated in each design to withstand the overturn test prescribed in this paragraph. The structural requirements will be generally met if the dimensions in this paragraph are adhered to in both side and rear loads.

(j) Definitions applicable to this section.

1. SAE J1194, Society of Automotive Engineers Handbook, 1986, Operator Protection for Wheel-type Agricultural and Industrial Tractors (1983) defines "agricultural tractor" as a "wheel-type vehicle of more than 20 engine horsepower designed to furnish the power to pull, carry, propel, or drive implements that are designed for agricultural usage." Since this subsection applies only to general industry work, the following definition of "agricultural tractor" is adopted for purposes of this regulation: "agricultural tractor" means a wheel-type vehicle of more than twenty (20) engine horsepower, used in general industry work, which is designed to furnish the power to pull, propel, or drive implements.

2. "Industrial tractor" means that class of wheeled-type tractor of more than twenty (20) engine horsepower (other than rubber-tired loaders and dozers described in subsection (2) of this section) used in operations such as landscaping, loading, digging, grounds keeping, and highway maintenance.

3. The following symbols, terms, and explanations apply to this section:

E_{is} = Energy input to be absorbed during side loading. $E'_{is} = 723 + 0.4$ W ft.-lb. ($E'_{is} = 100 + 0.12W'$, m.-kg.).
E_{ir} = Energy input to be absorbed during rear loading. $E_{ir} = 0.47$ W ft.-lb. ($E'_{ir} = 0.14$ W', m.-kg.).
W = Tractor weight as prescribed in subsection (3)(e)1 and (e)3, in lb. (W', kg.). L = Static load, lb. (kg.).
D = Deflection under L, in. (mm.).
L-D = Static load-deflection diagram.
L_mD_m = Modified static load-deflection diagram (Figure W-20). To account for increase in strength due to increase in strain rate, raise L in plastic range to L x K.
K = Increase in yield strength induced by higher rate of loading (1.3 for hot rolled low carbon steel 1010-1030). Low carbon is preferable; however, if higher carbon or other material is used, K must be determined in the laboratory. Refer to Charles H. Norris, et al., Structural Design for Dynamic Loads (1959), p. 3.
L_{max} = Maximum observed static load.
Load Limit = Point on L-D curve where observed static load is 0.8 L_{max} (refer to Figure W-19).
E_u = Strain energy absorbed by the frame, ft.-lb. (m.-kg.) area under L_mD_m curve.
FER = Factor of energy ratio, FER = E_u/E_{is} also = E_u/E_{ir}
P_b = Maximum observed force in mounting connection under static load, L, lb. (kg.).
FSB = Design margin for mounting connection FSB = (P_u/P_b)-1.
H = Vertical height of lift of 4.410 lb. (2,000 kg.) weight, in. (H', mm.). The weight shall be pulled back so that the height of its center of gravity above the point of impact is defined as follows: H = 4.92 + 0.00190 W or (H' = 125 + 0.107 W') (Figure W-24).

(k) Source of standard. The standard in this section is derived from, and restates, Society of Automotive Engineers Standard J1194, Society of Automotive Engineers Handbook, 1986, Protective Frame Test Procedures and Performance Requirements. This standard shall be resorted to in the event that questions of interpretation arise. The standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

(4) Overhead protection for operators of agricultural and industrial tractors.

(a) General.

1. Purpose. When overhead protection is provided on wheel-type agricultural and industrial tractors, the overhead protection shall be designed and installed according to the requirements contained in this subsection. The provisions of subsection (2) of this section for rubber-tired dozers and rubber-tired loaders may be used in lieu of the standards contained in this subsection. The purpose of the standard is to minimize the possibility of operator injury resulting from overhead hazards such as flying and falling objects, and at the same time to minimize the possibility of operator injury from the cover itself in the event of accidental upset.

2. Applicability. This standard applies to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work.

(b) Overhead protection. When overhead protection is installed on wheel-type agricultural or industrial tractors used in general industry work, it shall meet the requirements of this paragraph. The overhead protection may be constructed of a solid material. If grid or mesh is used, the largest permissible opening shall be such that the maximum circle which can be inscribed between the elements of the grid or mesh is 1.5 in. (38 mm.) in diameter. The overhead protection shall not be installed in such a way as to become a hazard in the case of upset.

(c) Test procedures - general.

1. The requirements of subsection (3)(d), (e), and (f) of this section shall be met.

2. Static and dynamic rear load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 inch^2 (1,032 cm.^{2}) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.

3. The static and dynamic side load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 inch^2 (1,032 cm.^{2}) normal to the direction of load application. The direction of load application is the same as in subsection (3)(g) and (h) of this section. To simulate the characteristics of the structure during an upset, the center of load application may be located from a point 24 in. (610 mm.) (K) forward to 12 in. (305 mm.) (L) rearward of the front of the seat backrest to best utilize the structural strength. See Figure W-25.

(d) Drop test procedures.

1. The same frame shall be subjected to the drop test following either the static or dynamic test.

2. A solid steel sphere or material of equivalent spherical dimension weighing 100 lb. (45.4 kg.) shall be dropped once from a height 10 ft. (3,048 mm.) above the overhead cover.

3. The point of impact shall be on the overhead cover at a point within the zone of protection as shown in Figure W-26, which is furthest removed from major structural members.

(e) Crush test procedures.

1. The same frame shall be subjected to the crush test following the drop test and static or dynamic test.

2. The test load shall be applied as shown in Figure W-27 with the seat positioned as specified in subsection (3)(d)4 of this section. Loading cylinders shall be pivotally mounted at both ends. Loads applied by each cylinder shall be equal within two (2) percent, and the sum of the loads of the two (2) cylinders shall be two (2) times the tractor weight as set forth in subsection (3)(e)1 of this section. The maximum width of the beam illustrated in Figure W-27 shall be 6 in. (152 mm.).

(f) Performance requirements.

1. General. The performance requirements set forth in subsection (3)(i)2, 3, and 4 of this section shall be met.

2. Drop test performance requirements.

a. Instantaneous deformation due to impact of the sphere shall not enter the protected zone as illustrated in Figure W-25, W-26, and W-28.

b. In addition to the dimensions set forth in subsection (3)(i)1a of this section, the following dimensions apply to Figure W-28:

H = 17.5 in. (444 mm.).

J = 2 in. (50.8 mm.) measured from the outer periphery of the steering wheel.

3. Crush test performance requirements. The protected zone as described in Figure W-28 must not be violated.

(g) Source of standard. This standard is derived from, and restates, the portions of Society of Automotive Engineers Standard J167, Society of Automotive Engineers Handbook, 1986, which pertain to overhead protection requirements. The full title of the SAE standard is: Protective Frame with Overhead Protection-test Procedures and Performance Requirements. The SAE standard shall be resorted to in the event that questions of interpretation arise. The SAE standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

Section 6. Fire Apparatus and Fire Department Facilities. (1) Scope. This section shall apply to industrial fire departments and private, public or contractual type fire departments. This section shall not apply to volunteer fire departments.

(2) Persons riding on fire apparatus. Beginning September 1, 1991, a person riding on fire apparatus shall be secured to the vehicle by seat belts or safety harnesses when the vehicle is in motion.

(3) Inspection, maintenance, and repair of vehicles. Beginning January 1, 1992:

(a) All fire department vehicles shall be inspected at least weekly and within twenty-four (24) hours after any use or repair to identify and correct unsafe conditions.

(b) A fire department vehicle found to be unsafe shall be placed out of service until repaired. After being repaired, the vehicle shall be inspected prior to being placed back in service.

(c) The inspection shall include:

1. Tires, brakes, warning lights and devices, headlights and clearance lights, windshield wipers and mirrors;

2. Starting the apparatus, and verification of the operation of pumps and other equipment; and

3. Inspection of the safety equipment carried on fire department vehicles.

(d) A fire department shall maintain inspection, maintenance, repair, and service records for all vehicles and equipment used for emergency operations.

(4) Facility safety. Beginning July 1, 1993:

(a) Sleeping areas in fire stations shall:

1. Be separated from vehicle storage areas by at least one (1) hour fire resistive assemblies; or

2. Have operable fire suppression or operable smoke detection systems.

(b) A fire station shall have a system capable of ventilating.

(5) Effective dates.

(a) Subsection (2) of this section shall become effective September 1, 1991.

(b) Subsection (3) of this section shall become effective January 1, 1992.

(c) Subsection (4) of this section shall become effective July 1, 1993.

COMPILER'S NOTE: The figures referred to in this regulation may be viewed in Volume 5 of both the 1991 or 1992 bound volumes of the Kentucky Administrative Regulations.

MRS. CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: June 11, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 27, 1992, at 1:30 p.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 July 22, 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. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: The existing Section 1 is revised. This revision applies to all employers in the Commonwealth that are engaged in changing, charging and jump starting storage batteries.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost of compliance with Section 1(1) will be approximately $1,000 per facility.

2. Continuing costs or savings: Section 1(1) will not result in continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this regulation which will increase or decrease costs.

(b) Reporting and paperwork requirements: This regulation will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation will not affect the promulgating administrative body.

(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: There will be no reporting or paperwork requirements as a result of this regulation.

(3) Assessment of anticipated effect on state and local revenues: This regulation has no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered for the previously adopted federal OSHA standard, except for the revision the Commonwealth elected to enact, which clarifies exactly what protective measures are necessary when handling corrosive material.

(5) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of this adoption of amendments.

(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 Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(1) revision requires Kentucky employers to comply with standards governing changing, charging and jump starting storage batteries.

3. Minimum or uniform standards contained in the federal mandate. Section 1(1) clarifies previously adopted federal OSHA requirements for changing, charging and jump starting batteries.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This revision will clarify existing adopted by reference standard. The existing standard is open for interpretation by the employer for changing, charging and jump starting batteries. If an employer previously interpreted the existing standard to require less than this revision, then the revision could be construed as being stricter than the federal OSHA standard.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Safety and health standards would be better addressed, as it will be easier for employers to understand compliance methods and enforcement will be easier.

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. Section 1(1) revision affects all local government entities that are engaged in changing, charging and jump starting storage batteries.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health.

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: The purpose of this revision is to clarify the existing adopted standard. There will be no increase in local government revenues or expenditures. This revision will have no effect on the number of local government.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:306. Adoption of 29 CFR Part 1910.94-.100.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.94-.100 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1910.95, "Hearing Conservation Program," is amended as follows:

(1) Revision to 29 CFR 1910.94, as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

(2) 29 CFR 1910.94(d)(9)(vii) is revised to read as follows: Near each tank containing a liquid which may burn, irritate, or otherwise be harmful to the skin if splashed upon the worker's body, there shall be an (a supply of clean cold water) emergency eyewash and emergency shower facilities installed in accordance with 1910.151(d)(3)(a) or 1910.151(d)(3)(b) and 1910.151(d)(3)(c) as adopted by 803 KAR 2:310. (The waterpipe (carrying a pressure not exceeding twenty-five (25) pounds) shall be provided with a quick opening valve and at least forty-eight (48) inches of hose not smaller than three-fourths (3/4) inch, so that no time may be lost in washing off liquids from the skin or clothing. Alternately, deluge showers and eye flushes shall be provided in cases where harmful chemicals may be splashed on parts of the body.) These requirements are effective October 1, 1992.

(3) [~~(2)~~] 29 CFR 1910.95, "Hearing Conservation Program," is amended as follows:

(a) 29 CFR 1910.95(h)(1) shall read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(b) 29 CFR 1910.95(h)(4) shall read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(c) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(d) 29 CFR 1910.95(h)(5)(iii) shall read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-

1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(e) 29 CFR 1910.95(L)(1) shall read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(f) 29 CFR 1910.95(o) shall read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(g) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This Appendix is Mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

(a) Sound Pressure Output Check.

1. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

2. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

3. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

4. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading."

(b) Linearity check.

1. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

2. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

3. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

4. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

(c) Tolerances.

When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter level meter reading dB
500	11.5	81.5
1000	7.0	77.0
2000	9.0	79.0
3000	10.0	80.0
4000	9.5	79.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-49 EARPHONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter level meter reading dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

MRS. CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: June 11, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 27, 1992, at 1:30 p.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 July 22, 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. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(2) affects all employers in the Commonwealth with operations involving open surface dip tanks.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost of compliance with Section 1(2) will be approximately $265 per emergency eyewash unit and $250 per emergency shower. It is very difficult to estimate the number of facilities and workers at risk due to the scope of the regulation.

2. Continuing costs or savings: Section 1(2) will not result in continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this regulation which will increase or decrease costs.

(b) Reporting and paperwork requirements: This regulation will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation will not affect the promulgating administrative body.

(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: There will be no reporting or paperwork requirements as a result of this regulation.

(3) Assessment of anticipated effect on state and local revenues: This regulation has no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered for the previously adopted federal OSHA standard, except for the revision the Commonwealth elected to enact, which clarifies exactly what protective measures are necessary when handling corrosive material.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of this adoption of amendments.

(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 Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(2) revision requires Kentucky employers to comply with standards governing protective equipment required for handling corrosive material.

3. Minimum or uniform standards contained in the federal mandate. Section 1((2) clarifies previously adopted federal OSHA requirements for handling corrosive material.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This revision will clarify existing adopted by reference standard. The existing standard is open for interpretation by the employer for protective equipment. If an employer previously interpreted the existing standard to require less than this revision, then the revision could be construed as being stricter than the federal OSHA standard.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Safety and health hazards would be better addressed, as it will be easier for employers to understand compliance methods and enforcement will be easier.

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. Section 1(2) revision affects all local government entities that are with the scope of "corrosives."

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health.

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: The purpose of this revision is to clarify the existing adopted standard. There will be no increase in local government revenues or expenditures. This revision will have no effect on the number of local government.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:310. Adoption of 29 CFR Part 1910.151-.153.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910.151-.153 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1910.151(c) is revised to read as follows:

(1) Scope: Where the eyes or body of any person may be exposed to (injurious) corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be in accordance with either subsection (3)(a) or (3)(b) and, (3)(c) of this section for "establishments" as follows:

(2) Definitions.

(a) "Corrosive" means any solid, liquid, or gaseous substance that burns, irritates, or destructively attacks organic tissues, most notably the skin, eyes, and when taken internally, the lungs and gastrointestinal tract.

(b) "Establishment" means a single physical location where work is performed, industrial operations are conducted, or where services are rendered. Examples include but are not limited to factories, mills, stores, automotive service centers, and warehouses. Note: This definition includes those facilities that serve as satellites or in a backup/support role for the primary "establishment".

(c) "Field operations" means activities occurring outside an existing structure.

(d) "Remote work area" means any work area in which a person may become visibly and audibly separated from coworkers by the nature of the environment and thus unable to summon/elicit help from coworkers in the event of an exposure to "corrosive" materials.

(3) "Establishment" (utilizing "corrosives").

(a) Plumbed emergency eyewash facilities.

1. The eyewash shall have the capability to deliver fifteen (15) minutes of freely flowing water at a comfortable temperature range (fifteen (15) to thirty-five (35) degree C or sixty (60) to ninety-five (95) degree F), a maximum inlet pressure of thirty (30) psig, and a minimum flow of one and five-tenths (1.5) liters per minute (four-tenths (0.4) gallons per minute). The supply line shall provide an uninterruptible supply of water at a maximum of 0.207 megapascal (thirty (30) pounds per square inch) of flow pressure. A filter shall be provided upstream of the eyewash to remove particles. A record of the initial setup parameters shall be retained to verify proper operation. The initial parameters shall be rechecked when there is a change in the water distribution or utilization in the facility that could

alter any of the above criteria for proper setup.

2. A means shall be provided to ensure that a controlled flow of potable water is provided to both eyes simultaneously at a velocity low enough not to be injurious to the user, and to wash the eyes and facial region free of "corrosive" materials.

3. The emergency eyewash shall be accessible in locations that require no more than ten (10) seconds to reach and shall be within a travel distance no greater than 6.92 meters (twenty-five (25) feet) from the hazard, or in the nearest safe area outside of the release area if the release could pose a further danger to the employee while using the emergency eyewash facility.

4. There shall be no sharp projections anywhere in the operating area of the eyewash facility and the eyewash shall be accessible from three (3) sides.

5. The height of the nozzles shall be between thirty-three (33) and forty-five (45) inches as measured from the floor or ground level. Nozzles shall be protected from airborne contaminants. Whatever means is used to afford such protection, its removal shall not require a separate motion by the operator when activating the unit.

6. The unit shall be designed to provide enough room to allow the eyelids to be held open with the hands while the eyes are in the stream of water.

7. The valve shall be designed in such a manner that the water flow remains on without the use of the operator's hands. The valve shall be designed to remain open until intentionally shut off. The valve shall be simple to operate and shall go from the "off" position to the "on" position in one (1) second or less. The valve shall be resistant to corrosion by potable water. The valve actuator shall be large enough to be easily located by the operator in an emergency situation without the normal available visual cues.

8. The eyewash unit shall be activated weekly to flush the line and to verify proper operation. (Before work is begun in an "establishment" that has not been occupied for a period of one (1) week or more, the plumbed emergency eyewash facility shall be activated to insure it is functioning properly.)

9. A weekly record or a record consistent with subparagraph 8 of this paragraph shall be maintained for the previous twelve (12) consecutive months to verify compliance with testing procedures. These records may be affixed to the apparatus or kept in a location readily accessible to Labor Cabinet representatives of the Occupational Safety and Health Program.

10. Each emergency eyewash station shall be identified with a highly visible sign which all employees can comprehend. The area around or behind the emergency eyewash shall be painted a bright color and shall be well lighted.

11. Instructions. Instructions on proper usage shall be affixed to the eyewash facility which all employees are capable of comprehending and/or depicting proper usage in the emergency setting.

12. All employees who might be exposed to releases of "corrosives" shall be instructed in the proper use of emergency eyewash units at the time of initial assignment to the hazardous work area and whenever a new hazard is introduced into the work area. A training/retraining record shall be kept to verify training for compliance purposes for a period of three (3) years.

13. Units shall be installed in accordance with the manufacturer's instructions.

14. In "remote work areas" where this standard applies an effective alarm system consisting of audible and/or visual alerting device(s) shall be installed. The audible or visible alarm shall activate when the eyewash unit is used and must continue until the unit is not in immediate use.

(b) Self-contained emergency eyewash facilities.

1. Self-contained units shall be constructed of materials that will not corrode in the presence of the flushing fluid. The stored fluid shall be protected from airborne contaminants.

2. The emergency eyewash shall be accessible in locations that require no more than ten (10) seconds to reach and shall be within a travel distance no greater than 6.92 meters (twenty-five (25) feet) from the hazard, or in the nearest safe area.

3. The self-contained unit shall be capable of delivering to the eyes not less than one and five-tenths (1.5) liters per minute (four-tenths (0.4) gallons per minute) for fifteen (15) minutes.

4. A means shall be provided to ensure that a controlled flow of potable water or its equivalent is provided to both eyes simultaneously at a velocity low enough not to be injurious to the user, and to wash the eyes and facial region free of "corrosive" materials.

5. There shall be no sharp projections anywhere in the operating area of the eyewash facility and the eyewash shall be accessible from three (3) sides.

6. Nozzles shall be protected from airborne contaminants. Whatever means is used to afford such protection, its removal shall not require separate motion by the operator when activating the unit.

7. The eyewash unit shall be inspected in accordance with the manufacturer's recommendations for proper operation. (Before work is begun in an "establishment" that has not been occupied for a period of one (1) week or more the self-contained emergency eyewash facilities shall be inspected to insure it is functioning properly.)

8. A weekly record or a record consistent with subparagraph 7 of this paragraph shall be maintained to verify compliance with inspection procedures for the previous twelve (12) consecutive months. These records may be affixed to the apparatus or kept in a location readily accessible to Labor Cabinet representatives of the Occupational Safety and Health Program.

9. The unit shall be designed to provide enough room to allow the eyelids to be held open with the hands while the eyes are in the stream of water.

10. Instructions. Instructions on proper usage shall be affixed to the eyewash facility which all employees are capable of comprehending and/or depicting proper usage in the emergency setting.

11. All employees who might be exposed to "corrosives" shall be instructed in the proper use of emergency eyewash units at the time of initial assignment to the hazardous work area and whenever a new hazard is introduced into the work area. A training/retraining record shall be kept to verify training for compliance purposes for a period of three (3) years.

12. Each emergency eyewash station shall be identified with a highly visible sign which all employees can comprehend. The area around or behind the emergency eyewash shall be painted a bright color and shall be well lighted.

(c) Emergency shower facilities.

1. Emergency shower heads shall be designed so that a water column is provided that is not less than 208.3 cm (eighty-two (82) inches) nor more than 243.8 cm (ninety-six (96) inches) in height from the surface on which the user stands. The spray pattern shall have a minimum diameter of fifty and eight-tenths (50.8) cm (twenty (20) inches) at 152.4 cm (sixty (60) inches) above the surface on which the user stands, and the center of the spray pattern shall be located at least forty and six-tenths (40.6) cm (sixteen (16) inches) from any obstruction. Emergency showers shall deliver a minimum of 113.6 liters (thirty (30) gallons) per minute of water, which shall be substantially dispersed throughout the pattern.

2. Emergency showers shall be accessible in locations that require no more than ten (10) seconds to reach and shall be within a travel distance no greater than 6.92 meters (twenty-five (25) feet) from the hazard, or in the nearest safe area outside of the release area if the release could pose any further danger to the employee while using the emergency shower facility.

3. Manual or automatic actuators shall be easy to locate and readily accessible to the user.

4. Shower enclosures, if used, shall provide for a minimum unobstructed area eighty-six and four-tenths (86.4) cm (thirty-four (34) inches) in diameter.

5. The valve shall be designed in such a manner that the water

flow remains on without the use of the operator's hands. The valve shall be designed to remain open until intentionally shut off. The valve shall be simple to operate and shall go from the "off" position to the "on" position in one (1) second or less. The valve shall be resistant to corrosion by potable water. The valve actuator shall be large enough to be easily located by the operator in an emergency situation without the normal available visual cues.

6. The shower unit shall be activated weekly to flush the line and to verify proper operation. (Before work is begun in an "establishment" that has not been occupied for a period of one (1) week or more the plumbed emergency shower facilities shall be activated to insure it is functioning properly.)

7. A weekly record or a record consistent with subparagraph 6 of this paragraph shall be maintained to verify compliance with inspection procedures for the previous twelve (12) consecutive months. These records may be affixed to the apparatus or kept in a location readily accessible to Labor Cabinet representatives of the Occupational Safety and Health Program.

8. Each emergency shower station shall be identified with a highly visible sign which all employees can comprehend. The area around or behind the emergency shower shall be painted a bright color and shall be well lighted.

9. Instructions. Instructions on proper usage shall be affixed to the shower facility which all employees are capable of comprehending and/or other signs depicting proper usage in the emergency setting.

10. All employees who might be exposed to releases of "corrosives" shall be instructed in the proper use of emergency shower units at the time of initial assignment to the hazardous work area and whenever a new hazard is introduced into the work area. A training record shall be kept to verify training for compliance purposes for a period of three (3) years.

11. Units shall be installed in accordance with the manufacturer's instructions.

12. In "remote work areas" where this standard applies, an effective alarm system consisting of audible and/or visual alerting device(s) shall be installed. The audible and/or visible alarm shall activate when the eyewash unit is used and must continue until the unit is not in immediate use.

(4) "Field operations" (areas outside the confines of an existing structure). Personal protective equipment.

(a) A face shield or goggles and appropriate personal protection equipment for hands and body shall be provided and utilized at the area where "corrosives" are to be used.

(b) Eyewash facilities shall be in accordance with 29 CFR 1910.151(d)(3)(a) as adopted by this regulation where feasible or 29 CFR 1910.151(d)(3)(b) as adopted by this regulation.

(5) Effective dates. These requirements are effective October 1, 1992.

~~[29 CFR 1910.151 relating to medical services and first aid shall be changed to read as follows:~~

~~(1) The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health.~~

~~(2) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and first aid supplies approved by the consulting physician, along with a signed list of these supplies, shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who while performing their duties, are away from the premises more than fifty (50) percent of the time are not to be included in determining the number of employees.~~

~~(3) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first aid. First aid supplies approved by the consulting physician shall be readily available.~~

~~(4) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.~~]

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

MRS. CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: June 11, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 27, 1992, at 1:30 p.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 July 22, 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. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(1)(d) revision affects all employers in the Commonwealth with operations involving the handling of corrosive materials.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost of compliance with Section 1(1)(d) is extremely difficult to even estimate, because of the many facilities that either handle or have the potential of handling corrosive materials. An estimate would be $1,000 per facility.

2. Continuing costs or savings: See 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this revision which will increase or decrease costs. There will be no effect upon competition.

(b) Reporting and paperwork requirements: This revision does not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This revision will not affect the promulgating administrative body.

(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: There will be no reporting or paperwork requirements as a result of this revision.

(3) Assessment of anticipated effect on state and local revenues: This revision has no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered for the previously adopted federal OSHA standard, except for the revision the Commonwealth elected to enact, which clarifies exactly what protective measures are necessary when handling corrosive material.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of this adoption

of amendments.

(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 Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(1)(d) revision requires Kentucky employers to comply with standards governing protective equipment required for handling corrosive material.

3. Minimum or uniform standards contained in the federal mandate. Section 1(1)(d) clarifies previously adopted federal OSHA requirements for handling corrosive material.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This revision will clarify existing adopted by reference standard. The existing standard is open for interpretation by the employer for protective equipment. If an employer previously interpreted the existing standard to require less than this revision, then the revision could be construed as being stricter than the federal OSHA standard.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Safety and health standards would be better addressed, as it will be easier for employers to understand compliance methods and enforcement will be easier.

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. Section 1(1)(d) revision affects all local government entities that are with the scope of "corrosives".

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health.

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: The purpose of this revision is to clarify the existing adopted standard. There will be no increase in local government revenues or expenditures. This revision will have no effect on the number of local government.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:313. Adoption of 29 CFR Part 1910.176-.190.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.176-.190 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.177(a)(2), "Servicing Multipiece and Single Piece Rim Wheels," shall be amended as follows:

(a) Amendments as published in the Federal Register, Volume 52, Number 186, September 25, 1987 are incorporated by reference.

(b) Amendments to 29 CFR 1910.177(b), "Servicing Multipiece and Single Piece Rim Wheels," as published in Federal Register, Volume 53, Number 174, September 8, 1988, are incorporated by reference.

(2) The amendment to 29 CFR 1910.178(a)(7), "Powered Industrial Trucks," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(3) The amendment to 29 CFR 1910.178, "Powered Industrial Trucks," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(4) 29 CFR 1910.178(g)(2) is amended by adding the following: Facilities shall be provided for flushing and neutralizing spilled electrolyte, for fire protection, for protecting charging apparatus from damage by trucks, and for adequate ventilation for dispersal of fumes from gassing batteries. In areas where electrolyte is handled or added to batteries there shall be emergency eyewash and emergency shower facilities installed in accordance with 1910.151(d)(3)(a) or 1910.151(d)(3)(b) and 1910.151(d)(3)(c) as adopted by 803 KAR 2:310. Note: This standard does not apply to those charging operations where the battery terminals are protected by physical barriers and no electrolyte is being manipulated. These requirements are effective October 1, 1992.

(5) [~~(4)~~] Revisions to 29 CFR 1910.179(j)(2)(iii) and (iv), "Overhead and Gantry Cranes," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are incorporated by reference.

(a) Revision to 29 CFR 1910.179(m)(l), "Overhead and Gantry Cranes," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.

(b) Revision to 29 CFR 1910.179, "Overhead and Gantry Cranes," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(6) [~~(5)~~] Revision to 29 CFR 1910.180(d)(6), "Crawler Locomotive and Truck Cranes," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.

(a) Revisions to 29 CFR 1910.180(g)(l) and (2)(ii), "Crawler and Locomotive Truck Cranes," as published in the Federal Register,

Volume 51, Number 188, September 29, 1986, are incorporated by reference.

(b) The amendment to 29 CFR 1910.180(i)(4)(i), "Crawler, Locomotive and Truck Cranes," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(c) Amendment to 29 CFR 1910.180, "Crawler, Locomotive, and Truck Cranes," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(7) [~~(6)~~] Revisions to 29 CFR 1910.181(g)(1) and (3), "Derricks," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are incorporated by reference.

(a) The amendment to 29 CFR 1910.181(j)(4)(i), "Derricks," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(b) Amendment to 29 CFR 1910.181, "Derricks," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

MRS. CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: June 11, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 27, 1992, at 1:30 p.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 July 22, 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. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(4) affects all employers in the Commonwealth that have powered industrial truck battery charging.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost of compliance with Section 1(4) will be approximately $250 per emergency shower unit and $265 per emergency eyewash unit. It is very difficult to estimate the number of facilities and workers at risk due to the scope of the regulation.

2. Continuing costs or savings: Section 1(4) will not result in continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this regulation which will increase or decrease costs.

(b) Reporting and paperwork requirements: This regulation will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation will not affect the promulgating administrative body.

(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: There will be no reporting or paperwork requirements as a result of this regulation.

(3) Assessment of anticipated effect on state and local revenues: This regulation has no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered for the previously adopted federal OSHA standard, except for the revision the Commonwealth elected to enact, which clarifies exactly what protective measures are necessary when handling corrosive material.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of this adoption of amendments.

(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 Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(4) revision requires Kentucky employers to comply with standards governing powered industrial truck battery charging.

3. Minimum or uniform standards contained in the federal mandate. Section 1(4) clarifies previously adopted federal OSHA requirements for powered industrial truck battery charging.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This revision will clarify existing adopted by reference standard. The existing standard is open for interpretation by the employer for protective equipment. If an employer previously interpreted the existing standard to require less than this revision, then the revision could be construed as being stricter than the federal OSHA standard.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Safety and health standards would be better addressed, as it will be easier for employers to understand compliance methods and enforcement will be easier.

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. Section 1(4) revision affects all local government entities that are within the scope of powered industrial truck battery charging.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health.

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: The purpose of this revision is to clarify the existing adopted standard. There will be no increase in local government revenues or expenditures. This revision will have no effect on the number of local government.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:317. Adoption of 29 CFR Part 1910.261-.275.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.261-.275 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) The amendment to 29 CFR 1910.261, "Pulp, Paper, and Paperboard Mills," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(2) The amendment to 29 CFR 1910.265(d)(2) (iv)(c), "Sawmills," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(3) The amendment to 29 CFR 1910.265, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(4) The amendments to 29 CFR 1910.266(c)(4) (iii) and (iv), "Pulpwood Logging," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(5) The amendment to 29 CFR 1910.266, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(6) 29 CFR 1910.268(c), "Telecommunications," shall be revised as follows: Revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987, are incorporated by reference.

(7) 29 CFR 1910.268(b)(2)(i) is revised to read as follows: Battery handling. Eye protection devices which provide side as well as frontal eye protection for employees shall be provided when measuring storage battery specific gravity or handling electrolyte, and the employer shall ensure that such devices are used by the employees. The employer shall also ensure that acid resistant gloves and aprons shall be worn for protection against splattering. Facilities for quick drenching or flushing of the eyes and body shall be provided in accordance with 1910.151(d)(3)(a) or 1910.151(d)(3)(b) and 1910.151(d)(3)(c) as adopted by 803 KAR 2:310, unless the storage batteries are of the enclosed type and equipped with explosion proof vents (in which case sealed water rinse or neutralizing packs may be substituted for the quick drenching or flushing facilities). Employees assigned to work with storage batteries shall be instructed in emergency procedures such as dealing with accidental acid spills. Note: This standard does not apply to those charging operations where the battery terminals are protected by physical barriers and no electrolyte is being manipulated. These requirements are effective October 1, 1992.

(8) [~~(7)~~] 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 52, Number 251, December 31, 1987, is incorporated by reference.

(a) The amendments to 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 53, Number 96, May 18, 1988, are incorporated by reference.

(b) The amendment to 29 CFR 1910.272, as published in the Federal Register, Volume 55, Number 119, June 20, 1990, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

MRS. CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: June 11, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 27, 1992, at 1:30 p.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 July 22, 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. Guy Schoolfield, Kentucky Labor Cabinet, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kembra Taylor, Guy Schoolfield

(1) Type and number of entities affected: Section 1(7) affects all employers in the Commonwealth with operations involving telecommunication centers as well as telecommunication field operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost of compliance with Section 1(7) will be approximately $250 per emergency shower unit and $265 per emergency eyewash unit. It is very difficult to estimate the number of facilities and workers at risk due to the scope of the regulation.

2. Continuing costs or savings: Section 1(7) will not result in continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this regulation which will increase or decrease costs.

(b) Reporting and paperwork requirements: This regulation will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation will not affect the promulgating administrative body.

(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: There will be no reporting or paperwork requirements as a result of this regulation.

(3) Assessment of anticipated effect on state and local revenues: This regulation has no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered for the previously adopted federal OSHA standard, except for the revision the Commonwealth elected to enact, which clarifies exactly what protective measures are necessary when handling corrosive material.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of this adoption of amendments.

(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 Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(7) revision requires Kentucky employers to comply with standards governing protective equipment required for handling corrosive material.

3. Minimum or uniform standards contained in the federal mandate. Section 1(7) clarifies previously adopted federal OSHA requirements for handling corrosive material.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This revision will clarify existing adopted by reference standard. The existing standard is open for interpretation by the employer for protective equipment. If an employer previously interpreted the existing standard to require less than this revision, then the revision could be construed as being stricter than the federal OSHA standard.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Safety and health standards would be better addressed, as it will be easier for employers to understand compliance methods and enforcement will be easier.

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. Section 1(7) revision affects all local government entities that are within the scope of handling corrosives.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed revision affects local government employees' occupational safety and health.

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: The purpose of this revision is to clarify the existing adopted standard. There will be no increase in local government revenues or expenditures. This revision will have no effect on the number of local government.

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

806 KAR 2:070. Preservation of records.

RELATES TO: KRS 304.2-210 to 304.2-230, 304.13-320, 304.24-290

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable [~~rules and~~] regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation requires the preservation of records of insurers, holding companies, and [~~rating and~~] advisory organizations [~~companies~~] for a minimum period of five (5) years and in a specified form.

Section 1. In order to enable the commissioner to perform the duties and execute the powers placed upon him by KRS 304.2-210, 304.2-220, 304.2-230, 304.13-320, and 302.24-290 and to enforce compliance therewith, the accounts, records, documents, experience, statistics, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, and inspections mentioned therein shall be preserved in their entirety and kept available and open to the commissioner's inspection, unless specifically excused by the commissioner, for a period of not less than five (5) years following creation of the [~~such~~] material or the completion of the purpose for which it was created, whichever shall occur last.

Section 2. Nothing in this regulation [~~herein~~] is intended to encourage the destruction of or failure to preserve [~~such~~] material at any time, particularly in view of the fact that statutory periods of time in which causes of action accrue or may be brought often exceed a [~~such~~] five (5) year period.

Section 3. With reference to domestic insurers, the term "principal records" as used in KRS 304.24-290 shall include[~~, but shall not be limited to,~~] the material referred to in Section 1 of this regulation, and the [~~such~~] material shall not be removed from this state except in compliance with this regulation.

Section 4. Records required by this regulation [~~herein~~] may be maintained in their original forms, on microfilm, [~~or~~] on data processing tapes or cards, or by means of other forms of electronic storage. All records maintained by electronic storage shall be capable of duplication to legible hard copy.

RONNIE C. MOORE, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 5, 1992

FILED WITH LRC: June 11, 1992 at 9 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for July 21, 1992, at 1:30 p.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Ronnie C. Moore, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 1:30 p.m. (ET), on July 21, 1992, in order to receive consideration. The public hearing scheduled above may be

cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Agency contact person: Patrick Watts

Need for the Proposed Regulation: The proposed regulation is necessary to permit insurers to maintain records through means of electronic storage other than microfilm, tapes, or cards. Many insurers are implementing imaging technology in order to reduce storage space for records. Imaging technology not only reduces storage space, but produces high quality copies. Various other technical changes are made in the regulation in order to comply with the requirements of KRS Chapter 13A.

Type and Numbers of Entities Affected: This regulation will affect the 1,300 insurers authorized to do business in Kentucky as well as the 18 advisory organizations licensed by the Department of Insurance.

a. Direct and indirect cost or savings to those affected:

1. First year: Insurers desiring to implement imaging technology will have savings due to the reduced need for storage space.

2. Continued cost or savings: Use of imaging technology will continue to yield savings due to reduced need for storage space for records.

3. Additional factors increasing or decreasing costs: None.

b. Reporting and paperwork requirements: The proposed regulation will result in less paperwork by authorizing new means of electronic storage for recordkeeping.

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.

Assessment of Anticipated Effect on State and Local Revenues: None.

Assessment of Alternative Methods; Reasons why Alternatives were Rejected: As currently written, the proposed regulation would not permit the use of imaging technology, which many insurers would like to implement in order to reduce the cost of storing records. The only alternative would be to reject use of imaging technology, which is not desirable in light of the benefits which may be yielded by use of imaging technology.

Statutes, Regulations, or Governmental Policies which may Conflict, Overlap, or Duplicate the Proposed Regulation: None.

TIERING: Tiering is recognized in the proposed regulation in that permitting additional means of electronic storage of records provides another alternative for insurers in deciding how to store their records.

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

806 KAR 17:066. Medicare supplement insurance policies.

RELATES TO: KRS 304.12-020, 304.14-500 to 304.14-550, 304.17-305, 304.17-318, 304.18-036, 304.18-095, 304.32-157, 304.32-165, 304.32-270, 304.38-193, 304.38-196, 304.38-200

STATUTORY AUTHORITY: KRS 304.2-110, 304.14.510, 304.32-250, 304.38-150

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 provides that the Commissioner of Insurance may make reasonable regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 provides that the Commissioner of Insurance may make reasonable regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may make reasonable regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This regulation establishes minimum standards for Medicare supplement insurance policies.

Section 1. Definitions. For the purposes of this regulation:

(1) "Applicant" means:

(a) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and

(b) In the case of a group Medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means any certificate delivered to or issued under a group Medicare supplement policy.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(4) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(5) "Insurance policy" means an insurance policy, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, and an enrollee contract issued by a health maintenance organization.

(6) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering [~~delivery~~] or issuing for delivery in this state Medicare supplement polices or certificates.

(7) "Medicare" means the "Health Insurance for the Aged Act," "Title XVIII of the Social Security Amendments of 1965," as then constituted or later amended.

(8) "Medicare supplement policy" means a group or individual policy of insurance, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, or an enrollee contract issued by a health maintenance organization, other than as policy issued pursuant to a contract under Section 1876 or Section 1833 of the federal Social Security Act (42 USC Section 1395 et.seq.) or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

Section 2. Purpose, Applicability, and Scope. (1) The purpose of this regulation is to provide for the reasonable standardization of coverages and simplification of terms and benefits of Medicare supplement policies, to facilitate public understanding and comparison of such policies, to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or in connection with the settlement of claims, and to provide for full disclosure in the sale of health insurance coverages to persons eligible for Medicare.

(2) Except as otherwise specifically provided in Sections 11 and 12 of this regulation, this regulation shall apply to:

(a) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation; and

(b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state.

(3) This regulation shall not apply to a policy or contract of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations,

or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

Section 3. Policy Definitions and Terms. No policy or certificate shall be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless the policy or certificate contains terms or definitions which conform to those in this section.

(1) "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury or injuries for which benefits are provided means accidental bodily injury sustained by the injured person which is a direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) Such definition may provide that injury shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability, or similar law, or motor vehicle no-fault insurance plan, unless such a definition is prohibited by law.

(2) "Benefit period," or "Medicare benefit period," shall not be defined as more restrictive than as that defined in the Medicare program.

(3) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

(4) "Health care expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(a) These expenses shall not include:

1. Home office and overhead costs;
2. Advertising costs;
3. Commissions and other costs of acquiring insurance business;
4. Taxes;
5. Capital costs;
6. Administrative costs; and
7. Claims processing costs.

(5) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but shall not be defined more restrictively than as defined in the Medicare program.

(6) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or Title I, Part I of P.L. 89-97, as enacted by the 89th Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof, or words of similar import.

(7) "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

(8) "Physician" shall not be defined more restrictively than as defined in the Medicare program.

(9) "Sickness" shall not be defined to be more restrictive than the following: "sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, or employer's liability, or similar law.

Section 4. Policy Provisions. (1) Except for permitted preexisting condition clauses as described in Sections 5(1)(a) and 6(1)(a) of this regulation, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if such policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) A Medicare supplement policy shall not contain a probationary or elimination period.

(3) A Medicare supplement policy or certificate shall not use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(4) No Medicare supplement insurance policy in force in this state shall contain benefits which duplicate benefits provided by Medicare.

Section 5. Minimum Benefit Standards. (1) A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate if it does not meet or exceed the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are consistent with these standards. This section applies to Medicare supplement policies issued prior to January 1, 1992.

(2) General standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with these changes.

(d) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium; or

2. Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(e)1. Except as authorized by the commissioner, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subparagraph 4 of this paragraph, the issuer shall offer certificate holders an individual Medicare supplement policy. The issuer shall offer the certificate holder at least the following choices:

a. An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

b. An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 6(2) of this regulation.

3. If membership in the group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in subparagraph 2 of this paragraph; or

b. Offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

(3) [~~(2)~~] Minimum benefit standards.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B; and

(f) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out of pocket amount equal to the Medicare Part B deductible maximum benefit.

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

Section 6. Benefit Standards for Policies or Certificates Issued or Delivered on or after January 1, 1992. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation:

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents, and shall not contain a probationary or elimination period.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost-sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable; and

1. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and

2. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subparagraph 5 of this paragraph, the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder):

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits which otherwise meet the requirements of this subsection.

4. If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall offer continuation and conversion coverages in accordance with subparagraph 3 of this paragraph.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice or any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(g)1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within ninety (90) days after the date the individual becomes entitled to such assistance. Upon receipt of timely notice, the issuer shall return to the policyholder or certificateholder that portion of the premium attributable to the period of Medicaid eligibility, subject to adjustment for paid claims.

2. If the suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of the entitlement to medical assistance) as of the termination of the entitlement if the policyholder or certicateholder provides notice of loss of the entitlement within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of the entitlement.

3. Reinstitution of coverages:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least

as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(2) Standards for basic ("core") benefits common to all benefit plans. Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic "core" package, but not in lieu thereof.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the diagnostic related group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations; and

(e) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3) Standards for additional benefits. The following additional benefits shall be included in Medicare supplement benefit Plans "B" through "J" only as provided by Section 7 of this regulation.

(a) Medicare Part A deductible: coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period;

(b) Skilled nursing facility care: coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A;

(c) Medicare Part B deductible: coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement;

(d) Eighty (80) percent of the Medicare Part B excess charges: coverage for eighty (80) percent of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(e) 100 percent of the Medicare Part B excess charges: coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(f) Basic outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(g) Extended outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(h) Medically necessary emergency care in a foreign country: coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(i) Preventive medical care benefit: coverage for the following preventive health services:

1. An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph 2 of this paragraph and patient education to address preventive health care measures.

2. Any one (1) or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

a. Fecal occult blood test and/or digital rectal examination;

b. Mammogram;

c. Dipstick urinalysis for hematuria, bacteriuria and proteinuria [~~proteinauria~~];

d. Pure tone (air only) hearing screening test, administered or ordered by a physician;

e. Serum cholesterol screening (every five (5) years);

f. Thyroid function test; or

g. Diabetes screening.

3. Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria [~~diptheria~~] booster (every ten (10) years).

4. Any other tests or preventive measure determined appropriate by the attending physician.

Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(j) At-home recovery benefit: coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

1. For purposes of this benefit, the following definitions shall apply:

a. "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

b. "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

c. "Home" shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

d. "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit.

2. Coverage requirements and limitations:

a. At-home recovery services provided must be primarily services which assist in activities of daily living.

b. The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

c. Coverage is limited to:

(i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-

approved home care plan of treatment.

(ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit.

(iii) $1,600 per calendar year.

(iv) Seven (7) visits in any one (1) week.

(v) Care furnished on a visiting basis in the insured's home.

(vi) Services provided by a care provider as defined in this section.

(vii) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(viii) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

3. Coverage is excluded for:

a. Home care visits paid for by Medicare or other government programs; and

b. Care provided by family members, unpaid volunteers, or providers who are not care providers.

(k) New or innovative benefits: an issuer may, with the prior approval of the commissioner, offer polices or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. New or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of a simplification of Medicare supplement policies.

Section 7. Standard Medicare Supplement Benefit Plans. (1) An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in Section 6(2) of this regulation.

(2) Groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in this state, except as may be permitted in Sections 6(3)(k) and 8 of this regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit Plans "A" through "J" listed in this subsection and conform to the definitions in Section 8 of this regulation. Each benefit shall be structured in accordance with the format provided in Section 6(2) and (3) of this regulation and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

(4) An issuer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic ("core") benefits common to all benefit plans, as defined in Section 6(2) of this regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible as defined in Section 6(3)(a) of this regulation.

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (c), and (h) of this regulation, respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Section 6(3)(a), (b), (h), and (j) of this regulation, respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and preventive medical care as defined in Section 6(3)(a), (b), (h), and (i) of this regulation, respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (c), (e), and (h) of this regulation, respectively.

(g) Standardized Medicare supplement benefit Plan "G" shall include only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty (80) percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Section 6(3)(a), (b), (d), (h), and (j) of this regulation, respectively.

(h) Standardized Medicare supplement benefit Plan "H" shall consist of only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (f), and (h) of this regulation, respectively.

(i) Standardized Medicare supplement benefit Plan "I" shall consist of only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined in Section 6(3)(a), (b), (e), (f), (h), and (j) of this regulation, respectively.

(j) Standardized Medicare supplement benefit Plan "J" shall consist of only the following: the core benefit as defined in Section 6(2) of this regulation, plus the Medicare part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined in Section 6(3)(a), (b), (c), (e), (g), (h), (i), and (j) of this regulation, respectively.

Section 8. Medicare Select Policies and Certificates. (1)(a) This section shall apply to Medicare select policies and certificates, as defined in this section.

(b) No policy or certificate may be advertised as a Medicare select policy or certificate unless it meets the requirements of this section.

(2) For the purpose of this section:

(a) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare select issuer or its network providers.

(b) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare select issuer or its network providers.

(c) "Medicare select issuer" means an issuer offering, or seeking to offer, a Medicare select policy or certificate.

(d) "Medicare select policy" or "Medicare select certificate" means respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(e) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare select policy.

(f) "Restricted network provision" means any provision which

conditions the payment of benefits, in whole or in part, on the use of network providers.

(g) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare select policy.

(3) The commissioner may authorize an issuer to offer a Medicare select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, if the commissioner finds that the issuer has satisfied all of the requirements of this regulation.

(4) A Medicare select issuer shall not issue a Medicare select policy or certificate in this state until its plan of operation has been approved by the commissioner.

(5) A Medicare select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation, and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

a. To deliver adequately all services that are subject to a restricted network provision; or

b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention and removal of network providers; and

3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the issuer to comply with paragraph (9) of this subsection.

(g) Any other information requested by the commissioner.

(6)(a) A Medicare select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing any changes. Any changes shall be considered approved by the commissioner thirty (30) days after filing unless specifically disapproved by the commissioner.

(b) An updated list of network providers shall be filed with the commissioner at least quarterly.

(7) A Medicare select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition; and

(b) It is not reasonable to obtain these services through a network provider.

(8) A Medicare select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(9) A Medicare select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare select policy or certificate with:

1. Other Medicare supplement policies or certificates offered by the issuer; and

2. Other Medicare select policies or certificates.

(b) A description (including address, phone number, and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers.

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(g) A description of the Medicare select issuer's quality assurance program and grievance procedure.

(10) Prior to the sale of a Medicare select policy or certificate, a Medicare select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to subsection (9) of this section and that the applicant understands the restrictions of the Medicare select policy or certificate.

(11) A Medicare select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. These procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(c) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

(12) At the time of initial purchase, a Medicare select issuer shall make available to each applicant for a Medicare select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(13)(a) At the request of an individual insured under a Medicare select policy or certificate, a Medicare select issuer shall make available to the individual insured the opportunity to purchase a

Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make these policies or certificates available without requiring evidence of insurability after the Medicare supplement policy or certificate has been in force for six (6) months.

(b) For the purpose of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services, or coverage for Part B excess charges.

(14) Medicare select policies and certificates shall provide for continuation of coverage in the event the Secretary of the United States Department of Health and Human Services determines that Medicare select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare select program to be reauthorized under law or its substantial amendment.

(a) Each Medicare select issuer shall make available to each individual insured under a Medicare select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services, or coverage for Part B excess charges.

(15) A Medicare select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare select program.

Section 9. Open Enrollment. (1) No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a Medicare supplement policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for such policy or certificate is submitted during the six (6) month period beginning with the first month in which an individual (who is sixty-five (65) years of age or older) first enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(2) Subsection (1) of this section shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before it became effective.

Section 10. Standards for Claims Payment. (1) An issuer shall comply with section 1882(c)(3) of the Social Security Act (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987, PL No. 100-203) by:

(a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(c) Paying the participating physician or supplier directly;

(d) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number, and a central mailing address to which notices from a Medicare carrier may be sent;

(e) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(f) Providing to the Secretary of the United States Department of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

(2) Compliance with the requirements set forth in subsection (1) of this section shall be certified on the Medicare Supplement Insurance Experience Reporting Form.

Section 11. Loss Ratio Standards and Refund or Credit of Premium. (1) Loss ratio standards. A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery in Kentucky unless it can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

1. At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; or

2. At least sixty-five (65) percent of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for such period and in accordance with accepted actuarial principles and practices.

(b) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(c) For purposes of applying subsection (1)(a) of this section and Section 12(3)(c) [3(e)] of this regulation only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

(2) Refund or credit calculation.

(a) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(b) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund of credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of the United States Department of Health and Human Services, but shall not be less than the average rate of interest for thirteen (13) week treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) Annual filing of premium rates. An issuer of Medicare supplement policies and certificates issued before or after January 1, 1992, in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(a) As soon as practicable prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in Kentucky shall file with the commissioner, in accordance with applicable filing procedures:

1. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable Medicare supplement policies or certificates. Supporting documents as necessary to justify the adjustment shall accompany the filing. An issuer shall make premium adjustments as are necessary to produce an expected loss ratio under the policies and certificates as will conform to the minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described in this subsection should be made with respect to a policy at any time other than upon its renewal date or anniversary date. If an issuer fails to make premium adjustments acceptable to the commissioner, he may order premium adjustments, refunds, or premium credit deemed necessary to achieve the loss ratios required by this section.

(b) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. These riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement insurance benefits provided by the Medicare supplement policy or certificate.

(4) Public hearings. The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in accordance with KRS Chapter 304.2.

Section 12. Filing and Approval of Policies and Certificates and Premium Rates. (1) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

(2) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

(3)(a) Except as provided in paragraph (b) of this subsection, an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

1. The inclusion of new or innovative benefits;

2. The addition of either direct response or agent marketing methods;

3. The addition of either guaranteed issue or underwritten coverage; and

4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare select policy, or a group Medicare select policy.

(4)(a) Except as provided in subparagraph 1 of this paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

1. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

2. An issuer that discontinues the availability of a policy form or certificate form pursuant to subparagraph 1 of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under paragraph (a) of this subsection unless the issuer complies with the following requirements:

1. The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and resultant rates; and

2. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

(5)(a) Except as provided in paragraph (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 11 of this regulation.

(b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

Section 13. Permitted Compensation Arrangements. (1) An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and shall be provided for not less than five (5) years.

(3) No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy.

(4) For purposes of this section, "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, bonuses, gifts, prizes, awards, and finders' fees.

Section 14. Required Disclosure Provisions. (1) General rules.

(a) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision must be consistent with the type of insurance policy issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases on the insured's age.

(b) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(c) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

(d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, these limitations shall appear as a separate paragraph of the policy and be labeled as "preexisting condition limitations."

(e) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within at least thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured is not satisfied for any reason.

(f) Issuers of insurance policies and certificates thereunder covering accident and sickness and hospital or medical expenses on an expense incurred or indemnity basis, other than incidentally, to persons eligible for Medicare by reason of age shall provide to these applicants a Medicare supplement buyer's guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than twelve (12) point type. Delivery of the buyer's guide shall be made whether or not the policies or certificates are advertised, solicited, or issued as Medicare supplement policies or certificates as defined in this regulation. Delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgment of receipt of the buyer's guide shall be obtained by the issuer, except that direct response issuers shall deliver the buyer's guide to the applicant upon request, but not later than the time the policy is delivered.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its insureds of modifications it has made to Medicare supplement policies or certificates. The notice shall be in a format acceptable to the commissioner. The notice shall:

1. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or certificate; and

2. Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(c) The notices shall not contain or be accompanied by any solicitation.

(3) Outline of coverage requirements for Medicare supplement policies.

(a) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response issuers, shall obtain an acknowledgment of receipt of the outline from the applicant.

(b) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type immediately above the issuer's name:

"NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this subsection consists of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All Plans A-J shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(d) The following items shall be included in the outline of coverage in the order prescribed below:

(COMPANY NAME)
Outline of Medicare Supplement Coverage - Cover Page:
Benefit Plan(s)__ (Insert letter(s) of plan(s) being offered)

Medicare supplement insurance can be sold in only ten standard plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your state.

BASIC BENEFITS: Included in all plans.
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
Medical expenses: Part B coinsurance (20% of Medicare-approved expenses).
Blood: First three pints of blood each year.

A	B	C	D	E	F	G	H	I	J
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-home Recovery			At-home Recovery		At-home Recovery	At-home Recovery
							Basic Drugs ($1,250 Limit)	Basic Drugs ($1,250 Limit)	Extended Drugs ($3,000 Limit)
				Preventive Care					Preventive Care

1. PREMIUM INFORMATION (Boldface Type)

We (insert issuer's name) can only raise your premium if we raise the premium for all policies like yours in this state. (If the premium is based on the increasing age of the insured, include information specifying when premiums will change).

DISCLOSURES (Boldface Type)

Use this outline to compare benefits and premiums among policies.

2. READ YOUR POLICY VERY CAREFULLY (Boldface Type)

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

3. RIGHT TO RETURN POLICY (Boldface Type)

If you find that you are not satisfied with your policy, you may return it to (insert issuer's address). If you send the policy back to us within thirty (30) days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

4. POLICY REPLACEMENT (Boldface Type)

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you

want to keep it.

5. NOTICE (Boldface Type)

This policy may not fully cover all of your medical costs.

a. (for agents)
Neither (insert insurer's name) nor its agents are connected with Medicare.

b. (for direct response insurers:)
(insert insurer's name) is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult "The Medicare Handbook" for more details.

6. COMPLETE ANSWERS ARE VERY IMPORTANT
(Boldface Type)

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Review the application carefully before you sign it. Be certain that all information has been recorded properly.

(Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments, and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. More than four (4) plans shall not be shown on one (1) chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 7(4) of this regulation.)

(Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.)

PLAN A

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$0	$628 (Part A deductible)
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare Eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	$0	Up to $78.50 a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN A

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
PARTS A & B			
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN B

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			

You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	$0	Up to $78.50 a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and in-patient respite care	$0	Balance

PLAN B
MEDICARE (PART A) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES: IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and out-patient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equip-ment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare-approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
PARTS A & B			
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN C
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare Eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN C
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0

Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment - First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN C
OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life-time maximum ben-efit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN D
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after: - While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
- Once lifetime reserve days are used: - Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs

BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and in-patient respite care	$0	Balance

PLAN D

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES: IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and out-patient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equip-ment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare-approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
PARTS A & B			
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
- Benefit for each visit	$0	Actual charges to $40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	$0	Up to the # of Medicare-approved	

		visits, not to exceed 7 each week	
- Calendar year maximum	$0	$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life-time maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN E
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare Eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN E
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN E
OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life-time maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
PREVENTIVE MEDICAL CARE BENEFIT-NOT COVERED BY MEDICARE Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diptheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

PLAN F
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and in-patient respite care	$0	Balance

PLAN F
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and out-patient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equip-ment,			
First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare-approved amounts)	$0	100%	$0

BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN F

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life-time maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN G

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-			

approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN G

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	80%	20%
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE			
Home care certified by your doctor, for			

personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
- Benefit for each visit	$0	Actual charges to $40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
- Calendar year maximum	$0	$1,600	

OTHER BENEFITS

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN H
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			

Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN H
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	80%	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN H
OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life-time maximum ben-efit of $50,000	20% and amounts over the $50,000 lifetime maximum

BASIC OUTPATIENT PRESCRIPTION DRUGS NOT

COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $2,500 each calendar year	$0	50% - $1,250 calendar year maximum benefit	50%
Over $2,500 each calendar year	$0	$0	All costs

PLAN I
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN I
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			

First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
- Benefit for each visit	$0	Actual charges to $40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
- Calendar year maximum	$0	$1,600	

OTHER BENEFITS

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life-time maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $2,500 each calendar year	$0	50% - $1,250 calendar year maximum benefit	50%
Over $2,500 each calendar year	$0	$0	All costs

PLAN J
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A deductible)	$0
61st thru 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN J
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
Part B excess charges (above Medicare approved amounts)	$0	100%	$0

BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
- Remainder of Medicare-approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
- Benefit for each visit	$0	Actual charges to $40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
- Calendar year maximum	$0	$1,600	

OTHER BENEFITS

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life-time maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
EXTENDED OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $6,000 each calendar year	$0	50% - $3,000 calendar year maximum benefit	50%
Over $6,000 each calendar year	$0	$0	All costs
PREVENTIVE MEDICAL CARE BENEFIT NOT COVERED BY MEDICARE Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing			

screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diptheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

(4) Notice regarding policies or certificates which are not Medicare supplement policies. Any accident or sickness insurance policy or certificate (other than a Medicare supplement policy), a policy issued pursuant to a contract under Section 1876 or Section 1833 of the Federal Social Security Act (42 U.S.C. §1395 et seq.), disability income policy, basic, catastrophic, or major medical expense policy, or single premium nonrenewable policy, or other policy identified in Section 2(3) of this regulation issued for delivery in Kentucky to persons eligible for Medicare by reason of age shall notify insureds under such policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, printed on or attached to the first page of the policy or certificate delivered to insureds. Such notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Medicare supplement buyer's guide available from the insurance company."

Section 15. Requirements for Application Forms and Replacement Coverage. (1) Comparison statement. When a Medicare supplement policy or certificate is to replace another health insurance policy or certificate, there shall be presented to the applicant, no later than at the time of taking the application, a comparison statement which shall be substantially identical to Appendix C. Direct response issuers shall present the comparison statement to the applicant not later than at the time of delivery of the policy. Agents shall obtain the signature of the applicant on the comparison statement and shall sign the comparison statement and send the comparison statement to the issuer. A copy of the comparison statement shall be attached to the replacement policy.

(2) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and the agent containing these questions and statements may be used:

(a) Statements.

1. You do not need more than one (1) Medicare supplement policy.

2. If you are sixty-five (65) or older, you may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

3. The benefits and premiums under your Medicare supplement policy will be suspended during your entitlement to benefits under Medicaid for twenty-four (24) months. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within ninety (90) days of losing Medicaid eligibility.

4. Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning Medicaid.

(b) Questions. To the best of your knowledge:

1. Do you have another Medicare supplement policy or certificate in force?

a. If so, with which company?

2. Do you have any other health insurance policies that provide benefits which this Medicare supplement policy would duplicate?

a. If so, with which company?

b. What kind of policy?

3. If the answer to (a) or (b) is yes, do you intend ~~[intent]~~ to replace these health policies with this policy (or certificate)?

4. Are you covered by Medicaid?

(3) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.

(b) List policies sold in the last five (5) years which are no longer in force.

(4) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) Upon determining that a sale will involve replacement of Medicare supplement coverage, an issuer (other than a direct response issuer), or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except where coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

(6) The notice required by subsection (5) of this section for an issuer shall be provided in substantially the following form in no less than ten (10) point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE
(Insurer Name and Address)
SAVE THIS NOTICE! IT MAY BE IMPORTANT
TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to terminate existing accident and sickness insurance and replace it with a policy to be issued by (insurer name). Your new policy provides (insert here an amount of time not less than thirty (30) days) within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all health insurance you now have. Terminate your present policy only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.

STATEMENT TO APPLICANT BY ISSUER OR AGENT (OR OTHER REPRESENTATIVE):

I have reviewed your current health insurance coverage. The replacement of insurance involved in this transaction does not duplicate coverage, to the best of my knowledge. The replacement policy is being purchased for the following reason(s) (check one):

___ Additional benefits.

___ No change in benefits, but lower premiums.

___ Fewer benefits and lower premiums.

___ Other (please specify).

(a) Health conditions which you may presently have (so-called

preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy (this paragraph may be modified if preexisting conditions are, in fact, covered under the new policy).

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(c) If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the insurer to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been recorded properly. (If the policy or certificate is guaranteed issue, this paragraph need not appear).

(d) Do not cancel your present policy until you have your new policy and are sure that you want to keep it.

_____
Signature of Agent or Other Representative

_____
Typed Name and Address of Agent

The above "Notice to Applicant" was delivered to me on:

_____
Date

_____
Applicant's Signature

(6) Subsection (5)(a) and (b) of this section may be omitted from the replacement notice if the replacement policy or certificate does not involve application of a new preexisting condition limitation.

Section 16. Filing Requirements for Advertising of Medicare Supplement Policies. (1) An issuer shall provide a copy of any Medicare supplement policy advertisement intended for use in Kentucky whether through written, radio, or television, to the commissioner prior to such use. Advertisements need not be approved prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of the disapproval has been given to the issuer.

(2) Issuers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisements as required by this section. Issuers and agents shall not use such "leads" if the solicitation materials have been disapproved by the commissioner.

Section 17. Policy Delivery. If a Medicare supplement policy is not delivered by mail, the agent or issuer [~~insurer~~] shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipt to the issuer.

Section 18. Standards for Marketing. (1) An issuer, directly or through its agents or other representatives, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp, or other appropriate means, on the first page of the [~~outline of coverage and the~~] policy the following disclosure: "Notice to buyer: This policy may not cover all of your medical expenses."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(e) Establish auditable procedures for verifying compliance with this subsection.

(2) In addition to the practices prohibited in KRS Chapter 304.12 and 806 KAR Chapter 12, the following acts and practices are prohibited:

(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(3) The terms "Medicare supplement", "Medigap", "Medicare Wrap-Around", and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

Section 19. Appropriateness of Recommended Purchase and Excessive Insurance. (1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of recommended purchase or replacement.

(2) Any sale of medicare supplement coverage that will provide an individual more than one (1) Medicare supplement policy or certificate is prohibited.

Section 20. Reporting of Multiple Policies. (1) On or before March 1 of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one (1) Medicare supplement insurance policy or certificate:

(a) Policy and certificate number; and

(b) Date of issuance.

(2) The items set forth above shall be grouped by individual policyholder.

Section 21. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods, and Probationary Periods in Replacement Policies or Certificates. (1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy for similar benefits to the extent such time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods.

APPENDIX A

MEDICARE SUPPLEMENT REFUND CALCULATION FORM

FOR CALENDAR YEAR_____

TYPE_____SMSBP (W)_____For the State of_____

Company Name_____

NAIC Group Code_____NAIC Company Code_____

Person Completing This Exhibit_____

Title_____Telephone Number_____

Line	(a) Earned Premium (x)	(b) Incurred Claims (y)
1. Current year's experience		
a. Total (all policy years)		
b. Current year's issues (2)		
c. Net (for reporting purposes = 1a - 1b)	-----	-----
2. Past year's experience (all policy years)	-----	-----
3. Total experience (net current year + past years' experience)	-----	-----
4. Refunds last year (excluding interest)		
5. Previous since inception (excluding interest)		
6. Refunds since inception (excluding interest)		
7. Benchmark ratio since inception (SEE WORK-SHEET FOR RATIO 1)		
8. Experienced ratio since inception		

Total actual incurred claims (line 3, col b) = Ratio 2

Tot. earned prem. (line 3, col a) - refunds since inception (line 6)

9. Life years exposed since inception_____

If the experienced ratio is less than the benchmark ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.

10. Tolerance permitted (obtained from credibility table)_____

11. Adjustment to incurred claims for credibility

ratio 3 = ratio 2 + tolerance

If ratio 3 is more than benchmark ratio (ratio 1), a refund or credit to premium is not required.

If ratio 3 is less than the benchmark ratio, then proceed.

12. Adjusted incurred claims =

(tot. earned premiums (line 3, col a) - refunds since inception (line 6)) x ratio 3 (lines 11)

13. Refund = total earned premium (line 3, col a) - refunds since inception (line 6) -

Adjusted incurred claims (line 12)

---

benchmark ratio (ratio 1)

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

Medicare Supplement Credibility Table

Life Years Exposed Since Inception	Tolerance
10,000 +	0.0%
5,000 - 9,999	5.0%
2,500 - 4,999	7.5%
1,000 - 2,499	10.0%
500 - 999	15.0%

If less than 500, no credibility.

(w) "SMSBP" = Standardized Medicare Supplement Benefit Plan.

(x) Includes model loadings and fees charged.

(y) Excludes active life reserves.

(z) This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios".

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

_____

Signature

_____

Name - Please Type

_____

Title

_____

Date

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO
SINCE INCEPTION FOR INDIVIDUAL POLICIES
FOR CALENDAR YEAR_____
TYPE_____SMSBP (P)_____
FOR THE STATE OF_____
Company Name_____
NAIC Group Code_____ NAIC Company Code_____
Address_____
Person Completing this Exhibit_____
Title _____ Telephone Number_____

(a) Year	(b) Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o) Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.4
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
			-----		-----		-----		-----	
TOTAL:		(k):		(l):		(m):		(n):		

Benchmark ratio since inception: (l + n) / (k + m):

(a): Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2
(etc.)
(Example: If the current year is 1991, then: year 1 is 1990; year 2 is 1989; etc.)

(b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

(o): Those loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit Plan.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO
SINCE INCEPTION FOR GROUP POLICIES
FOR CALENDAR YEAR_____
TYPE_____SMSBP (P)_____
FOR THE STATE OF_____
Company Name_____
NAIC Group Code_____ NAIC Company Code_____
Address_____
Person Completing this Exhibit_____
Title _____ Telephone Number_____

(a) Year	(b) Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o) Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46

2	4.175	0.567	0.000	0.000	0.63
3	4.175	0.567	1.194	0.759	0.75
4	4.175	0.567	2.245	0.771	0.77
5	4.175	0.567	3.170	0.782	0.8
6	4.175	0.567	3.998	0.792	0.82
7	4.175	0.567	4.754	0.802	0.84
8	4.175	0.567	5.445	0.811	0.87
9	4.175	0.567	6.075	0.818	0.88
10	4.175	0.567	6.650	0.824	0.88
11	4.175	0.567	7.176	0.828	0.88
12	4.175	0.567	7.655	0.831	0.88
13	4.175	0.567	8.093	0.834	0.89
14	4.175	0.567	8.493	0.837	0.89
15	4.175	0.567	8.684	0.838	0.89
TOTAL:	(k):	(l):	(m):	(n):	

Benchmark ratio since inception: (l + n) / (k + m):

(a): Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2
(etc.)
(Example: If the current year is 1991, then: year 1 is 1990; year 2 is 1989; etc.)

(b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

(o): Those loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit Plan.

APPENDIX B
FORM FOR REPORTING
MEDICARE SUPPLEMENT POLICIES

Company Name: _____
Address: _____
Phone Number: _____
Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Certificate # Date of Issuance

_____
_____
_____
_____

Signature _____

Name and Title (Please Type) _____

Date _____

KENTUCKY MEDICARE SUPPLEMENT COMPARISON STATEMENT

Current Insurance_____Annual Premium_____
(Insurer Name)
Proposed Insurance_____Annual Premium_____
(Insurer Name)

MEDICARE (PART A): HOSPITAL INSURANCE - COVERED SERVICES PER BENEFIT PERIOD (1)

PRIVATE INSURANCE CHECKLIST

Services	Benefit	Medicare Pays*	You Pay*	Current Insurance Pays (Plan)** (Plan)**	Proposed Insurance Pays (Plan) (Plan)
HOSPITALIZATION Semiprivate room and board, general nursing and miscellaneous hospital services and supplies.	First 60 days	All but $	$		
	61st to 90th day	All but $ a day	$ a day		
	91st to 150th day***	All but $ a day	$ a day		
	Beyond 150 days	Nothing	All costs		
POSTHOSPITAL SKILLED NURSING FACILITY CARE In a facility approved by Medicare. You must have been in a hospital for at least 3 days and enter the facility within 30 days after hospital discharge (2)	First 20 days	100% of approved amount	Nothing		
	Additional 80 days	All but $ a day	$ a day		
	Beyond 100 days	Nothing	All costs		
HOME HEALTH CARE	Visits limited to medically necessary skilled care.	Full cost of services; 80% of approved amount for durable medical equipment	Nothing for services; 20% of approved amount for durable medical equipment		
HOSPICE CARE Available to terminally ill.	Up to days if doctor certifies need.	All but limited costs for outpatient drugs and inpatient respite care	Limited cost sharing for outpatient drugs and inpatient respite care		
BLOOD	Blood.	All but first 3 pints	For first 3 pints ****		
FOREIGN TRAVEL	Medically necessary emergency care in a foreign country.	Emergency hospital services in qualified Mexican or or Canadian hospitals.*****	All costs not covered by Medicare		

* These figures are for 19___ and are subject to change each year.
** If the policy being replaced is not a standardized policy, insert "N/A" after "Plan" and complete this column.
*** 60 reserve days may be used only once; days used are not renewable.
**** To the extent the blood deductible is met under one part of Medicare during the calendar year, it does not have to be met under the other part.
***** Please refer to your Medicare Handbook for more information.
(1) A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital or skilled nursing facility for 60 days in a row.
(2) Medicare and private Medicare supplement insurance will not pay for most nursing home care. You pay for custodial care and most care in a nursing home.

Form LHM-2 Page 1 of 2
(November, 1991)

KENTUCKY MEDICARE SUPPLEMENT COMPARISON STATEMENT

MEDICARE (PART B): HOSPITAL INSURANCE - COVERED SERVICES PER CALENDAR PERIOD				PRIVATE INSURANCE CHECKLIST	
Service	Benefit	Medicare Pays	You Pay	Current Insurance Pays (Plan)*	Proposed Insurance Pays (Plan)
MEDICAL EXPENSE Physician's services, inpatient and outpatient medical services and supplies, physical and speech therapy, ambulance, etc.	Medicare pays for medical services in or out of the hospital.	80% of approved amount (after $ deductible)	$ Deductible** plus 20% of balance of approved amount (plus any charge above approved amount)***		
HOME HEALTH CARE	Visits limited to	Full cost of ser-	Nothing for ser-		

	medically necessary skilled care	vices; 80% of approved amount for durable medical equipment (after $ deductible)	vices; 20% of approved amount for durable medical equipment (after $ deductible)
AT-HOME RECOVERY BENEFIT	Short-term at-home assistance with activities of daily living ****	Nothing	All costs
OUTPATIENT HOSPITAL TREATMENT	Unlimited if medically necessary	80% of approved amount (after $ deductible)	Subject to deductible plus 20% of approved amount
BLOOD	Blood	80% of approved amount (after $ deductible and starting with 4th pint)	First 3 pints plus 20% of approved amount (after $ deductible)*****
PREVENTIVE CARE-PATIENT EDUCATION	Annual physical exam, preventive testing, influenza vaccines	Screening pap smears once every 3 years; screening mammograms every second year	All costs not covered by Medicare
OUTPATIENT PRESCRIPTION DRUGS	Outpatient prescription drugs	Nothing	All costs
FOREIGN TRAVEL	Medically necessary emergency care in foreign country	Nothing	All costs not covered by Medicare
OTHER******			

*	If the policy being replaced is not a standardized policy, insert "N/A".
**	Once you have had $ of expense for covered services in 19 , the Part B deductible does not apply to any further covered services you receive for the rest of the year.
***	YOU PAY FOR charges higher than the amount approved by Medicare unless the doctor or supplier agrees to accept Medicare's approved amount as the total charge for services rendered.
****	At home recovery benefits must be received in conjunction with Medicare approved home health care benefits.
*****	To the extent the blood deductible is met under one part of Medicare during the calendar year, it does not have to be met under the other part.
******	Use this area to compare prestandardization and/or innovative benefits.

NOTICE TO APPLICANT:
Do not sign this form unless it has been explained to you.

Applicant	Date	Agent	Date

NOTICE TO AGENT/INSURER:
This form is to be retained by the replacing insurer and attached to the replacement policy.

Form LHM-2 Page 2 of 2
(November, 1991)

RONNIE C. MOORE, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: June 5, 1992
FILED WITH LRC: June 11, 1992 at 9 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for July 21, 1992, at 1:30 p.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Ronnie C. Moore, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 1:30 p.m. (ET), on July 21, 1992, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Agency contact person: Patrick Watts

Need for the Proposed Regulation: The proposed regulation is needed to make technical corrections in the regulation. The changes in Sections 14(4) and 18(3) are needed to meet the minimum standards for regulation of Medicare supplement insurance under

federal law. The authorization for additional commissions for agents (Section 13(3)) is made at the request of agents. The rest of the changes are to correct typographical errors.

Type and Numbers of Entities Affected: The regulation will affect 50 insurers which transact Medicare supplement insurance in Kentucky.

a. Direct and indirect cost or savings to those affected:

1. First year: There will be minimal cost involved since the amendments are technical in nature and merely bring Kentucky into compliance with guidelines being used nationwide. However, permitting insurance agents to receive additional compensation may result in additional expenses.

2. Continued cost or savings: Permitting agents to receive more compensation will result in continued costs.

3. Additional factors increasing or decreasing costs: None.

b. Reporting and paperwork requirements: None.

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.

Assessment of Anticipated Effect on State and Local Revenues: None.

Assessment of Alternative Methods; Reasons why Alternatives were Rejected: Alternatives to adoption of the proposed amendments were not considered as to most of the proposed regulation since it is desirable to eliminate typographical errors and assure that the regulation meets the minimum standards required under federal law. The alternative to permitting additional agent compensation would be to leave the regulation as is, but this was rejected in light of the requests received from legislators and agents that additional agent compensation be permitted.

Statutes, Regulations, or Governmental Policies which may Conflict, Overlap, or Duplicate the Proposed Regulation: None.

TIERING: Tiering is recognized throughout the regulation in that the regulation establishes minimum standards and insurers are free to provide Medicare supplement policies which meet or exceed these minimum standards.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

811 KAR 1:215. Kentucky Standardbred Development Fund.

RELATES TO: KRS 230.770

STATUTORY AUTHORITY: KRS 230.770(5), (6)

NECESSITY AND FUNCTION: To regulate the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund. The function of this regulation is to establish eligibility standards and administrative practices to enforce such standards and to establish mandatory criteria for these races and the administration of purses and payments in such races.

Section 1. Beginning with the 1985 breeding season the owner or lessee of any standard bred stallion desiring to use him for breeding purposes and to have him qualify under the Kentucky Standardbred Development Fund must register said stallion by February 1 of the breeding season with the Kentucky Harness Racing Commission. Said stallion shall stand in the Commonwealth of Kentucky for the remainder of the breeding season except if contracted to stand at stud in the southern hemisphere. The registration shall be on forms provided by the commission with a payment of twenty (20) percent of the stud fee or a minimum of $200. A virgin standardbred stallion entering stud for the first time may be registered prior to his first breeding and must stand in the Commonwealth of Kentucky the remainder of the breeding season, except if contracted to stand at stud in the southern hemisphere.

Section 2. Stallions remaining in the state for more than one (1) breeding season shall be renewed annually. A renewal form must be filed by February 1 of the breeding season on forms provided by the commission. The annual renewal fee for stallions to the Kentucky Standardbred Development Fund will be twenty (20) percent of the stud fee with a minimum of $200.

Section 3. Owners of standardbred stallions registered with the commission shall submit by October 1 a report of mares bred during the preceding twelve (12) months. In addition, beginning with foals of 1985 owners shall submit to the Kentucky Standardbred Development Fund a copy of the Foaling Report Sheet sent to the United States Trotting Association of foals dropped.

Section 4. If the commission finds a registration to be incorrect, such registration may be cancelled and notice thereof shall be sent to the owner of the horse.

Section 5. (1) In order to qualify for the Kentucky Standardbred Development Fund, a foal must be the product of the mating of a mare with a Kentucky registered and resident stallion. [~~The mare to be bred must either be a resident at the farm on which the stallion stands or be shipped to the farm on which the stallion stands to be impregnated. The transporting or mailing of a Kentucky registered stallion's semen to a broodmare is strictly prohibited.~~]

(2) A foal conceived by semen which is frozen or [,] desiccated[~~, or transported off the premises where it is produced or not implanted on the same day it is collected,~~] is not eligible for nomination to the Kentucky Standardbred Development Fund. Beginning in 1992, a foal conceived by fresh semen from a Kentucky registered and resident stallion, which is transported intrastate or interstate, is eligible to be nominated to the Kentucky Standardbred Development Fund.

Section 6. Upon failure of an owner or lessee of a registered stallion to furnish the commission requested information relative to the registration of a horse, the commission may suspend or cancel the registration.

Section 7. If the commission finds that an application for registration or transfer contains false or misleading information, the commission may summon the person who executed said application and any other person who has knowledge thereof. Failure to respond to such summons may cause the commission to suspend or cancel the registration of horses owned by such person. After a hearing, the commission may suspend, cancel, or bar from further registration, horses owned by the person who executed the false or misleading information.

Section 8. Any owner or lessee of a stallion eligible or the Kentucky Standardbred Development fund shall designate a resident of Kentucky as an authorized agent who shall be responsible for the registrations and records of the farm and for complying with the requirements of the Kentucky Standardbred Development Fund on behalf of the owner or lessee.

Section 9. The authorized agent application is provided by the Kentucky Harness Racing Commission and must be filed together with the stallion registration.

Section 10. Sires stakes races in which any part of the purse is provided by the Kentucky Standardbred Development Fund shall be subject to the rules and regulations of the Kentucky Harness Racing

Commission.

Section 11. Each colt, gelding or filly participating in a Kentucky sires stakes race must have been sired by a stallion registered with the Kentucky Harness Racing Commission, and maintained eligibility to the Kentucky Standardbred Development Fund.

Section 12. Each race shall be a one (1) mile dash.

Section 13. The race will split if more than eleven (11) declare to start. Thereafter, no division shall contain more than nine (9) horses. In the case of a split the event will be raced as follows: The nominating, sustaining, stallion and starting fees shall be added to the purse and each division shall race for an equal part of that purse.

Section 14. Gait must be specified by the first two (2) year old payment. Change of gait may be made at the time of declaration at the track, but sustaining payments remain in the funds of the original gait specified.

Section 15. All races will be raced in separate colt-gelding and filly divisions.

Section 16. All declaration fees will be added to the purse and will be made payable to the racing association at the time of declaration.

Section 17. The purse will be distributed on the following percentage basis:

(1) 50-25-12-8-5; five (5) starters or more;
(2) 50-25-15-10; four (4) starters;
(3) 60-30-10; three (3) starters;
(4) 65-35; two (2) starters.

The nominating, sustaining, stallion, supplemental and starting fees shall be added to the purse and each division shall race for an equal part of that purse. In 1985, purses for three (3) and two (2) year olds will be $16,500 estimated. This will apply at each of the Kentucky pari-mutuel tracks.

Section 18. Should circumstances prevent the racing of any event, if the race is not drawn, added monies will be equally divided among horses eligible for the uncontested event at the time of declaring off. In the event the race is drawn, the monies will be equally divided among the horses entered to start. This will include stake payments, declaration fees and purses provided by the Kentucky Standardbred Development Fund.

Section 19. Starters will declare in at each track at the time specified by the association conducting the event.

Section 20. At the time of the declaration a started must show at least one (1) charted line with no breaks within the last six (6) starts and within thirty (30) days prior to the day of the race; a two (2) year old trotter must have been timed in 2:14 or faster; a two (2) year old pacer must have been timed in 2:12 or faster; a three (3) year old trotter must have been timed in 2:10 or faster and a three (3) year old pacer must have been timed in 2:08 or faster. A broken equipment break or an interference break will not be considered a break as stated in this section. An eligibility certificate or a clear photocopy of the eligibility certificate must be on deposit with the race secretary at the time of declaration or the declaration will be rejected. If the horse has a start subsequent to the eligibility certificate or photocopy being sent, the declarer must advise the race secretary of the commitment to race or the horse may be scratched from the race. This rule shall be in effect for wagering and nonwagering races.

Section 21. The Kentucky Standardbred Development Fund will be distributed by the Kentucky Harness Racing Commission on an equitable basis to promote the purposes expressed in KRS 230.770. The commission may authorize expenditures at any time; however, the commission may at its scheduled meeting each November, make provisions for the following year's distribution of funds for stake races. The Sires Stakes racing dates shall be issued after the tracks' race dates are set.

Section 22. The Kentucky Standardbred Development Fund will provide a trophy for each event. In the case of division races each division shall receive a trophy.

Section 23. After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year. The two (2) year old March 15 payment must be made in order to remain eligible as a three (3) year old.

Section 24. All nomination and sustaining payments shall be made to the Kentucky Standardbred Development Fund.

Section 25. Payments. All yearlings will be nominated on May 15 and fees will be twenty (20) dollars each. For foals of 1987, a late payment of $100 will be accepted to nominate a yearling if the May 15 deadline is missed. Beginning with foals of 1988 and thereafter, a late payment of $200 will be accepted to nominate a yearling if the May 15 deadline is missed. This supplemental payment may be made at any time prior to the two (2) year old March 15 payment. Fees are payable to the Kentucky Standardbred Development fund.

TWO (2) YEAR OLD PAYMENTS
Foals of 1987 (To be raced in 1989)

March 15th	$ 40
May 15th	$200
Declaration Fee (for each track)	$200

March 15th payment makes entry eligible as a three (3) year old.

TWO (2) YEAR OLD PAYMENTS
Foals of 1988 and Thereafter

March 15th	$100
May 15th	$200
Declaration Fee (for each track)	2% of actual purse

March 15th payment makes entry eligible as a three (3) year old.

THREE (3) YEAR OLD PAYMENTS
Foals of 1986 & 1987
(To be raced in 1989 & 1990)

February 15	$ 80
March 15	$200
Declaration Fee (for each track)	$200

THREE (3) YEAR OLD PAYMENTS
Foals of 1988 and Thereafter

February 15	$100
March 15	$200
Declaration Fee (for each track)	2% of actual purse

WAYNE G. LYSTER, III, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: June 3, 1992
FILED WITH LRC: June 8, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing has been scheduled on this administrative regulation on July 22, 1992, at 10 a.m. at the office of the Kentucky Racing Commission. Anyone interested in attending this hearing shall notify in writing Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, at least five days before the

hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mike Fulkerson

(1) Type and number of entities affected: 20 persons - owners of 30 Kentucky resident and registered standardbred stallions.

(a) Direct and indirect costs or savings to those affected: Minimal cost of shipping stallion semen; costs transferred to recipient.

1. First year: Initial costs of obtaining containers necessary for shipment, and shipping costs.

2. Continuing costs or savings: Continual shipping costs during breeding season.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Could increase bookings to Kentucky stallions, will permit owners of mares to keep mare on home farm thereby reducing risk of injury to mare and possibly foal.

(b) Reporting and paperwork requirements: Requires additional paperwork for owner of stallion and recipient of transported semen to U.S.T.A.

(2) Effects on the promulgating administrative body: Minimal effect of agency, as owners of stallions are responsible for reporting.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings.

1. First year: No direct or indirect costs or savings.

2. Continuing costs or savings: There would be no continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors would increase or decrease costs.

(b) Reporting and paperwork requirements: Minimal effect on agency, as only a copy of mares bred would be required.

(3) Assessment of anticipated effect on state and local revenues: Minimal effect on revenues as very few farms would participate.

(4) Assessment of alternative methods; reasons why alternatives were rejected: In November of 1990, the U.S. Trotting Association passed a regulation permitting the transportation of fresh stallion semen in the United States. Permitting transportation resolved a long-standing conflict with the Canadian Trotting Association regarding registration of horses. In November of 1991, the U.S.T.A. presented forms for reporting requirements to be used when stallion semen is transported. Not all requirements were finalized. At a January 1992 regional meeting of the U.S.T.A. held at the Red Mile in Lexington, a number of members present expressed the desire to be permitted to transport stallion semen, with the resultant foals to be eligible to the Kentucky Sires Stakes. The current Kentucky Standardbred Development Fund regulation strictly prohibits transportation of stallion semen. A public meeting was held at the office of the Kentucky Harness Racing Commission in late January, 1992. Approximately 40 owners of Standardbred farms were present, along with other interested parties. The vast majority present expressed a strong interest in being permitted to transport fresh stallion semen, with the foals to be eligible to the Kentucky Sires Stakes. The majority of those present believed that the Standardbred Industry was in such a state of decline in Kentucky that it would be in the best interest of the industry to try to stimulate business by transporting semen. However, most of the owners present did not believe that their farms would participate. The cost of transporting fresh stallion semen, and the precision with which it must be used to impregnate a mare, make the process too complicated for most Standardbred breeders. The majority present felt that they would like to have the option to transport or receive fresh stallion semen if they should so choose.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict with KRS, administrative regulation or 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: See (4).

TIERING: Was tiering applied? No. Tiering was not applicable as all registered stallions are treated the same.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS Chapter 13A, 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation will allow the department to permit the use of new parts and materials without amending specific regulations for each new item. This regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to add a new product approved by the Plumbing Code Committee on May 26, 1992. ~~[This amendment is necessary to add a new product approved by the Plumbing Code Committee on November 6, 1991.]~~

Section 1. Definitions as used in this regulation. (1) "APML" shall mean the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" shall mean all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" shall mean the State Plumbing Code Committee.

(6) "Code" as defined by KRS 318.010(11).

(7) "Department" as defined by KRS 318.010(1).

(8) "Person" as defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). The use of any part or material in any drainage or plumbing system, other than those currently authorized by the code, is prohibited unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include a description of the part or material for which approval is sought, available technical data, and a listing of other authorities which have approved the use of the part or material, and any other pertinent information requested by the committee.

(2) The committee shall consider all parts or materials for which approval is sought and shall forward thirty (30) days thereafter its recommended disposition to the department. A hearing shall be held before the committee if requested, within thirty (30) days following the determination of the committee, by a person having an interest in the subject matter. Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this regulation.

Section 4. Custody of the APML. It shall be the responsibility of the Director, Division of Plumbing, to maintain an up-to-date APML

and to make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for all the tensile strength, durability, etc., of the standard, ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 12, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 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: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings because the regulation only establishes acceptability of previously unapproved products. Provides ability of manufacturer to market his product in state.

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: Paperwork requirements and recordkeeping needs remain the same; no costs or savings involved.

(2) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

(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: Unchanged by this amendment.

(3) Assessment of anticipated effect on state and local revenues:

No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(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 used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Vital Records
(Proposed Amendment)

901 KAR 5:050. Fees for searches, certified copies of certificates and records.

RELATES TO: KRS [~~Chapter~~] 213.141

STATUTORY AUTHORITY: KRS [~~Chapter~~] 213.141, HB 468, Part I.G. 52g of the 1992 General Assembly, p. 63 (appropriation) p. 65 (fee authority) [~~, H.B. 64, H.B. 799 as enacted by the 1990 General Assembly~~]

NECESSITY AND FUNCTION: KRS [~~Chapter~~] 213.141 directs the Cabinet for Human Resources to set a reasonable fee by administrative regulation for searches [~~and~~] or for copies of the record of any birth, [~~or~~] death, marriage or divorce.

Section 1. Fees for Searches and, Certified Copies of Certificates and Records. The following fees shall be charged for searches for and copies of records registered with the State Registrar of Vital Statistics, Cabinet for Human Resources:

RECORD	RECORD SEARCH AND CERTIFIED COPY	RECORD SEARCH AND NO COPY
Death	$6.00 [~~5.00~~]	$6.00 [~~5.00~~]
Marriage	$6.00 [~~5.00~~]	$6.00 [~~5.00~~]
Divorce	$6.00 [~~5.00~~]	$6.00 [~~5.00~~]
Birth	$7.00 [~~6.00~~]	$7.00 [~~6.00~~]

PATRICIA K. NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: June 9, 1992

FILED WITH LRC: June 10, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 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 July 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: Robert N. Hurst III

(1) Type and number of entities affected: Will affect an estimated 300,000 individuals requesting certified records of birth, death, marriage and divorce certificates by a one (1) dollar increase in fees.

(a) Direct and indirect costs or savings to those affected: Increases the fee of certified records of birth, death, marriage and divorce by one (1) dollar.

1. First year: $320,000 (est.) direct costs increase for certified records of birth, death, marriage and divorce certificates.

2. Continuing costs or savings: Increase in direct costs to individuals of one (1) dollar for certified records of birth, death, marriage and divorce.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors. Vital Statistics is sole provider of certified records of birth, death, marriage and divorce.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: Application forms for the request of these records will be revised to denote increase in fees.

(a) Direct and indirect costs or savings: No additional direct costs for forms. Routinely printed upon request.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Slight increase in costs due to notification to public of increased fees.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Increase in state revenues of $320,000 (est.), FY 1993, with revenues projected to increase 2% annually thereafter.

(4) Assessment of alternative methods; reasons why alternatives were rejected: HB 468 specifies one (1) dollar increase in fees.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: HB 468 is in conflict with 213.141 and 901 KAR 5:050E in specification of fees for birth, death, marriage and divorce records.

(a) Necessity of proposed regulation if in conflict: Provides for increasing fees of birth, death, marriage and divorce as specified in HB 468.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Requires revision of emergency administrative regulation specified by HB 468.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Applies to all individuals equally.

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

902 KAR 10:021. License fees for frozen food locker plants.

RELATES TO: KRS 221.020, HB 468 [~~799~~]

STATUTORY AUTHORITY: KRS 194.050, 221.020, HB 468 Part I.G. 52g of the 1992 GA, p. 63 (appropriation) p. 65 (fee authority) [~~799 of the 1990 GA~~]

NECESSITY AND FUNCTION: KRS 194.050 and HB 468 [~~799~~] authorizes the Secretary for Human Resources to adopt a reasonable schedule of fees covering all charges for health services provided by the Cabinet for Human Resources and any local health department. This administrative regulation is to set forth a licensing fee relative to frozen food locker plants.

Section 1. All applications for a license to operate a frozen food locker plant or branch frozen food locker plant shall be accompanied by a license fee of twenty (20) [~~eighteen (18)~~] dollars.

PATRICIA K. NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: June 8, 1992
FILED WITH LRC: June 10, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 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 July 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 T. Corum
(1) Type and number of entities affected: 3 frozen food lockers.
(a) Direct and indirect costs or savings to those affected:
1. First year: Increases permit to operate fee $2 per year.
2. Continuing costs or savings: Minimal
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No additional.
(2) Effects on the promulgating administrative body: Assists in off-setting program cost.
(a) Direct and indirect costs or savings:
1. First year: No additional.
2. Continuing costs or savings: Minimal
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional.
(3) Assessment of anticipated effect on state and local revenues: $6
(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: None
(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 applied. The increase is only $2 per establishment. There are 3 frozen food lockers in Kentucky.

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. Local health departments, environmental services.
3. State the aspect or service of local government to which this administrative regulation relates. Increase state permit fee collected.
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: Increases state permit funds collected by local health departments.

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

902 KAR 10:060. On-site sewage disposal.

RELATES TO: KRS 211.350(5)
STATUTORY AUTHORITY: KRS 194.050, 211.350(5), HB 468, Part I, G. 52. g. of the 1992 GA, p 63 (appropriation) p 65 (fee authority) [~~799 of the 1990 GA~~]
NECESSITY AND FUNCTION: KRS 211.350(5) and HB 468 [~~799~~] authorize the Cabinet for Human Resources to establish a schedule of reasonable fees to cover the costs of services performed by the cabinet with respect to on-site sewage disposal systems. The function of this administrative regulation is to set forth the fee to be charged in order to cover the actual cost to the cabinet of the administration of the on-site sewage disposal system program.

Section 1. All applications for a permit to construct, install, or alter an on-site sewage disposal system filed with the cabinet or its agent shall be accompanied by a fee of thirty (30) [~~twenty five (25)~~] dollars.

PATRICIA K. NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: June 11, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 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 July 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 T. Corum
(1) Type and number of entities affected: All applicants requesting to construct, alter, or install an on-site sewage system and installers requesting certification.
(a) Direct and indirect costs or savings to those affected:
1. First year: Increases of $5 per application.
2. Continuing costs or savings: Minimal
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No additional.
(2) Effects on the promulgating administrative body: Establishes a fee schedule to assist in off-setting program cost.
(a) Direct and indirect costs or savings:
1. First year: No additional.
2. Continuing costs or savings: Minimal
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional.
(3) Assessment of anticipated effect on state and local revenues: Expected increase in state revenue of approximately $38,000.
(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: None
(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 applied due to uniform requirements, size, etc.

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. Local health departments, environmental services.
3. State the aspect or service of local government to which this administrative regulation relates. Increase inspection and permit fees collected, no change in services.
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: Increases state inspection and permit funds collected by local health departments.

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

902 KAR 10:121. Inspection fees for public swimming and bathing facilities.

RELATES TO: HB 468 [~~799~~]
STATUTORY AUTHORITY: KRS 194.050, HB 468, Part I, G. 52, g. of the 1992 GA, p. 63 (appropriation) p. 65 (fee authority) [~~HB 799 of the 1990 GA~~]
NECESSITY AND FUNCTION: KRS 194.050 and HB 468 [~~799~~] authorize the Secretary for Human Resources to adopt a schedule of reasonable fees covering the cost of annual inspections provided by the Cabinet for Human Resources and any local health department. This administrative regulation sets forth a schedule of fees for inspectional services related to public swimming and bathing facilities.

Section 1. Fees for Inspections. For inspections conducted by the department or its representatives to determine compliance with administrative regulation 902 KAR 10:120 adopted by the cabinet pursuant to KRS 194.050, HB 468 [~~492 and HB 516~~], public swimming and bathing facilities shall be subject to the payment of the following fees:
(1) Swimming and bathing facilities with a total water surface area of less than 1,000 square feet; or beach fronts of less than 150 linear feet - sixty-five (65) [~~sixty (60)~~] dollars per year.
(2) Swimming and bathing facilities with a total water surface area of 1,000 square feet or greater; or beach fronts of 150 linear feet or greater - $125 [~~120~~] per year.

Section 2. Payment of Fees. (1) Fees shall be paid to the local health department having jurisdiction. Fees received by local health department shall be deposited in the Kentucky State Treasury in a trust and agency account for use solely in administering the program. Inspection fees shall be submitted annually prior to May [~~July~~] 1. For newly constructed facilities such fees shall be initially submitted at the preopening inspection and at each May [~~July~~] 1 date thereafter.

PATRICIA K. NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: June 11, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by July 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 T. Corum
(1) Type and number of entities affected: All public swimming pools and bathing area owners.
(a) Direct and indirect costs or savings to those affected:
1. First year: Increase all pool and beach inspection fee $5.
2. Continuing costs or savings: Minimal
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No additional.
(2) Effects on the promulgating administrative body: Establishes a fee schedule to assist in off-setting program cost. Changes annual payment of inspection fee date from July 1 to May 1.
(a) Direct and indirect costs or savings: Minimal
1. First year: Minimal
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: No additional.
(b) Reporting and paperwork requirements: No additional.
(3) Assessment of anticipated effect on state and local revenues: Expected increase in state revenue of approximately $8,000.
(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: None
(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? Yes. Fees are tiered by square footage of public bathing facilities and linear footage of public beach facilities.

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. Local health departments, environmental services.
3. State the aspect or service of local government to which this administrative regulation relates. Increases inspection and permit fees collected, no change in services.
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: Increases state inspection and permit fund collected by local health departments.

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

902 KAR 10:130. Licensing fee for septic tank servicing.

RELATES TO: KRS 211.972, HB 468 [~~799~~]
STATUTORY AUTHORITY: KRS 194.050, 211.976, 211.978, HB 468, Part I, G. 52. g. of the 1992 GA, p. 63 (appropriation) p. 65 (fee authority) [~~211.972, HB 799 of the 1990 GA~~]
NECESSITY AND FUNCTION: KRS 194.050 and HB 468 [~~799~~] authorize the Secretary for Human Resources to adopt a reasonable schedule of fees to cover all charges for health services provided by the Cabinet for Human Resources with respect to the servicing of septic tanks. The function of this administrative regulation is to set forth the fees to be charged.

Section 1. All applications for a business license to service or maintain [~~a~~] septic tanks, seepage pits, or cesspools shall be accompanied by a license fee of $120 [~~110~~].

Section 2. All applications for a vehicle license to service or maintain septic tanks, seepage pits, or cesspools shall be accompanied by a license fee of forty (40) [~~thirty-five (35)~~] dollars for each vehicle.

PATRICIA K. NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by July 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 T. Corum
(1) Type and number of entities affected: All septic tank servicing companies.
(a) Direct and indirect costs or savings to those affected:
1. First year: Increase of $10 per company and $5 per vehicle.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No additional.
(2) Effects on the promulgating administrative body: Establishes a fee schedule to assist in off-setting program cost.
(a) Direct and indirect costs or savings:
1. First year: Minimal
2. Continuing costs or savings: Minimal
3. Additional factors increasing or decreasing costs: No additional.
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: $4,000
(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? Yes. Fees are a flat rate for each company and a flat rate per septic tank cleaning vehicle.

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. Local health departments, environmental services.
3. State the aspect or service of local government to which this administrative regulation relates. Increases business and vehicle license fees collected, no change in services.
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: Increases state license fees collected by local health departments.

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

902 KAR 45:110. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, and vending machine companies.

RELATES TO: KRS 217.025, 217.035, 217.037, 217.125(2), (3), (4), 217.811
STATUTORY AUTHORITY: KRS 194.050, 217.125(2), (3), (4), 217.811, HB 468, Part I, G. 52, g. of the 1992 GA, p. 63 (appropriation) p. 65 (fee authority) [~~HB 799 of the 1990 GA~~]
NECESSITY AND FUNCTION: KRS 217.125(2), 217.811, and HB 468 [~~799~~] authorize the Secretary of Human Resources to provide by administrative regulation a schedule of reasonable fees to be paid by food manufacturing plants, food storage warehouses, retail food establishments, salvage distributors, salvage processing plants, and vending machine companies for permits to operate and inspectional activities carried out by the Cabinet for Human Resources. This administrative regulation sets forth the fee to be charged.

Section 1. Fees. (1) Permit fees are required for inspections conducted by the cabinet or its representatives to determine compliance with administrative regulations adopted by the cabinet for salvage distributors and salvage processing plants, and to determine compliance with KRS 217.025, 217.035 and 217.037 applicable to food manufacturing plants and food storage warehouses. A fee according to the total square footage of the establishment shall be assessed as follows[~~, not to exceed the total amount of $300 per year shall be assessed~~].
0 - 5,000 square feet - $60 [~~50~~].
5,001 - 30,000 square feet - $110 [~~100~~].
30,001 [~~30,000~~] - and over square feet - $210 [~~200~~].
(2) With respect to retail food stores, for inspections conducted by the cabinet or its representative to determine compliance with administrative regulations adopted by the cabinet pertaining to adulteration, misbranding, packaging and labeling of food products pursuant to KRS 217.025, 217.035, 217.037 and 217.125(2), a fee

according to the total square footage of the establishment shall be assessed as follows[~~, not to exceed the sum of seventy (70) dollars per year, shall be assessed~~].

0 - 1,000 square feet - $20 [~~10~~].

1,001 - 10,000 square feet - $40 [~~30~~].

10,001 - and over square feet - $70 [~~60~~].

(3) With respect to vending machine companies, each application for a permit to operate shall be accompanied by a fee of twenty (20) [~~eighteen (18)~~] dollars for each vending commissary plus a fee for the total number of vending machines operated by the applicant as follows:

1-25 machines	Fee	$ 80 [~~70~~]
26-50 machines	Fee	$120 [~~110~~]
51-100 machines	Fee	$160 [~~150~~]
101-150 machines	Fee	$190 [~~180~~]
151 and over machines	Fee	$310 [~~300~~]

(4) With respect to food service establishments, each application for a permit to operate shall be accompanied by a fee of forty-five (45) [~~thirty-five (35)~~] dollars plus the following:

(a) Permanent food service establishments with no seats or twenty-five (25) seats or less - forty-five (45) [~~forty (40)~~] dollars per year.

(b) Permanent food service establishments with twenty-six (26) to fifty (50) seats - sixty-five (65) [~~sixty (60)~~] dollars per year.

(c) Permanent food service establishments with more than fifty (50) seats - seventy-five (75) [~~seventy (70)~~] dollars per year.

(5) With respect to temporary food service establishments, each application for a permit to operate shall be accompanied by a fee of twenty (20) [~~eighteen (18)~~] dollars.

Section 2. Payment of Fees. Payment of fees shall be made to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury.

Section 3. Exemptions. State and local government agencies shall be exempt from the payment of fees.

[~~Section 4. Effective Date. The fees set out in Section 1(1), (2), and (3) of this regulation shall become effective January 1, 1991 for existing establishments.~~]

PATRICIA K. NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: June 11, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by July 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 T. Corum

(1) Type and number of entities affected: All food manufacturing plants, retail food markets, food vending companies, warehouses and distributors.

(a) Direct and indirect costs or savings to those affected:

1. First year: Increase of $10 per permit for food manufacturing and retail food markets. Increase of $2 for vending commissaries and tiers increases of $10 to tier for numbers of machines owned.

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional.

(2) Effects on the promulgating administrative body: Establishes a fee schedule to assist in off-setting program cost.

(a) Direct and indirect costs or savings:

1. First year: Minimal

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional

(3) Assessment of anticipated effect on state and local revenues: $46,000

(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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied because a different fee is charged for different size establishments.

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. Local health departments, environmental services.

3. State the aspect or service of local government to which this administrative regulation relates. Increases inspection and permit fees collected, no change in services.

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: Increases state inspection and permit funds collected by local health departments.

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

902 KAR 45:120. Inspection fees; permit fees; hotels, mobile home and recreational vehicle parks.

RELATES TO: KRS 219.021 [~~219.031~~], 219.041, 219.340 [~~219.330~~], 219.350

STATUTORY AUTHORITY: KRS 194.050, 219.021, 219.041[~~(4)~~], 219.340, 219.350, HB 468 Part I, G. 52, g. of the 1992 GA p. 63 (appropriation) p. 65 (fee authority) [~~HB 799 of the 1990 GA~~]

NECESSITY AND FUNCTION: KRS 194.050, 219.041[~~(4)~~] and HB 468 [~~799~~] authorize the Secretary for Human Resources to provide by administrative regulation a schedule of reasonable fees to be paid by hotels, mobile home and recreational vehicle parks to cover the cost of inspection activities carried out by the Cabinet for Human Resources. This administrative regulation is to set forth the fees to be charged.

Section 1. Fees for Inspections. For inspections conducted by the cabinet or its representative to determine compliance with administrative regulations adopted by the cabinet pursuant to KRS 219.041, hotels shall be subject to the payment of the following fees:

(1) Hotels with twenty-five (25) rooms or less - forty (40) [~~thirty-five (35)~~] dollars per year.

(2) Hotels with twenty-six (26) rooms or more - seventy-five (75) [~~seventy (70)~~] dollars per year.

Section 2. Permit Fees for Hotels and Mobile Home and Recreational Vehicle Parks. (1) Each application for an annual permit to operate a hotel, shall be accompanied by a fee as follows: Hotels - forty-five (45) [~~thirty-five (35)~~] dollars per year.

(2) Each application for an annual permit to operate a mobile home or recreational vehicle park shall be accompanied by a fee as follows:

(a) Mobile home or recreational vehicle park with ten (10) spaces or less - eighty (80) [~~seventy (70)~~] dollars.

(b) Parks with more than ten (10) spaces - $120 [~~110~~].

(3) Each application for a permit to construct or alter a mobile home or recreational vehicle park shall be accompanied by a fee of thirty-five (35) dollars.

Section 3. Payment of Fees. (1) Fees shall be paid to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury. Inspection fees shall be submitted with the application for a permit to operate as required by KRS 219.021 or 219.340 as applicable.

Section 4. Exemptions. All facilities operated by the Cabinet for Human Resources or the Corrections Cabinet shall be exempt from the payment of inspection fees.

PATRICIA K. NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: June 11, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by July 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 T. Corum

(1) Type and number of entities affected: All food service establishments, hotels, mobile home and recreational vehicle parks.

(a) Direct and indirect costs or savings to those affected:

1. First year: Increase in inspection fees of $5 for hotels and mobile home parks. Increase in permit fees of $10 for hotels and mobile home parks and $5 for mobile home construction permits.

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional.

(2) Effects on the promulgating administrative body: Establishes a fee schedule to assist in off-setting program cost.

(a) Direct and indirect costs or savings:

1. First year: Minimal

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional.

(3) Assessment of anticipated effect on state and local revenues: $31,195

(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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Tiering was applied because a different fee is charged for different size establishments.

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. Local health departments, environmental services.

3. State the aspect or service of local government to which this administrative regulation relates. Increases inspection and permit fees collected, no change in services.

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: Increases state inspection and permit funds collected by local health departments.

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

902 KAR 100:012. Fee schedule.

RELATES TO: KRS 211.840 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.848, HB 468, Part I.G.#52.g. of the 1992 GA, p. 63 (appropriation) and p. 65 (fee authority) [~~1990 Acts, c. 514, HB 700, Part I.G. #56.d~~]
NECESSITY AND FUNCTION: KRS 211.848(1) authorizes the Cabinet for Human Resources [~~is empowered by KRS 211.848~~] to establish a reasonable schedule of fees [~~provide~~] by administrative regulation. These fees shall [~~for a reasonable schedule of fees and charges to~~] be paid by applicants for registration of radiation producing machines and radioactive material licenses and for their [~~the~~] renewal, [~~thereof and for inspections~~] and for environmental surveillance activities conducted by the cabinet. The purpose of this administrative regulation is to establish a fee schedule for registration, licensing and inspection services.

Section 1. Applicability. This administrative regulation [~~relating to fees~~] shall apply to applicants, registrants and licensees of radiation producing machines and radioactive materials.

Section 2. Radiation Producing Machine Schedule of Annual Fees and Charges. The following schedule of annual fees applies to radiation producing machine registrants. Applications for registration or annual renewals shall be accompanied by the appropriate fee established [~~set forth~~] below:

(1) Each diagnostic x-ray tube; therapeutic x-ray tube capable of operating up to 150 kVp; or industrial x-ray tube - $50 [~~40~~].

(2) Each therapeutic x-ray tube capable of operating at 150 kVp

or above (including particle accelerators) - $50 [40].
(3) Other x-ray tubes not specified above - $50 [40].

Section 3. Radioactive Material License Schedule of Annual Fees and Charges. The following schedule applies to radioactive material licenses. Initial and renewal applications shall be accompanied by the [appropriate] fee established [set forth] in this section.
(1) Specific radioactive material licenses initial and annual fee.
(a) Human use.
1. Nuclear medicine - $450 [360].
2. Teletherapy - $450 [300].
3. Mobile scanning - $450 [360].
4. Other - $375 [360].
(b) Industrial radiography - $450 [360].
(c) Wireline service - $450 [360].
(d) Broad scope - $600 [475].
(e) Nuclear laundry - $900 [715].
(f) Irradiator.
1. Self-contained - $225 [180].
2. Unshielded during irradiation - $900 [715].
(g) Manufacturing/processing/distribution.
1. Industrial gauging devices - $750 [600].
2. In vitro/In vivo kits - $600 [475].
3. Radiopharmaceuticals - $900 [715].
4. Other - $900 [715].
(h) Industrial gauging devices - $225 [180].
(i) In vitro and clinical laboratory - $225 [180].
(j) Veterinary use - $375 [300].
(k) Services (e.g., leak testing) - $150 [120].
(l) Other (nonspecified) - $225 [180].
(m) Application for review [distribution] of a new sealed source or [and] device or the application for review [the use] of a custom device in addition to the fees [specified] in paragraphs (a) through (l) of this subsection - $600 [475].
(2) General radioactive material licenses initial and annual fee.
(a) In vitro or medical use specified in 902 KAR 100:050, Sections 4 and 5 - $75 [60].
(b) Measuring, gauging or controlling devices (except emergency exit signs) - $75 [60].
(3) An application to amend an existing specific license - $75 [60].
(4) An application for initial reciprocal recognition of an out-of-state license under 902 KAR 100:065 - $300.

Section 4. General Requirements. (1) General radioactive material licenses shall expire on July 31 following the date of issuance.
(2) Radiation producing machine registration certificates shall expire on the last day of the month, one (1) year after the date of issuance.
(3) General radioactive material license fees shall be paid on or before July 31 of each year.
(4) Specific radioactive material licenses shall be renewed annually based on the expiration date stated in the license.
(5) Radiation producing machine registration fees shall be paid within forty-five (45) days of the bill date. Payments postmarked more than forty-five (45) days of the bill date are subject to $100 late payment penalty in addition to the registration fee.
(6) Payment of fees and other charges shall be submitted to Radiation Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621-0001, in the form of a check or money order payable to the Kentucky State Treasurer. [The cabinet may designate the form of payment.]
(7) The cabinet may designate the form of payment.
(8) If a check issued for payment of the fees set in this administrative regulation is returned to the state treasurer due to insufficient funds, payment will be resubmitted in the form of a money order or cashier's check.
(9) [(7)] Registration and licensing application fees are nonrefundable.
(10) [(8)] Failure to submit an [any] applicable fee set forth in this administrative regulation shall be deemed a violation and subject to the provisions of 902 KAR 100:170.

PATRICIA NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 19, 1992
FILED WITH LRC: May 20, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1992, at 9 a.m. in the Vital Statistics Conference Room, First 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 July 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: John A. Volpe
(1) Type and number of entities affected: Approximately 3,100 radiation producing machine registrants and 900 radioactive material licensees.
(a) Direct and indirect costs or savings to those affected:
1. First year: Direct costs to all registrants will be $10 more per x-ray tube per year. Direct cost to licensees will be a 25% increase over existing fees. There are no associated indirect costs.
2. Continuing costs or savings: Costs will continue each year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.
(2) Effects on the promulgating administrative body: It will be necessary for the promulgating body to make a one-time computer program change.
(a) Direct and indirect costs or savings:
1. First year: First year costs will be approximately $70 for computer programming changes.
2. Continuing costs or savings: There will be no continuing costs.
3. Additional factors increasing or decreasing costs: No additional reporting or paperwork requirements.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: An increase in state revenues of approximately $91,000 will occur.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives would have involved staff reductions which would have made program continuation impossible.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.
(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. Fees are tiered on a basis of the greater the number of x-ray tubes or the more complex a radioactive material license, the greater the fee.

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 administrative regulation affects local government entities with radiation producing machines such as local health departments and county hospitals.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services or, in a few instances, airport boards or authorities, that utilize radiation producing machines.

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 will involve each local government entity which operates a radiation producing machine. The amendment to the regulation will raise radiation producing machine registration fees $10 per x-ray tube per year.

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

902 KAR 105:020. General requirements.

RELATES TO: KRS 211.870, 211.890, 211.993

STATUTORY AUTHORITY: KRS 194.050, 211.090, HB 468, Part I.G.#52. g. of the 1992 GA, p. 63 (appropriation) and p. 65 (fee authority) [~~1990 Acts, Chapter 514, HB 790 Part I.G #56.d~~]

NECESSITY AND FUNCTION: KRS 211.870, 211.890 and 211.933 authorizes the Cabinet for Human Resources [~~is authorized by KRS 211.870, 211.890 and 211.993~~] to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform general requirements for the certification of operators of sources of radiation.

Section 1. General Applicability. The Cabinet for Human Resources' administrative regulations relating to radiation operators require the certification of operators of sources of radiation, other than licensed practitioners of the healing arts, for which a specific administrative regulation has been adopted requiring certification within a particular field of practice or operation. The regulation of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste are not covered by these administrative regulations. Nothing contained in these administrative regulations shall be deemed to require the certification of students enrolled in an approved course of instruction in relation to the healing arts or allied health sciences and employees of the federal government, while engaged in the performance[~~, within this state,~~] of their official duties within this state.

Section 2. Application for Certification. (1) Applications for certification as an operator of sources of radiation shall be filed with the Cabinet for Human Resources, Radiation Control, 275 East Main Street, Frankfort, Kentucky 40621. [~~Applications shall be submitted on forms provided by the cabinet.~~]

(2) Applicants for certification shall, as a condition for [~~precedent to~~] certification, be in compliance with the applicable administrative regulations of the cabinet relating to their particular field of practice or operation.

(3) General and limited certificates shall expire on the last day of the month, two (2) years after the date of issuance.

(4) Temporary and provisional certificates shall expire on the last day of the month, one (1) year after the date of issuance and are not renewable.

Section 3. Examinations. (1) A general or limited certificate shall be issued upon passage of an appropriate examination, approved by the cabinet, in the field of practice or operation for which certification is sought.

(a) Examinations shall be divided into appropriate sections and a minimum grade of seventy-five (75) percent is required for passage.

(b) A person [~~An individual~~] shall be allowed to retake the limited examination no more than three (3) times within a calendar quarter.

(2) The cabinet may accept in lieu of an examination conducted by the cabinet: [~~,~~]

(a) A valid certificate from a national organization acceptable to the cabinet if the holder is otherwise qualified for certification and has earned his certificate by passing an appropriate examination.

[~~(3) The cabinet may accept, in lieu of an examination conducted by the cabinet,~~]

(b) A valid certificate from another state or political subdivision acceptable to the cabinet if the holder is otherwise qualified for certification and has earned his certificate by passing an appropriate examination.

(3) [~~(4)~~] Acceptance of an examination from a national organization, state or political subdivision shall be contingent upon:

(a) An annual review of the examination together with an outline by subject; [~~and~~]

(b) An item analysis of each examination section; and [~~relative to individuals graduating from teaching institutions within this state. Acceptance of an examination from a state or political subdivision shall be contingent upon an annual review of the examination together with an outline by subject and an item analysis of each examination section.~~]

(c) The cabinet shall hold the examination information confidential and only make its contents available to authorized representatives of the cabinet.

(4) [~~(5)~~] The cabinet may accept, in lieu of the examination requirements for a general certificate, a person's [~~an individual's~~] current certificate from a national organization acceptable to the cabinet that was issued prior to the effective date of these regulations.

Section 4. Fee Schedule. The following fees shall be paid in connection with the certification of operators of sources of radiation other than licensed practitioners of the healing arts:

(1) Application for certification (nonrefundable) - $25 [~~20~~].
(2) Issuance of a general or limited certificate - $35 [~~30~~].
(3) Issuance of a temporary or provisional certificate - $25 [~~20~~].
(4) Renewal of a general or limited certificate - $35 [~~30~~].
(5) Duplicate certificate - $15 [~~10~~].
(6) Limited examination - $30 [~~25~~]

Section 5. Continuing Education Requirements for Renewal. (1) The continuing education requirements of this section shall be a condition precedent to the renewal of a general or limited certificate.

(2) A general certificate holder shall, during each twenty-four (24) month period that he holds his certificate, obtain a minimum of eighteen (18) clock hours of continuing education approved by the cabinet.

(3) A limited certificate holder shall, during each twenty-four (24) month period that he holds his certificate, obtain a minimum of twelve (12) clock hours of continuing education approved by the cabinet.

(4) Certificate holders attending or participating in continuing education related to their field of practice or operation shall send documented evidence of attendance or participation to the cabinet within [~~a reasonable time frame, not to exceed~~] forty-five (45) days. The evidence shall include:

(a) The certificate holder's name and [,] certificate number;

(b) Subject title;

(c) Date(s) attended;

(d) Clock hours of instruction; and

(e) The instructor's name and title.

(5) Operators of sources of radiation may receive up to six (6) clock hours credit, on an hour-for-hour basis, toward certificate renewal for continuing education lectures if they are the instructor.

(6) Continuing education clock hours may be accrued by attending seminars, lectures, or courses relating to the individual's field of practice or operation.

Section 6. General Requirements. (1) It shall be the responsibility of each employer to insure that his employees operating sources of radiation are certified as set forth in these administrative regulations.

(2) The cabinet may impose upon an operator of sources of radiation or institutions teaching students [~~individuals~~] to operate or use sources of radiation, requirements that are in addition to those established in these administrative regulations as it deems appropriate or necessary to minimize danger to public health or safety.

(3) Only persons [~~individuals~~] holding a general certificate shall be employed as an operator of sources of radiation at facilities where contrast studies are performed.

(4) It shall be the responsibility of a certified operator to notify the cabinet within sixty (60) days regarding a change of name or address.

(5) A person [~~An individual~~] certified as an operator of sources of radiation shall display or have available his certificate or a photocopy at his place of employment.

PATRICIA NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 19, 1992
FILED WITH LRC: May 20, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1992, at 9 a.m. in the Vital Statistics Conference Room, First 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 July 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: John A. Volpe

(1) Type and number of entities affected: 3500 medical radiation operators in the Commonwealth are affected by this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct costs will be $10 additional to each first time applicant and $5 additional to each renewal applicant. There are no indirect costs.

2. Continuing costs or savings: Costs should continue the same as the first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors increasing or decreasing cost are anticipated.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements by these administrative regulations.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a one time computer programming charge of approximately $70.

2. Continuing costs or savings: There will be no continuing costs.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs are anticipated.

(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: State revenues will increase approximately $24,000 per fiscal year.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative method is program elimination which is not feasible.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(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. While certification qualification requirements are tiered based on type of certificate, fees are the same for all certified operators.

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 administrative regulation affects local governments where radiation operators are employed such as health departments and county hospitals.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services which include radiographic procedures.

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 does not directly affect local government services.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:290. Employer contribution rates.

RELATES TO: KRS 341.270
STATUTORY AUTHORITY: KRS 194.050, 341.270
NECESSITY AND FUNCTION: KRS 341.270 requires the Secretary for Human Resources to determine the rate schedule for employer's contributions. The rate schedule in effect for each calendar year is determined by the "trust fund balance" as of December 31, of the preceding year. This regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

Section 1. Trust Fund Balance. The secretary finds the following to exist:

(1) The "trust fund balance" as of December 31, 1991 [~~1990~~], was $357,939,766.55 [~~413,909,901.94~~].

(2) There was no outstanding loan from the Federal Unemployment Trust Fund as of December 31, 1991 [~~1990~~].

Section 2. Rate Schedule. On the basis of the findings in Section 1 of this regulation, and in accordance with KRS 341.270(3), Schedule A of Table A shall be in effect for calendar year 1992 [~~1991~~], because the "trust fund balance" equals or exceeds $350,000,000, on December 31, 1991 [~~1990~~]. Rates listed in Schedule A of Table A are listed below.

Employer Reserve Ratio	Rate Schedule
8.0% and over	0.30%
7.0% but under 8.0%	0.40%
6.0% but under 7.0%	0.50%
5.0% but under 6.0%	0.70%
4.6% but under 5.0%	1.00%
4.2% but under 4.6%	1.30%
3.9% but under 4.2%	1.50%
3.6% but under 3.9%	1.80%
3.2% but under 3.6%	2.00%
2.7% but under 3.2%	2.10%
2.0% but under 2.7%	2.20%
1.3% but under 2.0%	2.30%
0.0% but under 1.3%	2.40%
-0.5% but under -0.0%	6.50%
-1.0% but under -0.5%	6.75%
-1.5% but under -1.0%	7.00%
-2.0% but under -1.5%	7.25%
-3.0% but under -2.0%	7.50%
-4.0% but under -3.0%	7.75%
-6.0% but under -4.0%	8.25%
-8.0% but under -6.0%	8.50%
Less than 8.0%	9.00%

MARGARET WHITTET, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 14, 1992
FILED WITH LRC: May 18, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, Cabinet for Human Resources Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Whittet

(1) Type and number of entities affected: 74,797 Kentucky employers.

(a) Direct and indirect costs or savings to those affected:

1. First year: No change - rate schedule remains the same.

2. Continuing costs or savings: None

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: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Possible increase in UI Trust Fund receipts due only to natural wage increases and increased number of employers.

(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: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All taxpaying employers treated equally.

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. Either all or part of a local government could be affected. Entities such as county health departments, water districts, libraries, etc., could be affected based upon their independent exercise of unemployment reporting options.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects the unemployment tax assessed based on the payroll of those local governments which have elected to make quarterly unemployment tax payments.

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: The great majority of local governments have elected to reimburse any unemployment benefits attributable to their employment. However, approximately 700 governmental entities have elected to pay quarterly unemployment taxes. By specifying the tax rate schedule in effect for 1992, this regulation determines in part the amount of tax which will be due from these tax paying entities. The tax rate schedule set forth in this regulation remains the same as the previous year.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:010. Definitions.

RELATES TO: KRS 194.050, 7 CFR 217.2, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16, PL 102-237

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Program. KRS 194.050

provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth definitions of terms used by the cabinet in regulations pertaining to the Food Stamp Program. [~~This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.~~]

Section 1. Definition of terms utilized in regulations relating to the Food Stamp Program are as follows:

(1) "Application for participation" means the form designed or approved by Food and Nutrition Service (FNS) that is completed by:

(a) A household member; or

(b) An authorized representative.

(2) "Authorization to participate card" (ATP) means the document that is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

(3) "Authorized representative":

(a) Means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:

1. Making application for the program;

2. Obtaining the coupons; and

3. Using the coupons.

(b) An adult who is a nonhousehold member may be designated as the authorized representative for certification purposes if the authorized representative:

1. Has been designated in writing by:

a. The head of the household;

b. The spouse; or

c. Another responsible member of the household; and

2. Is an adult who is aware of relevant household circumstances.

(c) The following individuals shall not act as an authorized representative unless:

1. The specific written approval of the designated state agency officials is obtained; and

2. That official determines that no one else is able to serve as the authorized representative:

a. A state agency employee who is involved in the certification or issuance processes;

b. A retailer that is authorized to accept food coupons; and

c. An individual disqualified for an intentional program violation.

(d) The cabinet shall disqualify an individual from participating as an authorized representative up to one (1) year if the cabinet obtains evidence that the individual has:

1. Misrepresented a household's circumstances;

2. Knowingly provided false information pertaining to the household; or

3. Made improper use of coupons.

(4) "Boarder":

(a) Means an individual to whom a household furnishes lodging and meals for reasonable compensation;

(b) "Reasonable compensation" is determined:

1. By considering only the amount paid for meals; and

2. Provided that the amount paid for meals is distinguishable from the amount paid for lodging.

(c) A reasonable monthly payment for meals shall be:

1. An amount which equals or exceeds the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for more than two (2) meals a day; or

2. An amount which equals or exceeds two-thirds (2/3) of the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for two (2) meals or less per day.

(d) A boarder is ineligible to participate in the program independent of the household providing the board.

(5) "Certification" means the action necessary to determine eligibility of a household including:

(a) Interview;

(b) Verification; and

(c) Decision.

(6) "Communal dining facility" means:

(a) A public or nonprofit private establishment, approved by FNS, that prepares and serves meals for elderly persons;

(b) A public or private nonprofit establishment (eating or otherwise) that feeds:

1. Elderly persons; and

2. SSI recipients and their spouses;

(c) Federally subsidized housing for the elderly that prepares and serves meals to the residents; and

(d) A private establishment that contracts with an appropriate state or local agency to offer meals at concessional prices to:

1. Elderly persons; and

2. SSI recipients and their spouses.

(7) "Coupon" means:

(a) Any stamp;

(b) Coupon; or

(c) Type of certificate; that is

(d) Issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food.

(8) "Date of entry" or "date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(9) "Disabled" means:

(a) An individual who receives:

1. Supplemental Security Income (SSI) or presumptive SSI under 42 USC 1381 to 1385;

2. Disability or blindness payments under:

a. 42 USC 301 to 306;

b. 42 USC 402 to 433;

c. 42 USC 1201 to 1206;

d. 42 USC 1351 to 1355; or

e. 42 USC 1381 to 1385;

3. Optional or mandatory state supplementation;

4. Disability retirement benefits from a:

a. Federal;

b. State; or

c. Local governmental agency; and

d. Resulting from a disability considered payment under 42 USC 221(i);

5. Annuity payments under:

A. 45 USC 231(a); and

b. Is determined to qualify for Medicare by the Railroad Retirement Board; or

c. Is disabled based upon the criteria used under 42 USC 1381 to 1385; or

(b) A veteran with a service connected or nonservice connected disability rated by the Veteran's Administration (VA) or paid as total (100 percent) by the VA under Title 38 of the United States Code;

(c) A veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

(d) A surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound;

(e) A surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38;

(f) A surviving spouse or surviving child of a veteran and considered by the VA to be entitled to:

1. Compensation for a service-connected death;

2. Pension benefits for a nonservice-connected death under Title 38; and

3. Has a disability considered permanent under 42 USC 221(i);

(g) An individual in receipt of disability related medical assistance under 42 USC 1396;

(h) An individual who is certified to receive, but not yet receiving SSI or Social Security disability payments; or

(i) An individual who is currently having their entire SSI or Social Security disability benefit check recouped to recover a prior overpayment.

(10) "Drug addiction or alcoholic treatment and rehabilitation program" means any:

(a) Drug addiction; or

(b) Alcoholic treatment and rehabilitation program;

(c) Conducted by:

1. A private nonprofit organization; or

2. Institution that is certified as responsible for the administration of the state's program for:

a. Alcoholics; or

b. Drug addicts; by

(i) The cabinet; or

(ii) Agencies designated by the Governor.

(11) "Elderly" means an individual who is:

(a) Age sixty (60) or older; or

(b) Fifty-nine (59) years of age at the time of application but shall turn age sixty (60) before the end of month of application.

(12) "Eligible foods" means any of the following:

(a) Any food or food product intended for human consumption except:

1. Alcoholic beverages;

2. Tobacco;

3. Hot foods; and

4. Hot food products prepared for immediate consumption;

(b) Seeds and plants to grow foods for the personal consumption by eligible households;

(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals;

(d) Meals served by a communal dining facility for:

1. The elderly;

2. SSI households; or

3. To both; and

4. To households eligible to use coupons for communal dining;

(e) Meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to eligible households;

(f) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled as defined in subsection (9) of this section. [~~recipients of benefits under:~~

~~1. 42 USC 401 to 433; or~~

~~2. 42 USC 1381 to 1385;~~]

(g) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents;

(h) Meals prepared for and served by an approved authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons, provided that the facility shall:

1. Be a nonprofit establishment;

2. Be a licensed food service establishment; and

3. Provide meals to the homeless.

(13) "Excluded household member" means an individual residing with a household but excluded when determining the household's size in accordance with the provisions of 904 KAR 3:035, Section 5(3) and (4).

(a) The income and resources of the excluded household member shall be treated the same as that of an ineligible household member in accordance with 904 KAR 3:035, Section 5(3) and (4).

(b) The following are excluded household members and shall not participate as a separate household:

1. An ineligible alien;

2. An individual disqualified for failure to provide a social security number;

3. An individual disqualified for intentional program violation; or

4. An individual disqualified for failure to comply with work or workforce requirements.

(14) "Employment and training program" means a program consisting of one (1) or more of the following components:

(a) Work;

(b) Training;

(c) Education; or

(d) Job search.

(15) "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(16) "FNS" means the Food and Nutrition Service of the United States Department of Agriculture.

(17) "Group living arrangement":

(a) Means a public or private nonprofit residential setting that:

1. Serves no more than sixteen (16) residents; and

2. Is appropriately certified.

(b) To be eligible, a resident shall be[:

~~1.~~] blind or disabled as defined in subsection (9) of this section [~~; and~~

~~2. receiving benefits under:~~

~~a. 42 USC 401 to 433; or~~

~~b. 42 USC 1381 to 1385~~].

(18) "Head of household" means the person with primary financial responsibility and in whose name the application for participation is made.

(19) "Household" means an individual living alone or with others, or a group of individuals living together where living quarters are shared.

(a) A household may be composed of any of the following individuals or groups of individuals specified in subsection (19)(b) of this section, provided that such individuals or groups of individuals are not:

1. Residents of an institution;

2. Residents of a commercial boarding house; or

3. Living with others and paying compensation to others for meals and lodging except as otherwise specified in subsection (4) of this section.

(b) A household may be composed of:

1. An individual living alone;

2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

3. A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption;

4. An individual who is:

a. Sixty (60) years of age or older (and the spouse of such individual);

b. Living with others; and

c. Unable to purchase and prepare meals because he:

(i) Suffers from a disability considered permanent under 42 USC; or

(ii) Suffers from a nondisease-related, severe, permanent disability; and

d. Provided that the income of the others, excluding the income of the individual's spouse, with whom the individual resides does not exceed 165 percent of the federal income poverty guidelines.

(c) In no event shall separate household status or nonhousehold member status be granted to:

1. Parents and natural, adopted or stepchildren, unless:

a. At least one (1) parent is elderly or disabled as defined in subsection (10) of this section; or

b. Unless three (3) generations live together and one (1) of the

children has minor children and meals are prepared separately;

2. A child under eighteen (18) years of age, under the parental control of an adult member of the household;

3. A spouse of a member of the household;

4. Siblings (natural, adopted, half or stepbrothers and sisters), unless:

a. At least one (1) sibling is elderly or disabled as defined in subsection (10) of this section; or

b. One (1) sibling has a minor child and meals are prepared separately.

(20) "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(21) "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(22) "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, including but not limited to:

(a) College;

(b) University; and

(c) Vocational or technical school.

(23) "Meal delivery service" means an entity with which the cabinet has contracted for the preparation of meals at concessional prices to an individual who is unable to adequately prepare his meals.

(a) A "meal delivery service participant" shall include:

1. An elderly person and his spouse;

2. The physically or mentally handicapped; and

3. A person otherwise disabled and his spouse.

(b) The cabinet shall contract with any of the following "meal delivery service" providers:

1. A political subdivision;

2. A private nonprofit organization; or

3. A private establishment.

(24) "Medicaid" means medical assistance under 42 USC 1396.

(25) "Nonassistance household" (NA) means a household containing at least one (1) member who is not included in a public assistance (PA) household grant.

(26) "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

(27) "Nonhousehold member" means an individual residing with a household but not considered a household member in determining the household's eligibility or allotment.

(a) The following shall be considered a nonhousehold member and if otherwise eligible, may participate in the program as a separate household:

1. Roomer. An individual to whom a household furnishes lodging, but not meals, for compensation.

2. Live-in-attendant. An individual who resides with a household to provide medical, housekeeping, child care or other similar personal services.

3. Other. Another individual who shares living quarters with the household but who does not customarily purchase food and prepare meals with the household.

(b) The following shall be considered as a nonhousehold member, ineligible to participate in the program as a separate household, and treated as described in 904 KAR 3:035:

1. An ineligible student;

2. A person disqualified for noncompliance with the work requirements;

3. A border;

4. A resident of an institution, except as provided in subsection (17) of this section;

5. A striker, unless:

a. The household was eligible the day prior to the strike; and

b. The household is eligible at the time of application;

6. A household disqualified due to voluntary quit provisions.

(28) "Overissuance" means the amount by which coupons issued to a household exceeds the amount the household was eligible to receive.

(29) "Public assistance" (PA) means any of the programs authorized under 42 USC 601 to 686 including:

a. Old age assistance;

b. Aid to families with dependent children (AFDC);

c. Aid to the blind;

d. Aid to the permanently and totally disabled; and

e. Aid to aged, blind or disabled.

(30) "Retrospective budgeting" means the computation of a household's food stamp allotment for an issuance month based on actual income and circumstances which existed in a previous month.

(31) "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and children. If a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(32) "Sponsor" means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(33) "Sponsored alien" means an alien lawfully admitted for permanent residence as an immigrant as defined under 8 USC 1101.

(34) "Spouse" means either of two (2) individuals who:

(a) Would be defined as married to each other under applicable state law; or

(b) Are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(35) "Striker" means anyone involved in a strike or other concerted stoppage of work by employees. This shall include:

(a) A stoppage by reason of expiration of a collective-bargaining agreement; and

(b) Any concerted slowdown or other concerted interruption of operations by employees, unless:

1. The individual is exempt from work registration for reasons other than employment; and

2. The exemption existed on the day prior to the strike.

(36) "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and disabled;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(37) "Thrifty food plan" means:

(a) The diet required to feed a family of four (4) persons, determined in accordance with the Secretary of the United States Department of Agriculture calculations, consisting of:

1. A man and a woman twenty (20) through fifty (50);

2. A child six (6) through eight (8); and

3. A child nine (9) through eleven (11) years of age; and

(b) The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(38) "Underissuance" means the amount that the allotment to that the household was entitled exceeds the allotment which the household received.

MIKE ROBINSON, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: May 14, 1992

FILED WITH LRC: May 18, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital

Statistics Conference Room, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: This administrative regulation is being amended to incorporate Section 901 of PL 102-237. The section provides that disabled persons, as defined by 7 USC 2012, residing in certain group living arrangements can use food stamps to purchase their prepared meals. The change does not negatively impact recipients and affects a minimal number of recipients.

(a) Direct and indirect costs or savings to those affected: None

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: 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: The amendments are the result of a federal mandate. Therefore, no alternatives were considered.

(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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 102-237, Section 901.

2. State compliance standards. This regulation pertains to the definitions applicable to the Food Stamp Program as prescribed by the Food and Nutrition Service. There are no separate state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The definitions contained in this administrative regulation are applied in a like manner on a statewide basis and are consistent with the definitions which are applied in the National Food Stamp Program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Service.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:020. Financial requirements.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.8, 273.9, 273.11, PL 101-508, 101-624, 102-237

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Financial Eligibility Requirements. (1) In accordance with regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp Program shall be composed of the following criteria:

(a) Income limitations; and

(b) Resource limitations.

(2) Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.

(3) The income eligibility standards shall be derived from the Office of Management and Budget's (OMB) nonfarm income poverty guidelines.

Section 2. Countable Income. All income from any source shall be counted, except income specifically excluded in Section 3 of this regulation, including but not limited to:

(1) Wages earned by a household member, including all wages received by a striker in accordance with the provision at 904 KAR 3:035, Section 6(9).

(2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business;

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements;

(4) Payments under 42 USC 1451 shall be considered earned income unless specifically excluded in Section 3 of this regulation;

(5) The earned or unearned income of an eligible household member or nonhousehold member as set forth in 904 KAR 3:035, Section 6(3) and 4;

(6) Assistance payments from federal or federally aided public assistance including:

(a) Supplemental security income (SSI);

(b) Aid to families with dependent children (AFDC);

(c) General assistance (GA) programs; or

(d) Other assistance programs based on need;

(7) Annuities;
(8) Pensions;
(9) Retirement, veteran's or disability benefits;
(10) Worker's or unemployment compensation;
(11) Strike pay;
(12) Old-age survivors or Social Security benefits;
(13) Foster care payments for children or adults, except as excluded in Section 3(16) of this regulation;
(14) Gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week;
(15) Wages earned by a household member which are garnisheed or diverted by an employer and paid to a third party for a household expense;
(16) Support or alimony payments made directly to the household from nonhousehold members. This includes any portion of such payments returned to the household by the cabinet;
(17) The portion of scholarships, educational grants, fellowships, deferred payment loans for education, and veterans educational benefits which are not excludable under Section 3(6) of this regulation;
(18) Payments from government sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit;
(19) Monies withdrawn or dividends which are or could be received from a trust fund;
(20) That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as set forth in 904 KAR 3:035, Section 6(12);
(21) The portion of means tested Assistance monies from a federal, state, or local welfare program which are withheld for purposes of recouping an overpayment which resulted from the household's intentional failure to comply with that program's requirements;
(22) Earnings to an individual who is participating in on-the- job training programs under 29 USC 1501 unless the individual is under nineteen (19) years of age and under the parental control of another adult member;
(23) Portions of Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401 in excess of $2,000 per payment per individual, effective September 1, 1989; and
(24) Payments from the Department of Housing and Urban Development which are paid directly to the household or utility provider as a utility subsidy.

Section 3. Income Exclusions. The following payments shall not be considered as income:
(1) Money withheld from an assistance payment, earned income or other income source, or monies received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, except in Section 2 (14) of this regulation;
(2) Child support income shall be considered as follows:
(a) Child support payments received by AFDC recipients which must be transferred to the Division of Child Support Enforcement to maintain AFDC eligibility shall be excluded;
(b) Any portion of child support monies returned to the AFDC household by the cabinet shall not be excluded;
(3) Any gain or benefit which is not in the form of money payable directly to the household.
(4) Money payments that are not legally obligated and otherwise payable directly to a household, but are paid to a third party for a household expense;
(5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty (30) dollars in a quarter.
(6) Educational income shall be excluded as follows:

(a) Educational income, including but not limited to:
1. Educational loans on which payment is deferred;
2. Grants;
3. Scholarships;
4. Fellowships; [and]
5. Veteran educational benefits;
6. And the like; [, to the extent that they are made available for tuition and mandatory school fees at an institution of higher education or an institution of postsecondary education as defined by 904 KAR 3:010, Section 1(23).]
(b) Awarded to a household member enrolled at one (1) of the following recognized institutions as defined by 904 KAR 3:010, Section 1(22):
1. Institution of postsecondary education;
2. School for the handicapped;
3. Vocational education program; or
4. A program that provides for completion of a secondary school diploma or the equivalent thereof;
(c) Is excluded to the extent that it does not exceed the amount used for or made available as an allowance determined by such:
1. School;
2. Institution;
3. Program; or
4. Other grantor; for
(d) Expenses of the student, including:
1. Tuition;
2. Mandatory fees related to the pursuit of the course of study involved, including the rental or purchase of any:
a. Equipment;
b. Material; and
c. Supplies;
3. Books;
4. Supplies;
5. Transportation;
6. Other miscellaneous personal expenses (other than living expenses);
7. Origination fees for such loans; and
8. Insurance premiums for such loans.
[(a) Types of financial educational assistance include:
1. Federal educational assistance not funded under 20 USC 1070;
2. Federal educational assistance funded under 20 USC 1070;
3. State, local and private assistance.
(b) Income exclusions for each type of assistance are allowed as follows:
1. Federal educational assistance not funded under 20 USC 1070:
a. Tuition;
b. Mandatory school fees;
c. Origination fees and insurance premiums charged for obtaining the assistance.
2. Federal educational assistance funded under 20 USC 1070 or effective December 1, 1988, student assistance programs funded by the Bureau of Indian Affairs:
a. Tuition;
b. Mandatory school fees;
c. Origination fees and insurance premiums charged for obtaining the assistance;
d. The costs of books, school supplies, transportation, and miscellaneous personal expenses other than room and board.
3. State, local and private financial assistance:
a. Tuition;
b. Mandatory fees;
c. Origination fees and insurance premiums charged for obtaining the assistance;
d. The costs of books, school supplies, transportation, routine supplies and dependent care.

~~(c) Mandatory fees include, but are not limited to:~~
~~1. Uniforms;~~
~~2. Lab fees or equipment which is required:~~
~~a. Of all students; or~~
~~b. All students within a particular curriculum.~~
~~(d) Mandatory fees shall not include routine school supplies.~~]

(7) All loans from private individuals or commercial institutions, other than educational loans on which repayment is deferred;

(8) Reimbursements for past or future expenses, other than normal living expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household;

(9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member;

(10) The earned income of children who:

(a) Are members of the household;

(b) Are students at least half time;

(c) Have not attained their 18th birthday; and

(d) Are under the parental control of another household member;

(11) Money received in the form of a nonrecurring lump-sum payment;

(12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming, such losses shall be offset against any other countable income in the household;

(13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program;

(14) Energy assistance payments made under federal laws or certified as excludable energy payments by FNS;

(15) Cash donations based on need received on or after February 1, 1988 from nonprofit charitable organizations, not to exceed $300 in a federal fiscal year quarter;

(16) Foster care payments for foster children when the household requests that the foster children be excluded from the household in determining eligibility (effective February 1, 1989);

(17) Up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II (effective February 1, 1989);

(18) Monies received under Section 3507 of the Internal Revenue Code (advanced payment of earned income credit).

(19) Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261 and 25 USC 1401, as distribution from judgment awards and trust funds of $2,000 or less per individual per payment, effective September 1, 1989.

(20) Any amount of income necessary for the fulfillment of an approved plan for achieving self-support of a household member as provided under 41 USC 1382a(b)(4)(B)(iv).

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program shall be limited to those households whose incomes fall at or below the applicable standards as established by FNS and which are set forth below:

(1) Households which contain a member who is elderly or disabled as defined in 904 KAR 3:010, Section 1(9) or (11) [~~(10)~~] shall have their net income compared to 100 percent of the federal income poverty guidelines.

(2) Households in which all members are recipients of AFDC or SSI shall be categorically eligible and shall not be required to meet either the gross or net income eligibility standards.

(3) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month which shall be periodically adjusted by FNS to reflect changes in the cost of living for a prior period of time as determined by FNS;

(2) Twenty (20) percent of gross earned income;

(3) Payments for the actual cost for the care of a child or other dependent, not to exceed $160 per month per dependent, when necessary for a household member to:

(a) Seek, accept or continue employment;

(b) Attend training; or

(c) Pursue education preparatory to employment;

(4) The monthly shelter cost deduction shall be determined as follows:

(a) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made.

(b) The shelter deduction shall not exceed the excess shelter maximum established by FNS, except that households containing an elderly or disabled member shall not be subject to the maximum.

(c) The excess shelter maximum shall be adjusted periodically by FNS to reflect changes in the cost of living for a prior period of time.

(d) Allowable monthly shelter expenses shall include the following expenses:

1. Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments;

2. Property taxes, state and local assessments, and insurance on the structure itself, but no separate cost of insuring furniture or personal belongings;

3. The cost of:

a. Heating and cooking fuel;

b. Cooling;

c. Electricity;

d. Water and sewage;

e. Garbage and trash collection fees;

f. The telephone standard deduction; and

g. Fees charged by the utility provider for the initial installation of the utility;

4. The shelter costs for the home if temporarily not occupied by the household because of:

a. Employment or training away from home;

b. Illness; or

c. Abandonment caused by a natural disaster or casualty loss; and

d. If the household intends to return to the home;

e. The current occupants of the home are not claiming the shelter costs for food stamp purposes; and

f. The home is not leased or rented during the absence of the household; and

5. Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood, unless such costs are reimbursed by:

a. Private or public relief agencies;

b. Insurance companies; or

c. From any other source.

(e) The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which receive Low Income Home Energy Assistance Program (LIHEAP) benefits or which incur heating or cooling (by air conditioning units only) costs separate and apart from their rent or mortgage payments.

(f) If the household is not entitled to the utility standard or does not choose to use the utility standard, it may claim actual utility expenses for any utility which it does pay separately.

(g) The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(h) The cabinet shall use a homeless shelter standard of shelter

expenses for households in which all members are homeless and are not receiving free shelter throughout the calendar month, unless that household verifies higher expenses.

(5) Allowable medical expenses, excluding special diets, in excess of thirty-five (35) dollars per month incurred by any household member who meets the definition of elderly or disabled as specified by 904 KAR 3:010, Section 1(10), including, but not limited to:

(a) Medical and dental care;

(b) Hospitalization or outpatient treatment and nursing care;

(c) Medication and medical supplies;

(d) Health and hospitalization premiums; and

(e) Dentures, hearing aids, eyeglasses and prosthetics.

Section 6. Resources. (1) Uniform national resource standards of eligibility shall be utilized.

(2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 7 of this regulation exceed:

(a) $3000 for all households with one (1) or more members, when at least one (1) member is sixty (60) years or older; or

(b) $2000 for all other households.

(3) Households which are categorically eligible as specified in Section 4(2) of this regulation shall be considered as having met the food stamp resource requirement.

(4) A household member who receives AFDC or SSI benefits shall be considered categorically eligible and to have satisfied the Food Stamp Program's resource limits as specified in subsection (2) of this section.

Section 7. Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others.

(2) Household goods;

(3) Personal effects including one (1) burial plot per household member;

(4) The cash value of life insurance policies; and

(5) Pension funds (except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be exempt);

(6) Prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds;

(7) Licensed or unlicensed vehicles;

(8) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis;

(9) Property which is essential to the employment or self-employment of a household member;

(10) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value;

(11) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended;

(12) Resources whose cash value is not accessible to the household;

(13) Resources which have been prorated as income;

(14) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs;

(15) Resources which are excluded for food stamp purposes by express provision of federal statute;

(16) Up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II [~~(effective February 1, 1989)~~];

(17) Income which is withheld by the employer to pay certain expenses directly to a third party as a vendor payment to the extent that the remainder of the withheld income is not accessible to the household at the end of the year [~~(effective September 1, 1989)~~];

(18) Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401, as distribution from judgment awards and trust funds, of $2,000 or less per individual per payment [~~(effective September 1, 1989)~~].

(19) Purchases of $2,000 or less which are made solely with Indian Per Capita payments after December 31, 1981 but prior to January 12, 1983 [~~(effective September 1, 1989)~~]; and

(20) The earned income tax credit (EITC) income of an individual and his spouse for the month of receipt and the following month;

(21) A resource, except a vehicle, which cannot be sold for a significant amount of funds for the support of the household.

Section 8. Transfer of Resources. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

MIKE ROBINSON, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: May 14, 1992

FILED WITH LRC: May 18, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: The regulation is promulgated to implement Sections 903, 904, and 905 of PL 102-237 and Section 1737 PL 101-624. The provisions will simplify and expand food stamp eligibility for applicable populations at no direct cost to the state agency. A minimal number of food stamp recipients will be affected by the amendments to the regulation.

(a) Direct and indirect costs or savings to those affected: None

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: 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: The amendments to the regulation are mandated by

federal statute. Therefore, no alternatives were considered.

(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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 102-237, Sections 903, 904 and 905. PL 101-624, Section 1737. 7 CFR 273.9(d)(i) (December 4, 1991).

2. State compliance standards. This regulation pertains to the financial eligibility requirements for participation in the Food Stamp Program as prescribed by the Food and Nutrition Service.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation allows the state agency to consider financial eligibility requirements in the eligibility determination for food stamps. The financial eligibility requirements contained in this administrative regulation are applied in a like manner on a statewide basis and are consistent with the technical eligibility requirements which are applied in the National Food Stamp Program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Service.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:025. Technical requirements.

RELATES TO: KRS 194.050, 7 CFR 273.4, 273.5, 273.7, 273.21, PL 101-624

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Definitions. (1) "Certification period" means a definite period of time within which a household shall be eligible to receive food stamp benefits.

(2) "Quality control review" means a review of a statistically valid sample of active and denied or discontinued cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that inactive cases are not incorrectly denied or terminated.

(3) "Student status" means any person who is between the ages of eighteen (18) and fifty (50) [~~sixty (60)~~] inclusive, physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, the cabinet utilizes national uniform standards of technical eligibility for the Food Stamp Program.

Section 3. Technical Eligibility Criteria. Technical eligibility standards shall apply equally to all households and consist of:

(1) Residency. A household shall live in the county in which they make application;

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, both the applicant's and the authorized representative's identities shall be verified;

(3) Citizenship and alien status.

(a) Program participation shall be limited to:

1. Citizens of the United States; or

2. Eligible aliens as defined by 904 KAR 3:010.

(b) Individuals whose status is questionable shall be ineligible to participate until such status has been verified;

(c) A single household member shall attest in writing to the citizenship or alien status of each household member;

(d) The departmental form required for the declaration of citizenship or alien status is incorporated into this regulation by reference.

(4) Household size. Size of household shall be verified through readily available documentary evidence or through a collateral contact;

(5) Students. Any person who meets the definition of a student as specified in Section 1 of this regulation shall be ineligible to participate unless they meet at least one (1) of the following criteria:

(a) Shall be engaged in paid employment for a minimum of twenty (20) hours per week or, if self-employed, shall be employed for a minimum of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours; or

(b) Shall participate in a federally financed work study program (funded in full or in part under 20 USC 1070) during the regular school year; or

(c) Shall be responsible for the care of a dependent household member under the age of six (6); or

(d) Shall be responsible for the care of a dependent household member who has reached the age of six (6) but is under age twelve (12) where the cabinet has determined that adequate child care is not available; or

(e) Shall receive benefits from the Aid to Families with Dependent Children Program (AFDC); [~~or~~]

(f) Shall be assigned to or placed in an institution of higher learning through a program under: [~~the 25~~]

1. 29 USC 1501; [~~,~~]

2. 7 USC 2015; or

3. 19 USC 2296;

(g) Shall be enrolled in an institution of higher learning as a result of participation in a work incentive program under 42 USC 681; or

(h) Is a single parent with responsibility for the care of a dependent household member under age twelve (12).

(6) Mandatory monthly reporting (MMR).

(a) Households of five (5) or more members in which one (1) or more members has gross earned income of $200 or more shall be required to file monthly reports, unless otherwise exempt.

(b) The following households shall be exempt from MMR:

1. Households whose sole source of earnings is from self-employment or contract self-employment income which is annualized for a twelve (12) month period;

2. Migrant or seasonal farm worker households;

3. Households in which all members are homeless individuals; or

4. Households with no earned income in which all adult members are elderly or disabled with no earned income.

(c) Departmental MMR forms are incorporated by reference in this administrative regulation.

(7) Social Security number (SSN).

(a) Households applying for or participating in the Food Stamp Program shall comply with SSN requirements by providing the SSN of each household member or applying for one prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in such individual's disqualification from participation in the Food Stamp Program until this requirement is met.

(8) Work registration.

(a) All household members, except those exempt in paragraph (b) of this subsection, shall be required to:

1. Register for work;

2. Accept suitable employment; and

3. Be subject to other work registration requirements.

(b) The following persons shall be exempt from work registration requirements:

1. A person younger than sixteen (16) years of age or a person sixty (60) years of age or older, except:

a. A child having its 16th birthday within a certification period shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the child qualifies for another exemption; or

b. A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time basis is exempt;

2. A person physically or mentally unfit for employment;

3. A household member subject to and complying with any work requirement in the AFDC Program;

4. A parent or other household member who is responsible for the care of a dependent child under age six (6) or an incapacitated person;

5. A person who receives unemployment compensation or a person who has applied for, but has not yet begun to receive, unemployment compensation if that person was required to register for work with the Department for Employment Services as part of the unemployment compensation application process;

6. A regular participant in a drug addiction or alcoholic treatment and rehabilitation program;

7. A person who is employed or self-employed and:

a. Working a minimum of thirty (30) hours weekly; or

b. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

8. A migrant or seasonal farm worker who meets the criteria in paragraph (g) of this subsection and is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

9. A student enrolled at least half time in any recognized school, training program, or institution of higher education; provided that those meeting student status have met the eligibility conditions in subsection (5) of this section.

(c) Strikers whose households are eligible in accordance with 904 KAR 3:035, Section 6(9), shall be subject to the work registration requirements unless exempt for reasons other than employment at the time of application.

(d) Work registrants who reside in a county which offers a food stamp employment and training program shall be required to participate in the food stamp employment and training program. Participants shall:

1. Participate in education, job search, or skills training activities; and

2. Be reimbursed for transportation and dependent care expenses, if otherwise eligible.

(e) A work registrant who:

1. Is required to participate in the:

a. Food stamp employment and training (E&T) program; or

b. Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS) Program pursuant to 904 KAR 2:006; and

2. Fails to do so shall be ineligible to receive food stamp benefits for two (2) months unless:

a. Good cause exists;

b. The noncompliance individual was participating in a JOBS component which is more stringent that the components of the E&T Program; or

c. The noncompliant JOBS participant is otherwise exempt from work registration in the E&T Program.

3. An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in subparagraph 2b of this paragraph shall be work registered in the E&T Program unless otherwise exempt by paragraph (b) of this subsection.

(9) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

Section 4. Material Incorporated by Reference. (1) Forms FS-301 and FS-301A are necessary for MMR and are incorporated effective June 1, 1991.

(2) Form FS-106.1 is necessary for the declaration of citizenship or alien status in the Food Stamp Program and is incorporated effective June 1, 1991.

(3) These forms 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: May 14, 1992

FILED WITH LRC: May 18, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: The regulation is amended to incorporate Section 1727 of PL 101-624. The amendment expands the criteria utilized to determine eligible student status. Under this provision, more students will be eligible for food stamps with no direct cost to the state agency. The provision, however, will affect a minimal number of recipients.

(a) Direct and indirect costs or savings to those affected: None

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: 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: The amendments to this regulation are mandated by federal statute. Therefore, no alternative methods were considered.

(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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 101-624, Section 1727.

2. State compliance standards. This regulation pertains to the technical eligibility requirements for participation in the Food Stamp Program as prescribed by the Food and Nutrition Service. There are no separate state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the state agency to consider technical eligibility requirements in the eligibility determination for food stamps. The technical eligibility requirements contained in this administrative regulation are applied in a like manner on a statewide basis and are consistent with the technical eligibility requirements which are applied in the National Food Stamp Program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Service.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:035. Certification process.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.5, 273.10, 273.11, 273.12, 273.14, 273.21, 274.6, PL 101-624

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the certification process used by the cabinet in the administration of the Food Stamp Program. ~~[This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.]~~

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering the household's circumstances for the entire period for which each household is certified.

(2) The criteria shall be applicable to all households.

(3) Certain households require special or additional certification procedures as specified in Section 4 of this administrative regulation.

Section 2. Certification Periods. (1) The cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided below, households shall be certified for at least three (3) months.

(a) If the certification process is completed after the 15th day of the month of application, a household eligible for a certification period of three (3) months or less shall, at the time of certification, have their certification period increased by one (1) month;

(b) A household shall be certified for one (1) or two (2) months, as appropriate if:

1. The household cannot reasonably predict what its circumstances will be in the near future; or

2. There is substantial likelihood of frequent and significant changes in income or household status.

(3) A household composed entirely of recipients of Aid to Families with Dependent Children (AFDC), or a combination of AFDC and Supplemental Security Income (SSI), shall be assigned a certification period to coincide with their AFDC reinvestigation date.

(4) The following households shall be certified for up to twelve (12) months:

(a) A household which is required to submit monthly reports.

(b) If other household circumstances are expected to remain stable, a household composed entirely of unemployable or elderly persons with very stable income; or

(c) A household whose primary source of income is from:

1. Self-employment; or

2. Regular farm employment with the same employer if:

a. The income can be readily predicted; and

b. Household circumstances are not likely to change.

(5) The following households shall be assigned a certification period not to exceed six (6) months, including those household types specified in subsection (4) of this section.

(a) A household which is granted separate household status because:

1. The household consists of an individual and the individual's minor child;

2. The individual and child are living with the individual's parent or sibling; and

3. The individual purchases and prepares meals separately from the parent or sibling; or

(b) A household that consists of recipients of AFDC or a combination of AFDC and SSI, receiving up to fifty (50) dollars child support payments forwarded from the Division of Child Support Enforcement. These households shall be exempt from the monthly reporting requirements.

Section 3. Certification Notices to Households. The cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;

(2) Notice of denial; or
(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process applications for recertification as specified in 904 KAR 3:030, Section 1, as follows:

(1) If the household files the application by the 15th day of the last month of the certification, the cabinet shall provide uninterrupted benefits if the household is otherwise eligible; or

(2) If the household files the application after the 15th day but prior to the last day of the last month of the certification, the cabinet shall provide benefits within thirty (30) days of date of the application if the household is otherwise eligible.

Section 5. Certification Process for Specific Households. Certain households have circumstances that are substantially different from other households and therefore require special or additional certification procedures.

(1) A household with self-employed members shall have its case processed as follows:

(a) Income is annualized over a twelve (12) month period if:

1. Self-employment income represents a household's annual income; or

2. Self-employment income is received on a monthly basis which represents a household's annual support;

(b) Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover;

(c) The income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year; or

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business.

(2) A household with boarders shall have its case processed as follows:

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses;

(b) Deductible expenses include:

1. Cost of doing business;

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

(3) A household with ineligible members shall be processed, as follows:

(a) Ineligible due to:

1. Intentional program violation;

2. Failure to comply with the work requirements; or

3. Failure to comply with workforce requirements:

a. Income and resources in their entirety shall be counted as income available to the remaining household members;

b. Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions; and

c. The ineligible member shall not be included when:

(i) Assigning benefit level;

(ii) Comparing monthly income with income eligibility standard; and

(iii) Comparing household resources with resource eligibility standard;

(b) Ineligible due to:

1. Failure to provide a Social Security number; or

2. Ineligible alien status:

a. All resources of ineligible members shall be considered available to the remaining household members;

b. A pro rata share of the ineligible member's income shall be attributed to remaining household members;

c. Earned income deduction shall be applied to pro rata share of earnings; and

d. The ineligible member's share of dependent care and shelter expenses shall not be counted;

4. The ineligible member shall not be included when:

a. Assigning benefit level;

b. Comparing monthly income with income eligibility standard; and

c. Comparing household resources with resource eligibility standard.

(4) A household with nonhousehold members shall be processed as follows:

(a) The income and resources of nonhousehold member (other than those described in subsection (3) of this section) shall not be considered available to the household with whom they reside;

(b) If earned income of household members and nonmembers are combined into one (1) wage, the agency shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count pro rata share of earned income if nonmember's share cannot be identified;

(c) The nonmember shall not be included when:

1. Assigning a benefit level to the household;

2. Comparing monthly income with income eligibility standards; and

3. Comparing household resources with resource eligibility standard.

(5) A resident of a drug or alcoholic treatment and rehabilitation program in a private, nonprofit organization or a publicly operated community mental health center shall have his case processed as follows:

(a) Eligibility shall be determined as a one (1) person household;

(b) Certification shall be accomplished through an authorized representative;

(c) Food stamp processing standards and notice provisions shall apply to a resident recipient;

(d) Treatment center shall notify the agency of any changes in a resident's circumstances;

(e) Upon departure of the center, the resident shall be eligible to receive any remaining benefits, if otherwise eligible; and

(f) The organization or institution shall be responsible for knowingly misrepresenting household circumstances.

(6) A resident of a group living arrangement who is blind or disabled and receives retirees, survivors, and disabled individuals or SSI benefits shall have his case processed as follows:

(a) A resident shall apply on his own behalf or through use of the facility's authorized representative;

(b) Certification provisions applicable to all other households shall be applied;

(c) Responsibility for reporting changes depends upon who files the application:

1. If resident applies on his own behalf, the household shall report changes to the agency; or

2. If the center acts as authorized representative, the group living arrangement shall report changes;

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible; and

(e) The group living arrangement shall be responsible for knowingly misrepresenting household circumstances unless the household applied on its own behalf.

(7) A resident of a shelter for battered women and children shall have her case processed as follows:

(a) The shelter shall:

1. Have food and nutrition service authorization to redeem at wholesalers; or

2. Meet the federal definition of such a shelter;

(b) A shelter resident shall be certified for benefits, if otherwise eligible, if she is currently included in a former household which contains the person who abused her; and

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(8) An SSI recipient shall have his case processed as follows:

(a) Application may be filed at:

1. The Social Security Administration (SSA) Office; or

2. The local food stamp office;

(b) The cabinet shall not require an additional interview for applications filed at the SSA;

(c) The cabinet shall obtain all necessary verification prior to approving benefits;

(d) Certification periods shall conform to Section 2 of this administrative regulation; and

(e) Household changes in circumstances shall conform to Section 6 of this administrative regulation.

(9) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(10) Student households.

(a) Any person who meets all of the following criteria shall be ineligible to participate in the Food Stamp Program:

1. Between age eighteen (18) and fifty (50) [~~sixty (60)~~];

2. Physically and mentally fit; and

3. Enrolled at least half-time in an institution of higher education.

(b) The criteria in [~~subsection (11)(a)~~] of this subsection shall not deem a household member ineligible if the member meets at least one (1) of the criteria specified in 904 KAR 3:025, Section 3(5). [:]

[~~1. Is employed or self employed at least twenty (20) hours per week and is paid for such employment;~~

~~2. Participates in a federally financed work study program;~~

~~3. Is responsible for the care of a dependent household member under age six (6);~~

~~4. Is receiving benefits from the Aid to Families with Dependent Children Program (AFDC); or~~

~~5. Is assigned to or placed in an institution of higher learning through a program under 29 USC 1501.~~]

(11) Sponsored aliens.

(a) Income of the sponsored alien shall:

1. Include that portion of the sponsor's and his spouse's income deemed to be that of the alien;

2. Be subject to appropriate income exclusions; and

3. Be reduced by:

a. Twenty (20) percent earned income disregard, if appropriate; and

b. An amount equal to the Food Stamp Program monthly gross income limit for a household size equal to the household size of the sponsor.

(b) Resources of the sponsored alien shall include the total resources of the sponsor and the sponsor's spouse, reduced by $1500.

(c) The appropriate portions of income and resources of the sponsor and of the sponsor's spouse shall be deemed unearned income for a period of three (3) years following the alien's admission for permanent residence into the United States.

(12) A household which is required, as specified in 904 KAR 3:020, Section 6(6), to comply with mandatory monthly reporting criteria shall have its case processed as follows:

(a) The cabinet shall adopt a two (2) month system in which the issuance month is the second month following its corresponding budget month;

(b) There shall be up to three (3) beginning months of participation in this system, the first month and the two (2) months following:

(c) Eligibility and benefit calculation shall be determined prospectively for beginning months;

(d) Ongoing eligibility shall be determined by considering all factors of eligibility prospectively and determining benefits retrospectively;

(e) Eligibility factors causing a period of ineligibility which exceeds one (1) month shall be acted upon immediately;

(f) A monthly reporting household which is ineligible for a period not to exceed one (1) month shall be treated as follows:

1. The ineligible household's issuance shall be suspended for one (1) month.

2. If the suspended household remains ineligible after one (1) month, the cabinet shall terminate the household's participation; and

(g) The recertification form shall serve as the report required for that month in which a household must be recertified.

Section 6. Reporting Changes. (1) A certified household is required to report changes in household circumstances within ten (10) days of the date the change becomes known to the household.

(2) An applying household shall report all changes related to its food stamp eligibility and benefits:

(a) At the certification interview; or

(b) If changes occur after the interview but prior to receipt of the notice of eligibility, within ten (10) days of the date of the notice.

(3) A household which is required to report monthly, shall not be required to submit any reports of changes other than the reports required under Section 5(12) of this regulation.

Section 7. Replacement Issuance. (1) The cabinet shall provide a replacement issuance to an eligible household if:

(a) Its authorization document was:

1. Not received in the mail;

2. Stolen from the mail;

3. Destroyed in a household misfortune;

4. Improperly manufactured;

5. Stolen after receipt; or

6. Mutilated;

(b) Its coupons were:

1. Not received in the mail;

2. Destroyed in a household misfortune;

3. Improperly manufactured; or

4. Mutilated;

(c) Food purchased with food stamps was destroyed in a household misfortune; or

(d) It received a partial coupon allotment.

(2) The cabinet shall not provide a replacement issuance to a household if after receipt:

(a) Coupons are:

1. Lost;

2. Stolen; or

3. Misplaced;

(b) Authorization documents are:

1. Lost; or

2. Misplaced;

(c) Coupons or authorization documents are totally destroyed in other than a disaster or misfortune; or

(d) Coupons sent by registered or certified mail are signed for by anyone residing with or visiting with the household.

(3) The cabinet shall not provide a replacement issuance if the household or authorized representative has not provided the written household statement of nonreceipt.

(4) The cabinet shall not provide a replacement allotment for a misfortune for the same month that the household is eligible for

disaster food stamp benefits pursuant to a disaster declaration by the FNS.

(5) A replacement issuance shall be provided to a household if:

(a) The household reports a loss timely:

1. Orally; or

2. In writing;

(b) The household provides a statement of nonreceipt; and

(c) The original authorization document or allotment has not been returned to the cabinet at the time of the request for replacement.

(6) The report specified in subsection (5)(a) of this section shall be considered timely if it is made to the cabinet within ten (10) days of the date that:

(a) An authorization document is stolen from the household; or

(b) The following items are destroyed in a household misfortune:

1. Authorization document;

2. Coupons; or

3. Food purchased with food stamps.

(7) In a mail issuance county, the report must be made:

(a) Within the period of intended use; unless

(b) The original issuance was made after the 20th of the month. The period of intended use shall be extended to the last day of the month following the month of application.

(8) The number of replacement issuances which a household may receive shall be limited to:

(a) A total of two (2) countable replacements in six (6) months for:

1. Authorization documents; or

2. Coupons:

a. Not received in the mail;

b. Stolen from the mail; or

c. Destroyed in a household misfortune.

3. Authorization documents stolen after receipt; and

4. Partial coupon allotments; and

(b) No limit shall be placed on the number of replacements for:

1. Partial allotments if the partial allotments were due to an error by the cabinet;

2. Authorization documents or coupons which were:

a. Improperly manufactured; or

b. Mutilated; or

c. Food purchased with food stamp benefits which was destroyed in a household misfortune.

(9) The replacement shall not be considered a countable replacement if:

(a) The original or replacement issuance is returned or otherwise recouped by the cabinet;

(b) The original authorization document is not transacted;

(c) The replacement authorization document is not transacted; or

(d) The replacement issued due to an error by the cabinet.

(10) A replacement issuance shall be provided:

(a) In the amount of the loss of the household; and

(b) Up to a maximum of one (1) on the allotment; unless

(c) The issuance includes restored benefits which shall be replaced up to their full value.

(11) The cabinet shall provide a replacement issuance to an eligible household in accordance with 904 KAR 3:045, Section 4.

MIKE ROBINSON, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: May 14, 1992

FILED WITH LRC: May 18, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: The regulation is amended to incorporate Section 1727 of PL 101-624. The provision lowers the maximum age level of an individual who meets the criteria of an ineligible student. The provision also expands the criteria for determining eligible student status. The provision will expand food stamp eligibility for students at no direct cost to the state agency. However, the provision will affect a minimal number of recipients.

(a) Direct and indirect costs or savings to those affected: None

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: 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: The amendments to the regulation are mandated by federal statute. Therefore, no alternative methods were considered.

(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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 101-624, Section 1727.

2. State compliance standards. This regulation pertains to the certification process requirements for participation in the Food Stamp Program as prescribed by the Food and Nutrition Service. There are no separate state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The certification process requirements contained in this administrative regulation are applied in a like manner on a statewide basis and are consistent with the certification process requirements which are applied in the National Food Stamp Program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Service.

5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional responsibilities than those required by the federal mandate.

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

907 KAR 1:013. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.575, HB 468 part I.G. #52.b.2. of the 1992 GA

STATUTORY AUTHORITY: KRS 194.050, HB 468 part I.G. #52.b.2. of the 1992 GA, 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.575 provides for hospital indigent care assurance program (HICAP) payments. This administrative regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised July 1, 1991, which is incorporated by reference in this regulation. For any reimbursement issue or area not specified in the manual, the cabinet shall apply the Medicare standards and principles (excluding the Medicare inpatient routine nursing salary differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 3. General Description of the Payment System. (1) Use of prospective rates. Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate shall be all inclusive in that both routine and ancillary cost shall be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate shall not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate shall not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data shall have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments shall be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, shall be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used shall be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall be peer grouped according to bed size. The peer groupings for the payment system shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals shall not be peer grouped but shall have a separate array of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature shall not be peer grouped or arrayed.

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

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits with regard to services provided on or after July 1, 1991.

(a) The following upper limits and payment principles shall apply to all hospitals with other limitations for disproportionate share hospitals shown in paragraph (b) of this subsection.

1. For acute care hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. A mental hospital designated by the cabinet

as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living increases using the Data Resources, Incorporated Index. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. Hospitals participating in the Hospital Indigent Care Assurance Program (HICAP) shall also receive, in addition to regular program payments, amounts which are payable under HICAP. Effective with regard to payments for the quarter ending June 30, 1992 and thereafter, the HICAP payments shall be the product of the ratio of each hospital's Medicaid patient days compared to total Medicaid patient days as applied to total available HICAP funds (which are the amounts remaining, from the hospital assessments paid, for distribution to hospitals after exclusion of appropriate amounts for [~~minus~~] administrative expense, [~~hold harmless amounts, and~~] the contingency reserve amount, and amounts reserved for other program needs in accordance with budget commitments, obligations, and appropriations, and taking into consideration available federal Medicaid matching funds and upper limits on HICAP payments). The formula for determination of HICAP payment amounts is shown in the Reimbursement Manual at Section 102D.(b)(2), (3), (4), and (5). [~~For the quarters ending March 31, 1991 and June 30, 1991, no hospital participating in HICAP shall receive less than its assessment plus $100,000 annually ($25,000 quarterly). Effective with regard to services provided on and after July 1, 1991,~~] No hospital participating in HICAP shall receive on an annual basis less than five and one-quarter (5.25) percent of its operating costs, or five (5) percent of its annual operating costs plus $100,000, whichever amount is greater. [~~Hold harmless amounts are computed separately for the first twenty (20) percent of the fund, for the 21st through 60th percent of the fund, and 61st through 100th percent of the fund.~~] For hospitals which are disproportionate share hospitals the limitations shown in paragraph (b) of this subsection and subsection (9) of this section shall be applicable for HICAP payments. If a hospital which is a nondisproportionate share hospital is determined by the cabinet to be a nonparticipant in HICAP, the amounts otherwise payable under HICAP to the hospital shall not be made.

2. For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section.

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

3. Mental hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The per diem amount shall be computed using this upper limit or by using the disproportionate share minimum payment amount shown in subsection (9)(b)1 of this section if doing so results in a higher per diem amount.

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r-4(b) and (d) and those hospitals which may not meet such criteria but meet the criteria specified in 42 USC 1396r-4(d) and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and mental hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one-half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

1. All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.

2. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 to children under the age of six (6) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days

beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children.

3. Effective with regard to services provided on or after July 1, 1990 any hospital which is participating in the Hospital Indigent Care Assurance Program (HICAP) shall receive disproportionate share payments under HICAP. HICAP assessments and payments are described in 907 KAR 1:017, Hospital indigent care assurance program. If a hospital is determined by the cabinet to be a nonparticipant in the HICAP program, the hospital shall be entitled to the minimum adjustment shown in subparagraph 1 of this paragraph.

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

(11) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

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

Section 4. Payments to Participating Out-of-state Hospitals. (1) Effective with regard to services provided on or after July 1, 1990 participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission, participating out-of-state hospitals shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) and children under age six (6), without regard to length of stay or number of admissions of the infants and children.

(3) Effective with regard to services provided on or after February 1, 1991, professional costs (i.e., physician fees) for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

~~[Section 5. Implementation Date. Except as provided in Section 3(8) of this regulation, the amendments to this regulation shall be applicable with regard to services provided on or after July 1, 1991.]~~

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 14, 1992
FILED WITH LRC: May 18, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All disproportionate share hospitals participating in the HICAP program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $77.4 million (savings)

2. Continuing costs or savings: $77.4 million (savings)

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: No viable alternatives were identified.

(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

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

907 KAR 1:045. Payments for mental health center services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.325, 42 USC 1396a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for mental health center services.

Section 1. Mental Health Centers. Participating in-state mental health center providers shall be reimbursed as follows:

(1)(a) Payment rates for the rate year beginning July 1, 1991 shall be based on the following principles:

1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based on the latest available cost and statistical

data from the mental health centers.

2. Costs used in setting the interim rates shall be trended to the beginning of the rate year and indexed for inflation to the end of the rate year.

3. Direct service costs shall be arrayed (the "interim" array) and the interim rate upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable, reasonable cost for each service unit or the upper limit, whichever is less.

5. A retrospective final settlement shall be made after the end of the rate year based on the fiscal year ending June 30, 1992 annual cost report. All costs shall be rearrayed (the final array) for the final settlement. For purposes of determining costs in excess of the upper limit, the upper limit shall be the higher of the maximum derived from the interim array or the final array.

6. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit based on the final array.

7. A funding adjustment of fifty-two (52) cents shall be added to the interim outpatient per unit rates, and the same funding adjustment (i.e., the same fifty-two (52) cents) shall be allowed as a part of the final outpatient per unit rates (without regard to upper limits) to improve compensation of service providers and encourage provision of additional services.

(b) Payment rates for the rate year beginning July 1, 1992 shall be based on the following principles:

1. Interim (not final) rates for the nine (9) direct service cost centers shall be set based on mental health center cost reports submitted for the six (6) month period ending December 31, 1991.

2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation to the end of the rate year.

3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable reasonable cost for each service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the number of outpatient units of service) shall be added to the interim rate (without regard to upper limits) to improve compensation of service providers and encourage provision of additional services.

7. The interim rate shall be adjusted to final prospectively determined rates based on the audited or desk reviewed annual cost reports for the period ending June 30, 1992 with the cost reports indexed for inflation, the upper limits previously determined remaining in effect, and the same funding adjustment allowed.

(c) Payment rates for rate years beginning on or after July 1, 1993 shall be based on the following principles:

1. Final prospectively determined rates for the nine (9) direct service cost centers shall be set based on each mental health center's audited annual cost report for the prior year; if an audited cost report is not available, the most recent unaudited annual cost report shall be the basis for the rate with the rate adjusted as necessary at the time of audit or desk review of the cost center used in setting the rate. Costs shall be actual, reasonable, and allowable costs.

2. Costs used in setting the rates shall be trended to the beginning of the rate year and indexed for inflation.

3. Direct service costs shall be arrayed and the upper limit set at 130 percent of the median cost per unit of service of all participating centers.

4. The base rate shall be the allowable reasonable cost for each service unit or the upper limit, whichever is less.

5. Each facility shall have added to its rate, as a cost savings incentive payment, for each direct cost center an amount equal to fifteen (15) percent of the difference between the facility's actual reasonable allowable cost for the cost center and the upper limit.

6. A funding adjustment amount (derived by dividing $1.3 million by the total number of outpatient units of service) shall be added to the rate (without regard to upper limits) to improve compensation of providers and encourage provision of additional services.

(2) Payment amounts shall be determined by application of the "Community Mental Health/Mental Retardation Center Reimbursement Manual," (revised May 1, 1992 [~~July 1, 1991~~]), which is incorporated by reference in this regulation and supplemented by the use of the Medicare reimbursement principles. The Community Mental Health/Mental Retardation Center Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), the costs of motor vehicles used by management personnel which exceed $15,000 total valuation annually (unless the excess cost is considered as compensation to the management personnel), and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.

(4) The reimbursable departmental cost centers are on-site psychiatrist, on-site individual, off-site psychiatrist, off-site individual, group, personal care, therapeutic rehabilitation, inpatient hospital psychiatrist, and inpatient hospital other.

Section 2. Implementation of Payment System. (1) Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.

(2) Overpayments discovered as a result of audits shall be settled in the usual manner, i.e., through recoupment or withholding.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet. Notwithstanding this general requirement, the provider need not make available (for purposes of determining Medicaid payment amounts) staff notes or treatment records which show treatment details for non-Medicaid covered services; for these services, the information required shall be limited to a case summary sheet or listing which shows, at a minimum, the type of service provided, the staff member who provided the service, the date of the service, and appropriate identifying information relating to the patient.

(5) Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the cabinet's

"Community Mental Health/Mental Retardation Center Reimbursement Manual."

Section 4. Reimbursement of Out-of-state Providers. Reimbursement to participating out-of-state mental health center providers shall be the lower of charges, or the facility's rate as set by the state Medicaid Program in the other state, or the upper limit for that type of service in effect for Kentucky providers.

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 14, 1992
FILED WITH LRC: May 18, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All mental health centers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

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

907 KAR 1:376. Incorporation by reference of the Hospital Services Manual.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 194.050, 42 CFR 440.10, 42 USC 1396a, b, d, r-4
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the hospital services component of the Medicaid Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Hospital Services Manual, revised June 1, 1992 [~~November 1, 1991~~], used in the implementation of this component of the Kentucky Medicaid Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: June 8, 1992
FILED WITH LRC: June 10, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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: Roy Butler
(1) Type and number of entities affected: All participating providers of hospital services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:

2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

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

907 KAR 1:382. Incorporation by reference of the Preventive Health Services Manual.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.325, 42 USC 1396a, 1396c, 1396d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid [~~Medical Assistance~~] Program. The cabinet, by administrative regulation, is empowered to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the preventive health services component of the Medicaid [~~Medical Assistance~~] Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Preventive Health Services Manual, revised June 1, 1992 [~~April 1, 1991~~] used in the implementation of this component of the Kentucky Medicaid [~~Medical Assistance~~] Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: June 8, 1992
FILED WITH LRC: June 10, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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: Roy Butler
(1) Type and number of entities affected: All participating providers of preventive health services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

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

907 KAR 1:408. Incorporation by reference of the Nurse-Midwife Services Manual.

RELATES TO: KRS 205.520[~~, Title XIX of the Social Security Act~~]
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.170, 42 USC 1396d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid [~~Medical Assistance~~] Program [~~in accordance with Title XIX of the Social Security Act and KRS 205.520~~]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be [~~is~~] imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the nurse-midwife services component of the Medicaid [~~Medical Assistance~~] Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Nurse-Midwife Services Manual, revised June 1, 1992 [~~September 16, 1988~~] used in the implementation of this component of the Kentucky Medicaid [~~Medical Assistance~~] Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall [~~will~~] not exceed approximate cost.

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: June 8, 1992
FILED WITH LRC: June 10, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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: Roy Butler
(1) Type and number of entities affected: All participating providers of nurse-midwife services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

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

907 KAR 1:412. Incorporation by reference of the Podiatry Services Manual.

RELATES TO: KRS 205.520[~~, Title XIX of the Social Security Act~~]
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.60, 42 USC 1396, a, b, d
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid [~~Medical Assistance~~] Program [~~in accordance with Title XIX of the Social Security Act and KRS 205.520~~]. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the podiatry services component of the Medicaid [~~Medical Assistance~~] Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Podiatry Services Manual, revised May 1, 1992 [~~September 1, 1988~~], used in the implementation of this component of the Kentucky Medicaid [~~Medical Assistance~~] Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and

4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall [will] not exceed approximate cost.

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 14, 1992
FILED WITH LRC: May 18, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating providers of podiatry services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(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: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

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

907 KAR 1:416. Incorporation by reference of the Pharmacy Services Manual.

RELATES TO: KRS 205.520[, Title XIX of the Social Security Act]
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396 a-d, s

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid [Medical Assistance] Program [in accordance with Title XIX of the Social Security Act and KRS 205.520]. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the pharmacy services component of the Medicaid [Medical Assistance] Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Pharmacy Services Manual, revised June 1, 1992 [1989], used in the implementation of this component of the Kentucky Medicaid [Medical Assistance] Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall [will] not exceed approximate cost.

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 29, 1992
FILED WITH LRC: June 2, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating providers of pharmacy services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

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

907 KAR 1:432. Incorporation by reference of the Home and Community Based Waiver Services Manual.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 194.050, 42 CFR 440.180, 42 USC 1396a, b, d, n
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of this waiver component of the Medicaid Program. In the event of a conflict between manual materials incorporated by reference in this administrative regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Home and Community Based Waiver Services Manual, revised June 1, 1992 ~~[November 1, 1991]~~, used in the implementation of this component of the Kentucky Medicaid Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 29, 1992
FILED WITH LRC: June 2, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of home and community based services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, JUNE 15, 1992

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

401 KAR 49:011. General provisions relating to area solid waste management plans.

RELATES TO: KRS 109.041, 224.01, 224.43
STATUTORY AUTHORITY: KRS 224.43-340, 224.43-345
NECESSITY AND FUNCTION: The purpose of the area solid waste management plan is to develop goals and objectives for improving solid waste management in all areas of Kentucky. By addressing all solid waste management components, including collection, transportation, disposal, recycling, resource recovery, and public education, counties can create a management structure capable of supporting the local solid waste system. This regulation sets forth general requirements and procedures for submittal, processing, and amending of area solid waste management plans. This regulation is being promulgated as a result of the enactment of statutory changes made during the First Extraordinary Legislative Session of 1991. This regulation supersedes three (3) regulations that are being repealed due to conflicts with the 1991 statutory revisions: 401 KAR 49:010, 49:060, and 49:070.

Section 1. Preparation of an Area Solid Waste Management Plan. (1) An area solid waste management plan, referred to in this regulation as the plan, shall contain the information specified in KRS 224.43-345. The plan shall be prepared and formatted in accordance with guidelines provided by the cabinet.

(2) The requirements set forth in the document, entitled "Guidelines for Preparation of an Area Solid Waste Management Plan" (June 1992), are incorporated in this regulation by reference. The guidelines may be obtained from the Division of Waste Management, 14 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.

Section 2. Public Information Procedures. (1) The governing body shall be responsible for conducting a public information period on the contents of the plan prior to its submittal to the cabinet.

(2) The public information period shall include a thirty (30) day comment period that shall commence with the publishing of a public notice in accordance with subsection (3) of this section.

(3) A public notice shall be published by the governing body that meets the following requirements:

(a) The public notice form provided by the cabinet shall be completed by the governing body. The public notice form is part of the guidelines incorporated by reference in Section 1(2) of this regulation;

(b) The public notice shall be of a size to include not less than two (2) column widths and shall be in a display format; and

(c) The public notice shall be published in a daily or weekly newspaper of general circulation in each county in the area designated by the plan.

(4) The governing body shall hold a public hearing if one is requested. The hearing may occur in conjunction with the governing body's normally scheduled official meeting. The governing body shall provide at least seven (7) days notice for the scheduling of a public hearing on the plan; and

(5) The governing body shall respond to public comments within fifteen (15) days after the public comment period.

Section 3. Submittal and Plan Review Process. (1) All plans shall be submitted based on time frames specified in KRS 224.43-340 and 224.43-345 and shall be accompanied by an ordinance, resolution, or regulation from the appropriate governing body. This official document shall indicate the review and approval of the plan by the governing body.

(2) The original and one (1) copy of the plan shall be sent to the director, Division of Waste Management, 14 Reilly Road, Frankfort, KY 40601.

(3) The cabinet shall review each submitted plan for consistency with KRS 224.43-340, KRS 224.43-345, and this regulation.

(4) The cabinet shall notify the governing body in writing if the plan is approved.

(5) If a plan is disapproved by the cabinet, the cabinet shall notify the governing body in writing of each deficiency. The cabinet may grant the governing body up to ninety (90) days to correct all deficiencies in the plan. The cabinet may require the governing body to repeat the public information process in accordance with Section 2 of this regulation prior to cabinet approval of the plan.

(6) If the governing body fails to submit a plan, fails to correct all identified deficiencies within time frames specified by the cabinet, or fails to amend a plan in accordance with Section 4 of this regulation, the cabinet may take one (1) or more of the following actions:

(a) Initiate enforcement proceedings against the governing body pursuant to 401 KAR Chapter 40;

(b) Withhold any grants or monies for the area and the counties and cities located within the area pursuant to KRS 224.10-105 and KRS 224.43-340 until a plan is approved by the cabinet; and

(c) Prepare a plan for the governing body, conduct the public information procedure specified in Section 2 of this regulation, and charge the governing body all expenses incurred by the cabinet.

Section 4. Plan Amendment Process. (1) A plan may be amended either upon the initiative of the governing body or the cabinet if the current plan is inadequate because of new or revised information or to meet the requirements of KRS Chapter 224 and this regulation.

(2) If the cabinet makes a determination that an amendment to a plan is necessary under subsection (1) of this section, the cabinet shall inform the governing body in writing of the needed changes. The governing body shall have ninety (90) days to prepare and submit an amendment in accordance with subsection (5) of this section.

(3)(a) If the governing body makes a determination to amend its plan, it shall prepare and submit to the cabinet a request to amend that contains the following:

1. Name of the county or area that intends to amend its plan;
2. Name and address of the governing body;
3. Name, address, and phone number of a contact person;
4. Identification of the pages of the plan to be affected and a brief statement of the nature of the amendment; and
5. A written description outlining the justification, desired outcome, implementation schedules, and the financial impact of the proposed amendment.

(b) The cabinet shall review the request to amend within thirty (30) calendar days of receipt and determine whether a plan amendment is appropriate. If the plan amendment is not appropriate, the cabinet shall inform the governing body that no amendment is required. If a plan amendment is appropriate, the cabinet shall notify the governing body to proceed to amend its plan in accordance with subsections (4) and (5) of this section.

(4) The governing body shall publish a public notice regarding the proposed amendment to its plan in accordance with Section 2(3) of this regulation unless the cabinet informs the governing body in writing that a public notice is not necessary. If a proposed amendment is of a clerical nature, the cabinet shall not require the governing body to publish a public notice.

(5) Upon approval by the governing body of the proposed plan

amendment, the governing body shall submit the following to the cabinet:

(a) Two (2) copies of each page of the plan that is being amended;

(b) A copy of the public notice, as published, from each newspaper that published the notice verifying the date of publication;

(c) A copy of the resolution by the governing body approving the amendment and its submission to the cabinet;

(d) Copies of any resolutions approving the amendment by the first or second class city governing body that developed its portion of the plan, if required;

(e) Copies of any agreements or contracts relating to the plan amendment, if applicable;

(f) Copies of any proposed rules, regulations, or by-laws relating to the plan amendment, if applicable; and

(g) Any other supporting documentation as required by the cabinet.

(6) The cabinet shall inform the governing body in writing of the cabinet's decision to approve or disapprove the amendment to the plan.

Section 5. Plan Update Process. (1) The governing body shall submit to the cabinet for reapproval an updated plan on January 1, 1998, and every five (5) years thereafter.

(2) The plan update shall be subject to the public information procedures of Section 2 of this regulation.

(3) The cabinet shall review the plan update in accordance with Section 3 of this regulation.

Section 6. Implementation of the Plan. (1) Each governing body shall implement its plan as approved by the cabinet.

(2) Failure to implement an approved plan shall result in one (1) or both of the following actions by the cabinet:

(a) Initiate enforcement proceedings against the governing body pursuant to 401 KAR Chapter 40; and

(b) Withhold any grants or monies for the area and the counties and cities located in the area pursuant to KRS 224.10-105 and KRS 224.43-340 until the governing body is in compliance with its plan.

Section 7. Annual Reports. (1) The annual report, specified in KRS 224.43-310(5), shall be prepared by each governing body on a form provided by the cabinet. The original and one (1) copy of the report shall be sent to the director, Division of Waste Management, 14 Reilly Road, Frankfort, KY 40601.

(2) The requirements of the annual report, form DEP 1015 entitled "Area Solid Waste Management Plan Annual Report" (January 1992) are incorporated in this regulation by reference. The annual report may be obtained from the Division of Waste Management, 14 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.

Section 8. Repeal. 401 KAR 49:010 entitled "General planning and management provisions for solid waste", 401 KAR 49:060 entitled "Application for designation as a solid waste management area", and 401 KAR 49:070 entitled "Contents of the area plan," are hereby repealed.

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

APPROVED BY AGENCY: June 3, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held at 9 a.m. on July 30, 1992, at the Capital Plaza Tower, State Board Room, 1st Floor. Individuals interested in being heard at this hearing shall notify this agency in writing by July 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 July 30, 1992. CONTACT PERSON: James Hale, Division of Waste Management, 14 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 contains requirements for submittal and approval of area solid waste management plans. These plans are prepared and submitted predominately by county fiscal courts or solid waste management districts. Although solid waste management plans affect all Kentuckians, the proposed regulation addresses requirements that local governing bodies shall comply with to submit and maintain a current plan with the Division of Waste Management.

(a) Direct and indirect costs or savings to those affected:

1. First year: The first year costs for preparation and submittal of the plan will vary from county to county. Costs have ranged from $7,000 to approximately $125,000. Costs vary based on size of the county, population, staff capabilities, need for consulting firm support, and if the county is rural or urban.

2. Continuing costs or savings: Counties will continue to experience costs associated with planning. Phase I of the plans were due October 1, 1991. Phase II will be due January 1, 1993. Plans shall then be updated once every five (5) years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Counties are required to not only submit the plans on a timely basis as required by statute, but also amend them should they find the plan is inadequate based on new or revised information. Governing bodies may experience planning expenses if solid waste management in their area changes.

(b) Reporting and paperwork requirements: This proposed regulation does not require any new or additional reporting or paperwork requirements. The requirements for plan submittal, annual reporting, and plan amendments are existing requirements from statute.

2. Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Division of Waste Management will be responsible for providing informational assistance regarding application procedures, documentation required, etc. The Division of Waste Management already has the responsibility to review and monitor for implementation of the county solid waste management area plans and to provide informational and technical assistance with regard to proper waste management.

2. Continuing costs or savings: The Division of Waste Management will continue to incur administrative expenses in reviewing amendments and updates of plans as they are submitted.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet will provide written confirmation of receipt and approval of area solid waste management plans. However, there are no new requirements to be performed by the cabinet in its ongoing monitoring of plans.

(3) Assessment of anticipated effect on state and revenues: This proposed regulation is meant to clarify and reorganize three existing regulations and, therefore, involves no new requirements. There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods: reasons why alternatives were rejected: Effective February 21, 1991, the General Assembly in special session enacted Senate Bill 2. This bill specifically delineated requirements for county solid waste planning and management and

mandates that the cabinet promulgate regulations regarding solid waste management planning. This proposed regulation is meant to incorporate the directives of Senate Bill 2 as well as reorganize existing regulations. KRS Chapter 13A states that statutory language shall not be restated in a regulation. By repealing 401 KAR 49:010, 49:060, and 49:070, duplicative and conflicting language has been removed.

Alternative: 1. Less stringent: Senate Bill 2, codified in KRS Chapter 224, delineates requirements for county solid waste management and planning. The proposed regulation cannot be less stringent than provisions outlined in statute.

2. More stringent: Senate Bill 2, codified in KRS Chapter 224, delineates requirements for county solid waste management and planning. The proposed regulation cannot be more stringent than provisions outlined in statute.

3. Present proposal: The proposed regulation sets forth general requirements and procedures for the submittal, processing, and amending of the area solid waste management plans.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlap, or duplicate: There are no statutes, administrative regulations, or government policies that conflict, overlap, or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict: There are no conflicting statutes, regulations, or policies with regard to this regulation.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There are no conflicting statutes, regulations, or policies with regard to this regulation.

(6) Any additional information or comments: None.

Tiering: Was tiering applied? Yes. This proposed regulation applies to county and urban county governments, cities, combinations of counties, and waste management districts.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the Federal mandate. The proposed administrative regulation is consistent with the requirements of the federal Resource Conservation and Recovery Act of 1976, as amended.

2. State compliance standards. KRS 224.43-345 requires that each area solid waste management plan be prepared in accordance with administrative regulations adopted by the cabinet. The content of the plans is outlined in the statute and, per KRS 13A, not repeated in this regulation. The proposed regulation contains general requirements and procedures for submittal, processing, and amending an area solid waste management plan.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate contains minimum standards for development and implementation of a state plan and the upgrading of open dumps.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed administrative regulation imposes different requirements but is consistent with federal requirements for solid waste planning. Different requirements are for plan development and implementation to be done on a county level and to be consistent with the Kentucky Waste Management Plan, as determined necessary by the cabinet. There are no new requirements associated with this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Counties and waste management districts are required to develop solid waste management plans and form solid waste management areas. Since each county is unique in resources and problems, planning will be tailored to specific problems and implementation will be more efficient.

JUSTICE CABINET
Department of Corrections

500 KAR 10:001. Definitions.

RELATES TO: 1992 Acts, ch. 255, §3
STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3
NECESSITY AND FUNCTION: The Kentucky State Corrections Commission shall make grants to assist local jurisdictions in the implementation and operation of community corrections programs. This regulation sets forth the purpose and name of this grant program.

Section 1. Definitions. For the purposes of this regulation, the terms listed below shall have the following meanings:

(1) "Eligible applicant" shall mean any local government agency or combination of agencies, private nonprofit or charitable organization who has an established community corrections board.

(2) "Director" shall mean the person designated by the Secretary of the Justice Cabinet to serve as primary staff person to the Kentucky Corrections Commission.

(3) "Targeted offender" shall mean a person charged with or convicted of one (1) or more felonies who is eligible for probation, conditional discharge, conditional release, shock probation, or suspension of sentence.

(4) "Board" shall mean a board consisting of at least eight (8) community members who are responsible for developing and implementing a community corrections program plan.

(5) "Program plan" shall mean a written plan describing the proposed community-based correctional programs to be offered in a judicial district, for the purpose of diverting felon offenders from prison.

(6) "Commission" shall mean the Kentucky State Corrections Commission.

(7) "Cabinet" shall mean the Justice Cabinet.

(8) "Department" shall mean the Department of Corrections.

(9) "Grant funds" shall mean funds awarded by the commission for implementing a program plan.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for July 21, 1992 at 9 a.m., in the fifth floor conference room of the State Office Building, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th floor, State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

(a) Direct and indirect costs or savings to those affected:

1. First year: None unless applicant chooses to contribute to the program.

2. Continuing costs or savings: None unless applicant chooses to contribute to the program.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: Applicants who receive funding will be required to file quarterly progress reports with the commission.

(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 implementa-

tion of the regulations are included in the operational budget.

2. Continuing costs or savings: If grant results in fewer commitments to the state prison systems, some long-term savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to submit an annual report on the program to the Legislative Research Commission.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in statute.

(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:

(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. All policies for the grant program will be administered in a uniform manner statewide.

JUSTICE CABINET
Department of Corrections

500 KAR 10:010. Authority, purpose, name of grant program.

RELATES TO: 1992 Acts, ch. 255, §3

STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3

NECESSITY AND FUNCTION: The Kentucky Corrections Commission shall make grants to assist local jurisdictions in the implementation and operation of community corrections programs. This regulation sets forth the purpose and name of this grant program.

Section 1. Name and Purpose. The Kentucky community corrections grant program provides funds to communities to develop alternatives to incarceration for felon offenders.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: June 15, 1992

FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for July 21, 1992 at 9 a.m., in the fifth floor conference room of the State Office Building, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th floor, State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

(a) Direct and indirect costs or savings to those affected:

1. First year: None unless applicant chooses to contribute to the program.

2. Continuing costs or savings: None unless applicant chooses to contribute to the program.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: Applicants who receive funding will be required to file quarterly progress reports with the Commission.

(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: If grant results in fewer commitments to the state prison systems, some long-term savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to submit an annual report on the program to the Legislative Research Commission.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in statute.

(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:

(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. All policies for the grant program will be administered in a uniform manner statewide.

JUSTICE CABINET
Department of Corrections

500 KAR 10:020. Administration.

RELATES TO: 1992 Acts, ch. 255, §3

STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3

NECESSITY AND FUNCTION: 1992 Acts, ch. 255, §3

Section 1. Application Process. (1) The director shall notify eligible applicants of the availability of grant funds, requirements of the program, grant application format, and deadline for receiving applications.

(2) Eligible applicants may apply for a grant to implement a program plan in a judicial district. Prior to submitting a program plan, the board shall approve the application. Programs eligible for funding under the grant programs include but are not limited to: victim restitution, community service work, home confinement, electronic monitoring, drug and alcohol counseling program, and day reporting centers. Programs may vary among counties in a judicial district.

(3) Eligible applicants may apply for an advance grant for development of a program plan. To qualify for a grant to defray expenses involved in the development of a plan, the eligible applicant shall certify the need for and the inability to pay for such expenses incurred by the board in the discharge of official duties in the development of a program plan. Certification of the need for said grant shall be accompanied by:

(a) Project overview containing a description of the cities and counties to be served and the general forms of programs.

(b) Letters of certification of need and support from the circuit judge, Commonwealth attorney and the chief executive officer of the governmental unit.

(c) A projected budget detailing the manner in which the funds shall be expended.

(d) Any local funds or contributions allocated to the development and implementation of the program plan. The total of financial aid grant to any applicant to defray costs of developing a plan shall not exceed $5,000. The granting of funds to assist eligible applicants in the development of program plans shall be at the discretion of the commission. Any applicant that receives advance grant funds shall be required to have a board established within thirty (30) days of the notice of grant award as well as a report providing an accounting of funds expended. If an applicant fails to meet either of these dead-

lines, the director may request the applicant to return all funds uncommitted or unexpended at the time of the actual notification within thirty (30) days of notification. If the director orders the funds to be returned, the applicant shall be required to file a detailed report of all expenditures.

Section 2. Cabinet Assistance. The cabinet shall provide consultation and technical assistance for the development of program plans within budget and staffing limitations of the cabinet.

Section 3. Funds Restrictions. Grant funds shall be used for the development and implementation of new or enhanced programs and services for the targeted offenders. Such funds shall not be used to supplant funds previously committed to said programs and services by local or state government. Grant funds shall not be used for jail operations or the renovation or construction of facilities or the acquisition of land. No program can collect for fees from offenders participating in the program except those fees specifically ordered by the court.

Section 4. Award Procedure. The director shall forward copies of the applications to members of the commission who shall vote on the applications within sixty (60) days of the final deadline. The commission shall make their decision based on priorities established by the commission. The director shall notify the recipient(s) of the grant(s) award(s) within two (2) weeks of the decision. Grants shall be made on a year-to-year basis with consideration for continued funding until June 30, 1994 after review of submitted progress reports and audit reports. No continuation shall be provided to a program which has failed to reduce prison commitments.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for July 21, 1992 at 9 a.m., in the fifth floor conference room of the State Office Building, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th floor, State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Cheryl Roberts
(1) Type and number of entities affected: 1 or 2 judicial districts in the state.
(a) Direct and indirect costs or savings to those affected:
1. First year: None unless applicant chooses to contribute to the program.
2. Continuing costs or savings: None unless applicant chooses to contribute to the program.
3. Additional factors increasing or decreasing costs (Note any effects upon competition): None
(b) Reporting and paperwork requirements: Applicants who receive funding will be required to file quarterly progress reports with the Commission.
(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: If grant results in fewer commitments to the state prison systems, some long-term savings may be realized.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Staff is required to submit an annual report on the program to the Legislative Research Commission.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in statute.
(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:
(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. All policies for the grant program will be administered in a uniform manner statewide.

JUSTICE CABINET
Department of Corrections

500 KAR 10:030. Community corrections board.

RELATES TO: 1992 Acts, ch. 255, §3
STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3
NECESSITY AND FUNCTION: 1992 Acts, ch. 255, §3

Section 1. Organization. A board shall be organized as a nonprofit corporation and shall consist of at least eight (8) members and include at least one (1) representative of each of the following groups: judges, Commonwealth attorneys, defense attorneys, crime victims or survivors, probation officers, law enforcement official, social worker, and community representatives interested in criminal justice issues.

Section 2. Appointments. The initial board shall be appointed by a three (3) person committee consisting of the senior circuit court judge or designee, Commonwealth attorney, and an attorney who practices criminal cases designated by the senior circuit judge for terms of one (1) year. The board shall select a chairperson and shall select additional board members or fill vacancies. If an elected official on the board is not reelected, their successor shall assume their place on the board on the first day in office.

Section 3. Meetings. The board shall meet at least monthly. Board meetings and records shall be subject to open meetings and records laws. Members shall not be compensated for their duties as board members.

Section 4. Duties. Duties of the board shall include but not be limited to:
(1) Review and approve grant applications and community corrections program plan.
(2) Oversee implementation of the plan including an annual audit and provisions of contracting.

Section 5. Reporting Requirements. The board is required to submit a minimum of quarterly progress reports to the director in a format approved by the department. Deviations from the approved plan or budget must first be approved by the director. An annual independent audit shall be completed and submitted to the director.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for July 21, 1992 at 9 a.m., in the fifth floor conference room of the State Office Building, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th floor, State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

(a) Direct and indirect costs or savings to those affected:

1. First year: None unless applicant chooses to contribute to the program.

2. Continuing costs or savings: None unless applicant chooses to contribute to the program.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: Applicants who receive funding will be required to file quarterly progress reports with the Commission.

(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: If grant results in fewer commitments to the state prison systems, some long-term savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to submit an annual report on the program to the Legislative Research Commission.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in statute.

(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:

(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. All policies for the grant program will be administered in a uniform manner statewide.

JUSTICE CABINET
Department of Corrections

500 KAR 10:040. Annual review for compliance.

RELATES TO: 1992 Acts, ch. 255, §3
STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3
NECESSITY AND FUNCTION: 1992 Acts, ch. 255, §3

Section 1. Review Process. During each fiscal year, the director shall inspect and examine the fiscal and program records of each grant to determine compliance with the program plan and submit a report to the commission. If the director determines that there is a reasonable cause to believe that a program or facility is not in substantial compliance with current requirements of the grant, or the program plan under which it was funded, notice of such findings shall be submitted to the commission. Thirty (30) days following such notice, the board shall determine if there is substantial compliance or satisfactory progress being made to achieve compliance. The director may suspend all or any portion of a grant if it is determined by the commission that the board is not in substantial compliance or has not made satisfactory progress in achieving substantial compliance.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 15, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for July 21, 1992 at 9 a.m., in the fifth floor conference room of the State Office Building, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th floor, State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

(a) Direct and indirect costs or savings to those affected:

1. First year: None unless applicant chooses to contribute to the program.

2. Continuing costs or savings: None unless applicant chooses to contribute to the program.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: Applicants who receive funding will be required to file quarterly progress reports with the Commission.

(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: If grant results in fewer commitments to the state prison systems, some long-term savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to submit an annual report on the program to the Legislative Research Commission.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in statute.

(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:

(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. All policies for the grant program will be administered in a uniform manner statewide.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

603 KAR 5:260. Annual permits for moving farm equipment.

RELATES TO: KRS 189.270
STATUTORY AUTHORITY: KRS 189.270
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue annual permits for the movement of farm equipment exceeding legal dimensions. It further allows for the issuance of an annual permit for the movement of farm equipment up to sixteen (16) feet wide between the dealership and the farm. This administrative regulation establishes the permit application procedures within the Transportation Cabinet and establishes movement requirements necessary in the interest of highway safety.

Section 1. Definitions. (1) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour

after sunset. However, it does not include any time when atmospheric conditions such as heavy rain, snow, sleet or fog render visibility lower than is ordinarily the case during that period of the day.

(2) "Farm equipment" means machinery, equipment or vehicles used exclusively in an agricultural operation and which is not required by KRS Chapter 186 to be registered.

(3) "Fully-controlled limited access highway" means a highway which gives preference to through traffic and which shall have access only at selected public roads or streets and which shall have no at-grade highway crossings or intersections. (4) "National holiday" means one (1) of the following:

(a) New Year's Day;

(b) Memorial Day as observed on the last Monday in May;

(c) Independence Day;

(d) Labor Day;

(e) Thanksgiving Day; and

(f) Christmas Day.

Section 2. Permit Required. Except as allowed in 603 KAR 5:075, overdimensional self-propelled farm equipment or a motor vehicle transporting overdimensional farm equipment shall obtain a permit pursuant to KRS Chapter 189 by the Department of Vehicle Regulation, Division of Motor Carriers prior to operation on a state-maintained highway. The following overwidth farm equipment shall not be operated on any state-maintained highway without a special permit.

(1) That with a width greater than eight and one-half (8.5) feet shall not be operated on any highway listed in 603 KAR 5:070, Section 2(2)(b); and

(2) That with a width greater than eight (8) feet shall not be operated on any Kentucky highway not listed in 603 KAR 5:070 Section 2(2)(b).

Section 3. Permit Application. (1) Application for an annual permit to move overdimensional farm equipment on Kentucky highways shall only be made to the Department of Vehicle Regulation, Division of Motor Carriers, Frankfort, Kentucky.

(2) An annual permit application or request shall be made in writing and shall specify the following:

(a) Make of the vehicle;

(b) The vehicle identification number of the towing vehicle;

(c) The license plate number and state of registration of the towing vehicle;

(d) The name, telephone number and address of the owner of the towing vehicle; and

(e) The name, telephone number, address, and number of license required by KRS 138.665 (KYU#) of the person applying for the annual permit.

Section 4. Annual Permits. (1) An annual permit shall not be issued for the movement of the following:

(a) Self-propelled farm equipment which exceeds twelve (12) feet in width;

(b) Motor vehicle transporting farm equipment if the vehicle or load exceeds twelve (12) feet in width unless the transporter is a farm equipment dealer transporting farm equipment from his dealership to a farm or from a farm to his dealership;

(c) A motor vehicle transporting farm equipment which exceeds sixteen (16) feet in width;

(d) Farm equipment if the length of the trailer and towing unit combined exceeds ninety-five (95) feet in length;

(e) Farm equipment if the length of the straight truck and load exceeds fifty-five (55) feet in length; or

(f) A motor vehicle transporting farm equipment if the power unit does not have sufficient horsepower or braking capacity to safely handle the load being transported.

(2) A permit for the movement of farm equipment with a width greater than twelve (12) feet but which does not exceed sixteen (16) feet shall only be:

(a) Issued to a farm equipment dealer; and

(b) Valid when he is transporting the farm equipment from his dealership to a farm or from a farm to his dealership.

(3) A motor vehicle for which a permit was issued to a farm equipment dealer to transport farm equipment with a width greater than twelve (12) feet shall be:

(a) Titled, registered and licensed in Kentucky; or

(b) Apportioned licensed in another jurisdiction to operate in Kentucky.

Section 5. Permit Cost. (1) The issuance cost of an annual permit for the movement of farm equipment which does not exceed twelve (12) feet in width shall be eighty (80) dollars.

(2) The issuance cost of an annual permit to a farm equipment dealer for the movement of farm equipment which does not exceed sixteen (16) feet shall be $150.

(3) The issuance cost of a single trip permit shall be established by KRS 189.270.

(4)(a) The annual permit shall apply to a specific towing vehicle or self-propelled farm equipment.

(b) Each towing vehicle shall have a separate permit either issued under the provisions of this administrative regulation or another provision of KRS Chapter 189.

(c) The cost of the annual permit shall not be prorated.

Section 6. Movement of Farm Equipment in Excess of Twelve (12) Feet in Width. (1) If the farm equipment to be transported exceeds twelve (12) feet in width, the farm equipment dealer who holds the annual permit shall, prior to the proposed move, scout the entire route proposed to be used for the movement of the overdimensional farm equipment.

(2) If there is any doubt of the adequacy of the highway to safely accommodate the overdimensional farm equipment, the dealer shall:

(a) Select a different route; or

(b) Contact the appropriate highway district office for clearance to move the equipment over that specific route.

(3) If the highway district office does not issue clearance for the use of a particular route, that route shall not be used.

Section 7. Escort Vehicles. (1)(a) Required escort vehicles shall accompany the permitted vehicle at a distance of 300 feet on open highways.

(b) This interval shall be shortened in cities or congested areas to protect other traffic.

(2) An escort vehicle's headlamps shall be lit at all times.

(3) On a two (2)-lane highway, farm equipment with a width greater than:

(a) Ten and one-half (10.5) feet but twelve (12) feet or less in width shall have one (1) lead escort;

(b) Twelve (12) feet shall have one (1) lead and one (1) trail escort.

(4) On a four (4)-lane or wider highway, one (1) trail escort shall be required for:

(a) Farm equipment with a width greater than twelve (12) feet; or

(b) If the minimum speed of forty-five (45) miles per hour for any farm equipment being transported is not maintained.

(5) All escort vehicles shall maintain radio contact with the transporting vehicle at all times.

(6) Each required escort vehicle shall have one (1) of the following:

(a) An amber strobe or flashing light on the roof of the escort vehicle; or

(b) A warning sign which:

1. Is clearly legible;

2. States "OVERSIZE LOAD" in black letters on a yellow background; and

3. Shall be placed on the front of a front escort vehicle and on the rear of a trail escort vehicle.

Section 8. Other Safety Requirements. (1) Red or orange fluorescent warning flags at least eighteen (18) inches square shall be displayed on both sides of the vehicle at the widest extremities of the vehicle or load and at the four (4) top corners of the load.

(2) A warning sign shall be fastened to both the front of the towing unit and the rear of the load if:

(a) The total overdimensional permitted vehicle exceeds ten and one-half (10.5) feet in width; or

(b) Has front or rear overhang of four (4) or more feet.

(3) Each warning sign shall:

(a) State "OVERSIZE LOAD" in black letters on a yellow background;

(b) Not be less than seven (7) feet long and eighteen (18) inches high; and

(c) Have a brush stroke of not less than one and four-tenths (1.4) inches.

(4) If the overdimensional permitted vehicle has front or rear overhang of four (4) or more feet, a flag as described in subsection (1) of this section shall be placed at the outer extremity of the overhang.

(5) All overdimensional vehicles shall be marked and lighted in accordance with those requirements set forth in 601 KAR 1:005.

Section 9. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

Section 10. Presentation of Permits. (1) The permit shall be carried in the towing vehicle at all times.

(2) The permit shall be presented, upon request, to any law enforcement officer or any authorized personnel of the Department of Vehicle Regulation for inspection.

(3) A photocopy of the annual permit shall not be valid.

Section 11. Permit Validity. (1) A permit for the movement of overdimensional farm equipment shall be valid only during daylight hours.

(2) A permit for the movement of overdimensional farm equipment shall not be valid on any fully-controlled limited access highway during the following time periods:

(a) From Saturday noon until daylight on Monday; or

(b) From noon of the day preceding a national holiday until daylight of the next permissible day.

(c) If the national holiday occurs on Saturday, Sunday or Monday, the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

Section 12. Traffic Control. (1) When farm equipment with a width greater than fourteen (14) feet is crossing a bridge on a two (2) lane road, all other traffic shall be stopped.

(2) The Department of Vehicle Regulation may require that special traffic controls be implemented or the stopping of traffic be accomplished when the conditions indicate this action is necessary to maintain traffic safety.

Section 13. Responsibility of the Permit Holder. (1) Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of overdimensional farm equipment on an annual permit shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

(2) The permit holder who is moving farm equipment greater than twelve (12) feet in width under the provisions of an annual permit shall immediately prior to moving the farm equipment determine if there are any construction zones on his proposed route which would be too narrow or have curves too sharp to safely accommodate the farm equipment. This information may be obtained from the jurisdictional Highway District Office.

(3) A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the personal, written approval of the chief district engineer having jurisdiction over the property involved.

DON C. KELLY, Secretary
GLEN KELLY, Acting State Highway Engineer
NORRIS BECKLEY, Deputy Commissioner

APPROVED BY AGENCY: June 12, 1992

FILED WITH LRC: June 15, 1992 at 8 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 28, 1992 at 1 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by July 23, 1992 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until July 23, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All farm equipment dealers in Kentucky who transport overdimensional farm equipment.

(a) Direct and indirect costs or savings to those affected: The specific cost of the safety items imposed by this administrative regulation will vary with the tiered application and distance traveled. In general, the cost of an escort vehicle will be $50/hour. The one-time cost of purchasing an overdimensional banner will be $10.

1. First year:

2. Continuing costs or savings: The specific cost of the safety items imposed by this administrative regulation will vary with the tiered application and distance traveled. In general, the cost of an escort vehicle will be $50/hour. The one-time cost of purchasing an overdimensional banner will be $10.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Application for annual permits must be completed.

(2) Effects on the promulgating administrative body: The Department of Highways will be required to examine the roads over which some of the farm equipment will be transported.

(a) Direct and indirect costs or savings: Each on-site examination will have a total cost of about $75 to $100.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Issuance of the

annual permit.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The safety items imposed by this administrative regulation were jointly decided upon by the Departments of Highways and Vehicle Regulation and are consistent with those required by other states and for other overdimensional permits.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering of safety requirements was applied based on the type of highway, and width of farm equipment.

TRANSPORTATION CABINET
Department of Highways
Department of Vehicle Regulation
Division of Maintenance
Division of Motor Carriers

603 KAR 5:270. Annual overweight permits for the movement of steel products or materials.

RELATES TO: KRS 189.222, 1992 Acts c. 94, 23 CFR 658.17

STATUTORY AUTHORITY: 1992 Acts c. 94

NECESSITY AND FUNCTION: House Bill 492 passed by the 1992 General Assembly created a new section of KRS Chapter 189 which authorizes the Department of Highways to issue an annual $250 permit for the movement of a motor vehicle whose load of steel does not exceed a gross weight of 120,000 pounds and which does not travel more than thirty-five (35) miles on Kentucky highways. This administrative regulation establishes the procedures for application and safety requirements necessary in the interest of highway safety and convenience for the issuance of this overweight permit.

Section 1. Application for Permit. (1) An application for an annual overweight permit issued pursuant to this administrative regulation shall be made to the Department of Vehicle Regulation, Division of Motor Carriers, Frankfort, Kentucky 40622.

(2) The written application shall:

(a) State the name and address of the applicant;

(b) The purpose of the movements for which a permit is requested;

(c) The portion of the state primary road system to be used;

(d) The specific steel cargo to be hauled; and

(e) Description and identity of the vehicle for which the application is made.

(f) A certification that the tractor or towing unit has sufficient horsepower and braking capacity to safely transport the steel.

(3) A highway map showing the proposed route shall also be attached to the application.

(4) A separate permit application shall be required for each tractor or power unit which the applicant intends to operate under the provisions of this administrative regulation.

Section 2. Limits on Permits. (1) This annual overweight permit shall only be issued to a tractor or power unit which is:

(a) Registered in Kentucky for a combined gross weight of 80,000 pounds; or

(b) Apportioned registered in another licensing jurisdiction to operate in Kentucky with a gross weight of 80,000 pounds.

(2) All trailers or semitrailers used in conjunction with the tractor or power unit shall be registered and licensed:

(a) In Kentucky; or

(b) If in another jurisdiction, apportioned registered to operate in Kentucky.

(3) Each special permit issued shall be limited to designated portions of the state primary road system.

(4) An overweight permit shall not be issued or valid for a vehicle or vehicle combination whose axle weight exceeds the product of 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle.

(5) An annual overweight permit shall not be issued or valid for a vehicle or vehicle combination whose axle or axle group weight exceeds the following:

(a) Single axle - 24,000 pounds;

(b) Tandem axle group if the combination vehicle has only five (5) axles total - 45,000 pounds but there shall be at least forty-two (42) inches spacing between the center of each of the axles of the tandem axle group;

(c) Tandem axle group if the combination vehicle has six (6) axles or more - 48,000 pounds but there shall be at least forty-two (42) inches spacing between the center of each of the axles of the tandem axle group;

(d) Tridem axle group - 60,000 pounds but there shall be at least forty-two (42) inches spacing between the center of each of the axles of the tridem axle group; and

(d) Five (5) axle combination units shall not exceed 96,000 pounds gross weight.

Section 3. Denial of Permit Application. (1) The Transportation Cabinet, Division of Motor Carriers shall deny a permit application if the route includes any portion of the interstate highway system. Federal regulation 23 CFR 658.17 forbids the issuance of a permit for the movement on the interstate highway system of an overweight load which can be readily divided.

(2) The Transportation Cabinet shall have the right to deny or restrict a permit for the use of any route which may be detrimental to public safety or convenience. The Transportation Cabinet shall consider the following when making the determination on the application:

(a) The strength of all bridges and structures on the route;

(b) Traffic congestion on the route;

(c) Horizontal and vertical alignment of the route;

(d) The availability of alternate routes that afford greater safety;

(e) Urban development in residential and commercial areas on the route;

(f) The proximity of schools to the route; and

(g) Any other condition that would unduly compromise public safety and convenience.

Section 4. Permit Availability. (1) The original of the annual permit shall be carried in the overweight vehicle at all times.

(2) It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(3) A photocopy of the annual permit shall not be valid.

Section 5. Overdimensional Loads. If any movement to be made under an annual permit issued under this administrative regulation involves a motor vehicle which is overdimensional as well as overweight, the permit holder shall apply for an overdimensional permit under the provisions of KRS Chapter 189.

Section 6. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual

permit during its effective year. Any additional transfer of the permit requested shall be subject to the fees set forth in KRS Chapter 189.

DON C. KELLY, Secretary
GLEN KELLY, Acting State Highway Engineer
NORRIS BECKLEY, Deputy Commissioner
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 8 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on July 28, 1992 at 1 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by July 23, 1992 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until July 23, 1992. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All steel producing or steel using plants in Kentucky and the motor carriers which contract with them to transport their steel products.
(a) Direct and indirect costs or savings to those affected: None. The fee for the annual permit is established by statute. The savings each company will realize as a result of the annual permit was granted by statute.
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: Application for annual permits must be completed.
(2) Effects on the promulgating administrative body: The Department of Highways will be required to examine the roads and bridges over which the overweight steel will be transported.
(a) Direct and indirect costs or savings: Each road segment examination which contains a bridge will have a total cost of about $300 to $500.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Issuance of the annual permit.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The procedures for applying for this permit were made as consistent as possible with the application for other types of overweight permits.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering of the weight allowed was based on the type of axle configuration of the permitted vehicle.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education

780 KAR 9:130. Qualifications for progressing satisfactorily through a GED program.

RELATES TO: KRS 151B.110, 151B.125, 161.011
STATUTORY AUTHORITY: KRS 151B.125, 161.011
NECESSITY AND FUNCTION: KRS 151B.110 provides that the State Board for Adult and Technical Education shall be responsible for adult education programs and services. KRS 161.011 authorizes the State Board for Adult and Technical Education to define progressing satisfactorily through the GED program for the purposes of minimum qualifications for local school district classified employment positions. This regulation provides the necessary definition.

Section 1. Definition. (1) Making progress toward obtaining a General Equivalency Diploma (GED) means:
(a) Enrollment in an adult education program on an appropriate instructional level; and
(b) Verification of attendance at least once per month; and
(c) A minimum of two (2) years attendance or successful completion of the GED.
(2) The adult education teacher shall determine the appropriate instructional level by administering a reliable and valid commercially prepared standardized test designed for adult students as a pretest. This same test shall be administered as a posttest to enrollees at least once per year. Making progress shall also be determined through periodic testing. In cases of employee disability or undue hardship, these requirements may be waived or modified as appropriate by the local school superintendent.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: May 21, 1992
FILED WITH LRC: May 29, 1992 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1992 at 10 a.m. (EDT), in the State Board Room, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by July 17, 1992, five days prior to 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. 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: Audrey T. Carr, Secretary, State Board for Adult and Technical Education, Capital Plaza Tower, Room 302, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock
(1) Type and number of entities affected: Local school districts and State Board for Elementary and Secondary Schools.
(a) Direct and indirect costs or savings to those affected: Staff time.
1. First year: Cost of checking educational background of all classified employees.
2. Continuing costs or savings: Monitoring of classified employees.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: As required by State Board for Elementary and Secondary Education to monitor enforcement.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: See above. N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: As required to monitor at local school district level.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Legislative mandate under KRS 161.011.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All local school districts would enforce the same statutory requirement. Uniformity required by statute.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance.

RELATES TO: KRS 304.2-210, 304.3-200, 304.12-010, 304.12-220, 304.12-230, 304.12-235, 304.14-400, 304.20-070, 304.20-150 to 304.20-180, 342.325

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation defines unfair property and casualty insurance claims settlement practices.

Section 1. Definitions. As used in this regulation:

(1) "Agent" means any person authorized to represent an insurer with respect to a claim;

(2) "Claimant" means either a first party claimant, a third party claimant, or both and includes the claimant's designated legal representative (e.g., administrator, executor, guardian, or similar person) and includes a member of the insured's immediate family designated by the claimant (the insurer may require written proof of designation);

(3) "Claim file" means any retrievable electronic file, paper file, or combination of both;

(4) "Commissioner" means the Commissioner of the Kentucky Department of Insurance;

(5) "First party claimant" means a person asserting a right to payment under an insurance policy, certificate, or contract arising out of the occurrence of the contingency or loss covered by the policy, certificate, or contract;

(6) "Good faith" means an honest intention to abstain from taking any unconscientious advantage of another, together with absence of all information, notice, or benefit or belief of facts which render a transaction unconscientious;

(7) "Insurer" means any person transacting property or casualty insurance, including reciprocal insurers and Lloyd's plan insurers. "Insurer" also means agents and third party administrators;

(8) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by a policy, certificate, or contract;

(9) "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of the policy, certificate, or contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

(10) "Policy," "certificate," or "contract," mean any contract of insurance or indemnity, but do not include contracts of workers' compensation insurance (except to the extent provided in Section 2 of this regulation), fidelity, suretyship, or boiler and machinery insurance;

(11) "Replacement crash part" means sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels;

(12) "Third party claimant" means any person asserting a claim against any person under a policy, contract, or certificate of an insurer; and

(13) Delay or denial of a claim is "without reasonable foundation" when there is no rational relationship between the reasons for the delay or denial of a claim and the insurance policy, contract, or certificate, applicable law, or applicable facts.

Section 2. Scope and Purpose of This Regulation. This regulation is to set forth minimum standards for the investigation and disposition of property and casualty insurance claims arising under policies, certificates, and contracts. This regulation is not intended to cover claims involving fidelity, suretyship, or boiler and machinery insurance. This regulation is not intended to cover claims involving workers' compensation to the extent those questions arise under KRS Chapter 342 since those questions shall be resolved by workers' compensation administrative law judges. However, this regulation does apply to claims for unearned premium refunds under workers' compensation policies since workers' compensation administrative law judges do not have jurisdiction over a claim of this type. This regulation is intended to define procedures and practices which constitute unfair claims settlement practices.

Section 3. File and Record Documentation. Each insurer's claim files for policies, certificates, or contracts are subject to examination by the commissioner or the commissioner's designees. To aid in an examination:

(1) The insurer shall maintain claim data that are accessible and retrievable for examination. An insurer shall be able to provide the claim number, line of coverage, date of loss and date of payment of the claim, and date of denial or date closed without payment. This data shall be available for all open and closed files for the current year and the five (5) preceding years.

(2) Documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to each claim.

(3) Each relevant document within the claim file shall be noted as to date received, date processed, or date mailed.

(4) For those insurers which do not maintain hard copy files, claim files shall be accessible from a computer terminal available to examiners or micrographics and be capable of duplication to legible hard copy.

Section 4. Misrepresentation of Policy Provisions. (1) Insurers shall not fail to disclose fully to first party claimants all pertinent benefits, coverages, or other provisions of a policy, certificate, or contract under which a claim is presented.

(2) Agents shall not conceal from first party claimants benefits, coverages, or other provisions of any policy, certificate, or contract when the benefits, coverages, or other provisions are pertinent to a claim.

(3) A claim shall not be denied on the basis of failure to exhibit property unless there is documentation in the claim file of breach of

the policy provisions.

(4) Insurers shall not deny a claim based upon the failure of a first party claimant to give written notice of loss within a specified time limit unless written notice of loss is a written condition in the policy, certificate, or contract or the claimant's failure to give written notice after being requested to do so is so unreasonable as to constitute a breach of claimant's duty to cooperate with the insurer.

(5) Insurers shall not indicate to a first party claimant on a payment draft, check, or in an accompanying letter that payment is "final" or "a release" of any claim unless the policy limit has been paid or there has been a compromise settlement agreed to by the first party claimant and the insurer as to coverage and amount payable under the policy, certificate, or contract.

(6) Insurers shall not issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from total liability.

Section 5. Failure to Acknowledge Pertinent Communications. (1) Every insurer, upon receiving notification of a claim shall, within fifteen (15) calendar days acknowledge the receipt of the notice unless payment is made within that period of time. If an acknowledgement is made by means other than writing, an appropriate notation of the acknowledgement shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.

(2) Every insurer, upon receipt of any inquiry from the Department of Insurance respecting a claim shall, within twenty-one (21) calendar days of receipt of the inquiry, furnish the Department of Insurance with an adequate response to the inquiry in duplicate.

(3) An appropriate reply shall be made within fifteen (15) calendar days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

(4) Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance to first party claimants so that they can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this subsection within fifteen (15) calendar days of notification of a claim shall constitute compliance with subsection (1) of this section.

Section 6. Standards for Prompt, Fair, and Equitable Settlements Applicable to All Insurers. (1)(a) The insurer shall affirm or deny any liability on claims within a reasonable time and shall offer any payment due within thirty (30) calendar days of receipt of due proof of loss. If the insurer fails to pay the claim within thirty (30) days of receipt of due proof of loss, and the delay or denial is due to lack of a good faith attempt to settle the claim, the claim bears interest at the rate of twelve (12) percent per annum from the expiration of thirty (30) days from the receipt of due proof of loss. If the delay or denial is without reasonable foundation, the insured shall be reimbursed for reasonable attorney's fees incurred in collecting the claim. In claims where multiple coverages are involved, payments which are not in dispute shall be tendered within thirty (30) days of receipt of due proof of loss.

(b) Where there is a reasonable basis supported by specific information available for review by the commissioner that the first party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subsection, but the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(2)(a) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within thirty (30) calendar days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, forty-five (45) calendar days from the date of the initial notification and every forty-five (45) calendar days thereafter, send to the first party claimant a letter setting forth the reasons additional time is needed for investigation. The letter shall also describe to the insured the availability of interest and attorney's fees specified in subsection (1)(a) of this section.

(b) Where there is a reasonable basis supported by specific information available for review by the commissioner for suspecting that the first party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subsection, but the first party claimant shall be advised of the acceptance or denial of the claim by the insurer within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(3) Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(4) Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is not legally represented if the claimant's rights may be affected by a statute of limitations or a time limit in a policy, certificate, or contract, unless the insurer has given the claimant written notice of the limitation. The notice shall be given to first party claimants at least thirty (30) calendar days and to third party claimants at least sixty (60) calendar days before the date on which the time limit expires.

(5) Insurers shall not make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

(6) Subject to subsection (1)(a) of this section relating to first party claims, insurers shall affirm or deny liability on claims within a reasonable time and shall tender payment within thirty (30) days of affirmation of liability, if the amount of the claim is determined and not in dispute. In claims where multiple coverages are involved, payments which are not in dispute and where the payee is known shall be tendered within thirty (30) calendar days if the payment would terminate the insurer's known liability under that individual coverage.

(7) Insurers shall not request or require any insured to submit to a polygraph examination unless authorized under the applicable policy, certificate, or contract and applicable law.

Section 7. Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle Insurance. (1) When the policy, certificate, or contract provides for the adjustment and settlement of first party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, one (1) of the following methods shall apply:

(a) The insurer may elect to offer a replacement motor vehicle which is a specific comparable motor vehicle available to the insured, with all applicable taxes, license fees (if these fees cannot be refunded by the Transportation Cabinet) and other fees incident to transfer of evidence of ownership of the motor vehicle paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof shall be documented in the claim file.

(b) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable motor vehicle including all applicable taxes, license fees (if these fees cannot be refunded by the Transportation Cabinet), and other fees incident to transfer of evidence of ownership of a comparable motor vehicle. The cost may be determined by:

1. The cost of a comparable motor vehicle in the local market area when a comparable motor vehicle is available in the local market area; or

2. If a comparable motor vehicle is not available in the local market area, one (1) of two (2) or more quotations obtained by the insurer from two (2) or more qualified and licensed dealers (i.e., dealers which engage in the buying and selling of comparable motor

vehicles in the ordinary course of their business) located within the local market area.

(c) When a first party motor vehicle's total loss is settled on a basis which deviates from the methods described in subsection (1)(a) and (b) of this section, the deviation shall be supported by documentation giving particulars of the motor vehicle's condition. Any deductions from the cost, including deduction for salvage, shall be measurable, discernable, itemized, and specified as to dollar amount and shall be appropriate in amount. The basis for the alternative method of settlement shall be explained fully to the first party claimant.

(2) The measure of damages in a third party motor vehicle loss is the difference between the fair market value of the motor vehicle immediately before and after the loss, proportioned by the third party's contributory negligence, if any. Repair estimates or appraisers' reports may be used to indicate the difference in fair market value.

(3) Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claims under their own policies, certificates, or contracts solely to avoid paying claims under the insurers' policies, contracts, or certificates.

(4) Insurers shall not require a claimant to travel an unreasonable distance to inspect a replacement motor vehicle, to obtain a repair estimate, or to have the motor vehicle repaired at a specific repair shop.

(5) Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction shall then be for only a pro rata share of the allocated loss adjustment expense.

(6) If losses involving motor vehicle repairs are settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply the insured a copy of the estimate upon which the settlement is based. The estimate prepared by or for the insurer shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a worker-like manner. If the insured subsequently claims, based upon a written estimate which the insured obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the insurer shall pay the difference between the written estimate and a higher estimate obtained by the insured, or promptly provide the insured with the name of at least one (1) repair shop that will make the repairs for the amount of the written estimate. If the insurer designates only one (1) or two (2) repair shops, the insurer shall assure that the repairs are performed in a worker-like manner. The insurer shall maintain documentation of all of these communications.

(7) When the amount claimed is reduced because of betterment or depreciation, all information for the reduction shall be contained in the claim file. These deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(8)(a) Betterment deductions are allowable only if the deductions reflect a measurable decrease in the market value and general overall condition of the motor vehicle.

(b) The deductions set forth in paragraph (a) of this subsection shall be measurable, itemized, specified as to dollar amount, and documented in the claim file.

(c) Insurers shall not require the insured or claimant to supply parts for replacement.

(9) Insurers shall not require the use of replacement crash parts in the repair of a motor vehicle unless the replacement crash part is at least equal in kind and quality to the original part in terms of fit, quality, and performance. Insurers specifying the use of replacement crash parts shall consider the cost of any modifications which may be necessary when making the repair.

Section 8. Standards for Prompt, Fair, and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage. (1) When the policy, contract, or certificate provides for the adjustment and settlement of first party losses based on replacement cost, the following shall apply:

(a) When a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making the repair or replacement not otherwise excluded by the policy shall be included in the loss. The insured shall not have to pay for betterment nor any other cost to the extent of replacement cost, except for the applicable deductible.

(b) When a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured shall not bear any cost over the applicable deductible.

(2) Actual cash value.

(a) When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as follows: replacement cost of property at the time of the loss less depreciation, if any. Upon the insured's request, the insurer shall provide a copy of the claim file worksheets showing any and all deductions for depreciation.

(b) In cases in which the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth in paragraph (a) of this subsection is not required. In these cases, the insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

RONNIE C. MOORE, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: June 5, 1992
FILED WITH LRC: June 11, 1992 at 9 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for July 21, 1992, at 1:30 p.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Ronnie C. Moore, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 1:30 p.m. (ET), on July 21, 1992, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Agency contact person: Patrick Watts

Need for the Proposed Regulation: The proposed regulation is necessary to provide guidelines for compliance with statutes relating to unfair claims settlement practices, particularly KRS 304.12-230 and 304.12-235. These statutes are general in nature and require detailed guidelines in order to assure compliance. The proposed regulation contains the following provisions:

1. Requires maintenance of claim file documentation accessible to Department of Insurance examiners.
2. Requires disclosure of policy provisions to claimants.
3. Requires acknowledgement of communications regarding claims.
4. Requires payment of first party claims within 30 days of receipt of proof of loss by the insurer or interest begins to run at twelve percent (12%).
5. Establishes guidelines for settlement of motor vehicle insurance claims.

6. Establishes guidelines for settlement of property insurance claims involving replacement cost coverage.

Type and Numbers of Entities Affected: The proposed regulation will affect 600 insurers authorized to write property or casualty insurance in Kentucky. The proposed regulation will also affect 2,400 adjusters licensed in Kentucky. The proposed regulation will also affect an unknown number of insurance agents who have claim authority.

a. Direct and indirect cost or savings to those affected:

1. First year: The proposed regulation will establish new time periods for acting on communications. There may be some expense to comply, but since this is a model regulation, savings may result in the long run and claimants will receive better service.

2. Continued cost or savings: As stated above, as a model regulation, the proposed regulation will provide savings of the long run as part of an attempt to provide uniform guidelines.

3. Additional factors increasing or decreasing costs: None.

b. Reporting and paperwork requirements: The proposed regulation requires maintenance of claim file documentation accessible to Department of Insurance examiners. Similar requirements have been part of department regulations for many years and have always been considered reasonable. Electronic data processing maintenance of claim files is permitted.

Effects on the Promulgating Administrative Body:

a. Direct and indirect costs or savings:

1. First year: The regulatory standards established in the proposed regulation will result in savings because the department will have the advantage of specific guidelines to follow in enforcement of statutes relating to unfair claims settlement practices.

2. Continuing costs or savings: There will be no additional costs. Additional savings should be realized due to ease of enforcement.

3. Additional factors increasing or decreasing costs: None.

b. Reporting and paperwork requirements: None.

Assessment of Anticipated Effect on State and Local Revenues: None.

Assessment of Alternative Methods; Reasons why Alternatives were Rejected: The alternative would be to attempt enforcement of the statutes without specific guidelines. This would be difficult in that the statutes are couched in general terms, making enforcement difficult.

Statutes, Regulations, or Governmental Policies which may Conflict, Overlap, or Duplicate the Proposed Regulation: None.

TIERING: Tiering is recognized in the proposed regulation by noting specific practices which are prohibited and by prohibiting certain activities unless clearly provided for in the policy, thereby giving insurers the option of using a particular procedure.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 37:010. Insurance holding company systems.

RELATES TO: KRS 304.24-390, 304.24-410, 304.37-020, 304.37-030, 1992 Acts c. 267 §1 and §2

STATUTORY AUTHORITY: KRS 304.2-110.

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation sets forth procedural requirements which the Commissioner of Insurance deems necessary to carry out the provisions of KRS 304.37, insurance holding company systems, and statutes relating to the merger and acquisition of domestic insurers, this information being necessary and appropriate for the public interest and for the protection of policyholders in Kentucky.

Section 1. Definitions. The following definitions apply to this regulation:

(1) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

(2) "Foreign insurer" shall include an alien insurer except where clearly noted otherwise.

(3) "Ultimate controlling person" means that person which is not controlled by any other person.

Section 2. Forms - General Requirements. (1) Forms A, B, C, and D are intended to be guides in the preparation of the statements required by the 1992 Acts c. 267 §2, KRS 304.37-020 and 304.37-030. In addition, Form A shall be used as to mergers and acquisitions of domestic insurers referred to in KRS 304.24-390 and 304.24-410. They are not intended to be blank forms which are to be filled in. These statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers thereto are prepared in a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, shall be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(2) Duplicate originals of each statement including exhibits and all other papers and documents filed as a part thereof, shall be filed with the commissioner by personal delivery or mail addressed to: Financial Standards and Examination Division, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602. A copy of Form C shall be filed in each state in which an insurer is authorized to do business, if the insurance regulatory official of that state has notified the insurer of its request in writing, in which case the insurer has fifteen (15) days from receipt of the notice to file the form. The duplicate original shall be manually signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

(3) Statements shall be prepared on paper eight and one-half (8 1/2) inch by eleven (11) inch in size and bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable, and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

Section 3. Forms - Incorporation by Reference, Summaries and Omissions. (1) Information required by any item of Forms A, B, or D may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Forms A, B, or D provided the document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the commissioner which were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that the

material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where the incorporation would render the statement incomplete, unclear, or confusing.

(2) Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three (3) years and may be qualified in its entirety by the reference. In any case where two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one (1) of such documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents a copy of which is filed.

Section 4. Forms - Information Unknown or Unavailable and Extension of Time to Furnish. (1) Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because obtaining it would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:

(a) The person filing shall give the information on the subject it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and

(b) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to the person for the information.

(2) If it is impractical to furnish any required information, document, or report at the time it is required to be filed, there may be filed with the commissioner as a separate document:

(a) Identifying the information, document, or report in question;

(b) Stating why its filing at the time required is impractical; and

(c) Requesting an extension of time for filing the information, document, or report to a specified date. The request for extension shall be deemed granted unless the commissioner within sixty (60) days after receipt thereof enters an order denying the request.

Section 5. Forms - Additional Information and Exhibits. In addition to the information expressly required to be included in Forms A, B, C, and D, there shall be added any further material information necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. These exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, or D shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

Section 6. Subsidiaries of Domestic Insurers. The authority to invest in subsidiaries under 1992 Acts c. 267 §1 is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code.

Section 7. Acquisition of Control - Statement Filing. A person required to file a statement pursuant to KRS 304.24-410 or 1992 Acts c. 267 §2, shall furnish the required information on Form A.

Section 8. Amendments to Form A. The applicant shall promptly advise the commissioner of any changes in the information so furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the commissioner's disposition of the application.

Section 9. Acquisition of Certain Insurers. (1) If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of KRS 304.37-(1)(a), the name of the domestic insurer on the cover page shall be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company".

(2) Where an insurer referred to in subsection (1) of this section is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

Section 10. Annual Registration of Insurers - Statement Filing. An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall furnish the required information on Form B.

Section 11. Summary of Registration - Statement Filing. An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall also furnish information required on Form C. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the insurance regulatory official of that state.

Section 12. Alternative and Consolidated Registrations. (1) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under KRS 304.37-020. A registration statement may include information not required by KRS Chapter 304.37 regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in Kentucky. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile if:

(a) The statement or report contains substantially similar information required to be furnished on Form B; and

(b) The filing insurer is the principal insurance company in the insurance holding company system.

(2) The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under subsection (1) of this section.

(4) Any insurer may take advantage of the provisions of KRS 304.37-020(9) or (10) without obtaining the prior approval of the commissioner. However, the commissioner reserves the right to require individual filings if he deems them necessary in the interest of clarity, ease of administration, or the public good.

Section 13. Disclaimers and Termination of Registration. (1) A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (the "subject") shall contain the following information:

(a) The number of authorized, issued, and outstanding voting securities of the subject;

(b) With respect to the person whose control is denied and all affiliates of this person, the number and percentage of shares of the subject's voting securities which are held of record or known to be owned beneficially, and the number of these shares concerning which there is a right to acquire, directly or indirectly;

(c) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of this person;

(d) A statement explaining why the person should not be considered to control the subject.

(2) A request for termination of registration shall be deemed to have been granted unless the commissioner, within thirty (30) days after he receives the request, notifies the registrant otherwise.

Section 14. Transactions Subject to Prior Notice - Notice Filing. An insurer required to give notice of a proposed transaction pursuant to KRS 304.37-030 shall furnish the required information on Form D.

Section 15. Extraordinary Dividends and Other Distributions. (1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(a) The amount of the proposed dividend;

(b) The date established for payment of the dividend;

(c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;

(d) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

1. The amounts, dates, and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurers own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year.

2. Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;

3. If the insurer is a life insurer, the net gain from operations for the twelve (12) month period ending the 31st day of December next preceding;

4. If the insurer is not a life insurer, the net income less realized capital gains for the twelve (12) month period ending the 31st day of December next preceding and the two (2) preceding twelve (12) month periods; and

5. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years.

(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(2) Subject to KRS 304.37-030(2), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof, including the same information required by subsection (1)(d) of this section.

Section 16. Adequacy of Surplus. The factors set forth in KRS 304.37-030(4) are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The commissioner shall consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the commissioner shall consider the extent to which each of these factors varies from insurer to insurer and in determining the quality and liquidity of investments in subsidiaries, the commissioner shall consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

APPENDIX A

FORM A

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

_____

Name of Domestic Insurer

BY

_____

Name of Acquiring Person (Applicant)

Filed with the Kentucky Department of Insurance

_____

(State of domicile of insurer being acquired)

Dated:_____, 19_____

Name, Title, address, and telephone number of Individual to Whom Notices and Correspondence Concerning this Statement Shall be Addressed:

_____

_____

_____

_____

ITEM 1. INSURER AND METHOD OF ACQUISITION

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

(1) State the name and address of the applicant seeking to acquire control over the insurer.

(2) If the applicant is not an individual, state the nature of its business operations for the past five (5) years or for any lesser period as the person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.

(3) Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. No affiliate need be identified if its total assets are equal to less than one-half of one (0.5) percent of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in the chart or listing the percentage of voting securities of each person which is owned or controlled by the applicant or by any other person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

State the following with respect to the applicant if he is an individual or all persons who are directors, executive officers, or owners of ten (10) percent or more of the voting securities of the applicant if the applicant is not an individual.

(1) Name and business address;

(2) Present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(3) Material occupations, positions, offices, or employment during the last five (5) years, giving the starting and ending dates of each

and the name, principal business, and address of any business corporation or other organization in which each occupation, position, office, or employment was carried on; if any occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency, indicate this fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension, or disciplinary proceedings in connection therewith.

(4) Whether or not the person has ever been convicted in a criminal proceeding (excluding minor traffic violations) and, if so, give the date, nature of conviction, name, and location of court, and penalty imposed or other disposition of the case.

ITEM 4. NATURE, SOURCE, AND AMOUNT OF CONSIDERATION

(1) Describe the nature, source, and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship (if any) between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements relating thereto.

(2) Explain the criteria used in determining the nature and amount of such consideration.

(3) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was determined.

ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in Item 3.

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any person listed in Item 3 is involved, such as transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom these contracts, arrangements, or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates, or any person listed in Item 3 during the twelve (12) calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid. State whether any shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates, any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates, or any person listed in Item 3 during the twelve (12) calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER-DEALERS

Describe the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

(1) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits attached.

(2) The financial statements shall include the annual financial statements of the persons identified in Item 2(3) for the preceding five (5) fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of the person's last fiscal year, if the information is available. Statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if the consolidated statements are prepared in the usual course of business.

(3) The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the annual statement of the person filed with the insurance regulatory official of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.

(4) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer, and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two (2) fiscal years, and any additional documents or papers required by Form A or Sections 2 and 4 of this regulation.

ITEM 13. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of KRS 304.24-390, 304.24-410, or 199 and 1992 Acts c.267 §2, as applicable, _____ has caused this application to be duly signed on its behalf in the City of _____ and State of _____on the_____day of_____, 19 ____.

(SEAL) _____

Name of Applicant

BY _____

(Name) (Title)

Attest:

_____

(Signature of Officer)

_____

(Title)

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached application dated _____, 19_____, for and on behalf of _____ (Name of Applicant); that he is the _____ (Title of Officer) of the company and that he

is authorized to execute and file the instrument. Deponent further says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

(Signature)_____

(Type or print name beneath)_____

APPENDIX B
FORM B
INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Kentucky Department of Insurance
BY

_____
Name of Registrant

On Behalf of Following Insurance Companies

Name Address

_____

_____

_____

_____

Date:_____, 19____

Name, Title, Address, and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Shall Be Addressed:

_____

_____

_____

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered ("the registrant"), the home office address and principal executive offices of each, the date on which each registrant became part of the insurance holding company system, and the method(s) by which control of each registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. No affiliate need be shown if its total assets are equal to less than one-half of one (0.5) percent of the total assets of the ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding $1,000,000.00. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in such chart or listing indicate the type of organization (e.g., - corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system furnish the following information:

(1) Name;

(2) Home office address;

(3) Principal executive office address;

(4) The organizational structure of the person (i.e., corporation, partnership, individual, trust, etc.);

(5) The principal business of the person;

(6) The name and address of any person who holds or owns ten (10) percent or more of any class of voting security, the class of the security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and

(7) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings, and the date commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

Furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations.

ITEM 5. TRANSACTIONS AND AGREEMENTS

(1) Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates;

(b) Purchases, sales or exchanges of assets;

(c) Transactions not in the ordinary course of business;

(d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;

(e) All management agreements, service contracts, and all cost-sharing arrangements;

(f) Reinsurance agreements;

(g) Dividends and other distributions to shareholders;

(h) Consolidated tax allocation agreements; and

(i) Any pledge of the registrant's stock or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(2) No information need be disclosed if it is not material for purposes of KRS 304.37-020.

(3) Sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one (0.5) percent or less of the registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

(4) The description shall be in a manner as to permit the proper evaluation thereof by the commissioner, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any persons is or was the subject. Give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

(1) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and

(2) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company such as bankruptcy, receivership, or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

(1) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits attached.

(2) The financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

(3) If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent the information is available. The financial statements may be prepared on either an individual basis, or unless the commissioner otherwise requires, on a consolidated basis if the consolidated statements are prepared in the usual course of business.

(4) Unless the commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of the insurer filed with the insurance regulatory official of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

(5) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person, and any additional documents or papers required by Form B or Sections 2 and 4 of this regulation.

ITEM 9. FORM C REQUIRED

A Form C, Summary of Registration Statement, shall be prepared and filed with this Form B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of KRS 304.37-020, the Registrant has caused this annual registration statement to be duly signed on its behalf in the City of_____ and State of _____ on the _____ day of _____, 19____.

(SEAL)_____
Name of Applicant

BY_____
(Name) (Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached annual registration statement dated_____, 19___, for and on behalf of _____ (Name of Company); that he is the _____ (Title of Officer) of the company and that he is authorized to execute and file such instrument. Deponent further says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

APPENDIX C
FORM C
SUMMARY OF REGISTRATION STATEMENT

Filed with the Kentucky Department of Insurance
By

_____
Name of Registrant

On Behalf of Following Insurance Companies

Name Address

_____

_____

_____

_____

Date:_____, 19_____

Name, Title, Address, and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Shall Be Addressed:

_____

_____

_____

Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the commissioner, and shall include specific references to item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B, insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where the changes are ones which result in ownership or holdings of ten (10) percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where an individual is, for the first time, made a director or executive officer of the ultimate controlling person, a director or executive officer terminates his responsibilities with the ultimate controlling person, or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion, and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of KRS 304.37-020, the Registrant has caused this summary of registration statement to be duly signed on its behalf in the City of _____ and State of _____on the _____day of_____, 19_____.

(SEAL) _____
Name of Applicant

BY _____
(Name) (Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached summary of registration statement dated _____, 19_____, for and on behalf of _____ (Name of Company); that he is the _____ (Title of Officer) of the company and that he is authorized to execute and file the instrument. Deponent further says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

APPENDIX D
FORM D
PRIOR NOTICE OF A TRANSACTION

Filed with the Kentucky Department of Insurance
By

_____
Name of Registrant

On Behalf of Following Insurance Companies

Name Address

_____
_____
_____
_____

Date:_____, 19_____

Name, Title, Address, and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Shall Be Addressed:

_____
_____
_____

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the transaction:

(1) Name;

(2) Home office address;

(3) Principal executive office address;

(4) The organizational structure (i.e., corporation, partnership, individual, trust, etc.);

(5) A description of the nature of the parties' business operations;

(6) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties; and

(7) Where the transaction is with a nonaffiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

ITEM 2. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given:

(1) A statement as to whether notice is being given under KRS 304.37-030(2)(a)1, 2, 3, 4, or 5;

(2) A statement of the nature of the transaction; and

(3) The proposed effective date of the transaction.

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS

(1) Furnish a brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

(2) If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under the loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

(3) If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

(4) No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit, or guarantee is less than:

(a) In the case of nonlife insurers, the lesser of three (3) percent of the insurer's admitted assets or twenty-five (25) percent of surplus as regards policyholders; or

(b) In the case of life insurers, three (3) percent of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NONAFFILIATE.

(1) If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of, or make investments in any affiliate. Describe the amount and source of duns, securities, property, or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

(2) No notice need be given if the loan or extension of credit is one which equals less than, in the case of nonlife insurers, the lesser of three (3) percent of the insurer's admitted assets or twenty-five (25) percent of surplus as regards policyholders or, with respect to life insurers, three (3) percent of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 5. REINSURANCE

(1) If the transaction is a reinsurance agreement or modification thereto, as described by KRS 304.37-030(2)(a)3, furnish a description of the known or estimated amount of liability to be ceded or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and nonaffiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one (1) or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

(2) No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities in connection with the reinsurance agreement or modification thereto is less than five (5) percent of the insurer's

surplus as regards policyholders, as of the 31st day of December next preceding.

ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST-SHARING ARRANGEMENTS.

(1) For management and service agreements, furnish:

(a) A brief description of the managerial responsibilities, or services to be performed; and

(b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

(2) For cost-sharing arrangements, furnish:

(a) A brief description of the purpose of the agreement;

(b) A description of the period of time during which the agreement is to be in effect;

(c) A brief description of each party's expenses or costs covered by the agreement; and

(d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement.

ITEM 7. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of KRS 304.37-030, _____ has caused this notice to be duly signed on its behalf in the City of _____ and State of _____ _____ on the _____ day of _____, 19_____.

(SEAL) _____

Name of Applicant

BY _____

(Name) (Title)

Attest:

_____

(Signature of Officer)

_____

(Title)

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached notice dated _____, 19___, for and on behalf of _____ (Name of Applicant); that he is the _____ (Title of Officer) of the company and that he is authorized to execute and file the instrument. Deponent further says that he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

RONNIE C. MOORE, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 5, 1992

FILED WITH LRC: June 11, 1992 at 9 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for July 21, 1992, at 1:30 p.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Ronnie C. Moore, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 1:30 p.m. (ET), on July 21, 1992, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Contact person: Patrick Watts

Need for the Proposed Regulation: The proposed regulation is necessary to provide guidance for insurance holding company systems to comply with KRS 304.37. The proposed regulation is also needed to meet the Financial Regulation Accreditation Standards established by the National Association of Insurance Commissioners. While the regulation of insurance holding company systems is complex, the purpose behind that regulation is to prevent a holding company from "bleeding" an insurer, leaving it in poor financial condition. To accomplish this purpose, KRS 304.37 requires insurers which are members of holding company systems to register with the Commissioner of Insurance to provide notice of transactions which are material to the financial condition of the insurer. The 1992 General Assembly adopted House Bill 576, which adds various sections to KRS 304.37 to regulate the activities of domestic insurer subsidiaries, to regulate mergers and acquisitions not otherwise controlled by the insurance code, to authorize the Commissioner of Insurance to recover funds lost due to violations, and to provide for penalties for violations. As a result of House Bill 576, KRS 304.37 is substantially identical to the National Association of Insurance Commissioners Insurance Holding Company System Regulatory Act. In order to implement the provisions of KRS 304.37, the regulation describes the information which must be submitted in filings with the Commissioner of Insurance. These filings are described as Forms A (Mergers and Acquisitions), B (Registration Statement Concerning Material Transactions), C (Summary of Registration Statement), and D (Prior Notice of a Transaction).

Type and Numbers of Entities Affected: This regulation will affect 20 insurers which are domestic insurers which are members of insurance holding company systems.

a. Direct and indirect cost or savings to those affected:

1. First year: The filings referred to in Forms A, B, C, and D, are required by statute. The proposed regulation will result in savings by providing insurers guidance as to what must be contained in filings to meet the requirements of KRS 304.37. Further, these forms are substantially identical to forms used in other states, resulting in uniformity of reporting. Presently, many insurers use the model regulation to make these reports to the Kentucky Department of Insurance.

2. Continued cost or savings: The proposed regulation will result in continued savings by providing guidance in future years. 3 Additional factors increasing or decreasing costs: None.

b. Reporting and paperwork requirements: The proposed regulation specifies what must be included in filings made pursuant to KRSr 304.37.

Effects on the Promulgating Administrative Body:

a. Direct and indirect costs or savings:

1. First year: The proposed regulation will result in savings for the department because the department will be able to judge whether a filing provides all information needed to review transactions.

2. Continuing costs or savings: The proposed regulation will result in continued savings by allowing the department to determine whether a filing is in compliance with KRS 304.37.

3. Additional factors increasing or decreasing costs: None.

b. Reporting and paperwork requirements: The proposed regulation specifies what must be included in filings made by insurers which are members of insurance holding company systems.

Assessment of Anticipated Effect on State and Local Revenues: None.

Assessment of Alternative Methods; Reasons why Alternatives were Rejected: Alternatives to adoption of the proposed regulation were not considered since the regulation is required under the National Association of Insurance Commissioners Financial Regulation Accreditation Standards.

Statutes, Regulations, or Governmental Policies which may Conflict, Overlap, or Duplicate the Proposed Regulation: None.

TIERING: Tiering is recognized in that only transactions which are

material to the financial standing of a member of an insurance holding company system must be reported. The proposed regulation assists insurers in identifying material transactions which must be reported. Further, although the page size and format of filings are prescribed, the forms described in the proposed regulation are not "blanks" to be filled out, but merely indicate the types of information which must be included.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 2:170. Medical conditions which may pose a threat in the school environment.

RELATES TO: KRS 158.160, 211.180
STATUTORY AUTHORITY: KRS 158.160, 194.050, 211.090
NECESSITY AND FUNCTION: KRS 158.160 amended during the 1992 Regular Session of the General Assembly, requires the cabinet to define medical conditions which may pose a threat to others in the school environment. These conditions, as determined by the Department for Health Services, are to be set forth in regulation. This regulation is promulgated to comply with this requirement.

Section 1. For the purposes of notification of school personnel, conditions considered to pose a threat to others in the school environment are: hepatitis A, measles, bacterial meningitis, meningococcemia, pertussis, rubella, shigellosis, infectious tuberculosis, typhoid fever or its carrier state, mumps, head lice, weeping or excoriating skin infections which cannot be adequately covered, and a history of violent or abusive behavior.

PATRICIA K. NICOL, M.D., Acting Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by July 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: Reginald Finger, M.D.
(1) Type and number of entities affected: Kentucky school personnel. Number cannot be determined since it is unknown where one of the conditions may occur to make notification necessary.
(a) Direct and indirect costs or savings to those affected:
1. First year: There should be no cost associated with the notification requirement relating to these conditions.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None required.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: Cost of promulgating regulation.
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: HB 530 requires promulgation of regulation to define medical conditions for which notification is required of school personnel.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation, or policy in conflict with this action.
(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. HB 530 requires uniformity in conditions to be disclosed to school personnel.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:425. Incorporation by reference of the revised alternative intermediate services/mental retardation manual.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441 Subpart G, 42 USC 1396 a, b, d, n
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid program. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the alternative intermediate services/mental retardation services component of the Medicaid program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the alternative intermediate services/mental retardation manual, dated May 1, 1992, used in the implementation of this component of the Kentucky Medicaid Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. 907 KAR 1:424 is hereby repealed.

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 14, 1992
FILED WITH LRC: May 18, 1992
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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: Roy Butler

(1) Type and number of entities affected: All participating providers of alternative intermediate services/mental retardation.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(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: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:550. Incorporation by reference of the targeted case management services adults manual.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid program. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the targeted case management services for adults with chronic mental illness component of the Medicaid program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the targeted case management services adults manual dated May 1, 1992 used in the implementation of this component of the Kentucky Medicaid Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: May 14, 1992
FILED WITH LRC: May 18, 1992

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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: Roy Butler

(1) Type and number of entities affected: All participating providers of targeted case management services for adults with chronic mental illness.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(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: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be

addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:555. Incorporation by reference of the targeted case management services children manual.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a-d, n

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medicaid program. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the targeted case management services for severely emotionally disturbed children component of the Medicaid program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the targeted case management services children manual dated May 1, 1992 used in the implementation of this component of the Kentucky Medicaid Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: May 14, 1992

FILED WITH LRC: May 18, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1992 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 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: Roy Butler

(1) Type and number of entities affected: All participating providers of targeted case management services for emotionally disturbed children are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(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: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the June 2 and 3, 1992 Meeting

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 2, 1992 at 2 p.m. and Wednesday, June 3, 1992 at 10 a.m. in Room 131 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the May 5 and 6, 1992 meeting were approved.

Present were:

Members: June 2, 1992: Representative Tom Kerr, Chairman; Senators Gene Huff and Bill Quinlan; Representatives Woody Allen, Jim Bruce and James Yates. June 3, 1992: Representative Tom Kerr, Chairman; Senators Pat McCuiston, Gene Huff and Bill Quinlan; Representatives Jim Bruce, Woody Allen and James Yates.

Guests: Nathan Goldman, Paula S. Stone, Kentucky Board of Nursing; John Phillips, Thomas A. Young, Department of Fish and Wildlife; Kathryn R. Matheny, Judith A. Villines, C. Gregory Higdon, C. Pat Haight, Mark Brennaman, James Hale, Linda Stacy, Dave Rosenbaum, Jim Villines, Natural Resources and Environmental Protection Cabinet; Robert Hughes, East Kentucky Power Corporation; Tony Sholar, Kentucky Chamber of Commerce; Jacquelyn R. Johnson, Stoll, Keenon & Park; Carl Breeding, Reece, Lane & Breeding; Greg Brotzge, Kentucky Paint Council; James E. Baker, Western Kentucky Coal Assoc.; James M. See, Russ Coburn, Kentucky Power Company; Jim B. Byrum, KEA; Bill Caylor, Kentucky Coal Association; Jack Damron, Lori Poole, Corrections; Sandy Pullen, Transportation; Ellen Hellard, Michelle Gardner, Department for Libraries and Archives; John Horton, Beverly H. Haverstock, Workforce Development Cabinet; David Ashley, Department of Financial Institutions; Jack A. Wilson, K. M. Hargraves, Ked Fitzpatrick, Anita Moore, Cliff Jennings, Barbara Coleman, Timothy A. Sturgill, Masten Childers II, Samuel J. Burnette, Patricia K. Nicol, M.D., Patrick Rickard, Janice Kline, Cookie Whitehouse, Diana Gaetz, Thelma Cornett, John Sammons, Tom Johnson, Cabinet for Human Resources; John Karay, Kinder Kollege, Inc.; Chris Dedic; Kenneth Spach, Jessamine County Health Department; Timothy E. Wright, Woodford County Health Department; Darlene Eakin, Kentucky Optometric Association; Carl Noe, Madison County Health Department; Elizabeth A. Grever, Community Coordinated Child Care; Jack Brammer, Lexington Herald-Leader.

LRC Staff: Joe Hood, Greg Karambellas, Tom Troth, Patrice Carroll, Susan Wunderlich, Donna Pierce, Peggy Jones, Susan Eastman.

The Subcommittee determined that the following administrative regulation, as amended, does not comply with statutory authority:

Cabinet for Human Resources: Department for Social Services: Day Care

905 KAR 2:080 (Child day care services.) Representative Bruce asked what amount day care centers will receive through the increase in payments proposed by this administrative regulation. Cabinet personnel responded that the increase ranges from 10% to 20% depending on the age of the child and the type of facility.

Representative Allen asked what rate is used to pay providers of child care. Cabinet personnel explained payment is made for any amount a provider charges up to the market rate. Representative Allen commented on a program for "stressed out parents" where he had learned of situations where payments were made in an irregular manner. The Cabinet responded that this change in rate for payments went into effect October 1991 and clearly established a rate which is the lesser of the market rate or what the provider charges to the general public.

Representative Bruce commented on a similar situation where a woman, employed part-time, wanted to place her children in day care for two days and was told she would be charged $55 dollars weekly. He said this had the effect of keeping some part-time workers from being able to place their children and requires them to pay for private child care. It further encourages child care providers to accept only children at $55 dollars weekly instead of a child for two days at $20 dollars. Cabinet personnel explained that the block grant program attempts to promote the availability of child care and the $55 dollar rate was most likely based on the individual provider's policy which required a weekly rate regardless of the number of days utilized.

Representative Bruce commented that those persons interested in part-time employment should not be eliminated simply because this grant program encourages providers to require a specified rate for a full week.

Representative Allen inquired what qualifications are required for a parent to be eligible to enroll a child in the block grant program. The Cabinet listed the qualifications which essentially require a parent to be working or in school. Representative Allen expressed concern that a parent on welfare with no job would not be able to place their child in this program. The Cabinet described other programs which address the concerns of these individuals and explained that the grant program does provide child care at night and on weekends.

Chairman Kerr asked whether nonrelative providers, who provide care in the child's home, must be certified as required in Section 5 if those individuals choose to receive federal funds. Cabinet personnel explained that the federal rules under the Child Care and Development Block Grant have to become certified.

Chairman Kerr commented that legislation was enacted during the last regular session which specified that when care is provided in the home, a provider is not required to be certified if caring for one to three children. If four to six children are cared for then the provider must seek certification. Cabinet representatives clarified that the certification requirements in Senate Bill 211 are separate from federal certification requirements which specify that any provider of care other than relatives must meet state "health and safety" requirements. The certification rules contain minimal health and safety requirements.

Representative Kerr questioned the validity of Section 5(d)5. which prohibits a nonrelative provider in the child's home from using any form of corporal punishment even if consented to by the parent. The Cabinet explained that this subsection is part of the minimal health and safety requirements the Cabinet is imposing on in-home providers.

Senator Huff asked what the Cabinet's current policy is on nonrelative providers. The Cabinet responded that the policy is established in the state plan for the child care development block grant. However, the Cabinet recognizes that this policy is not currently established in an administrative regulation, but is presently addressing this concern.

Senator Huff asked if the requirements listed in Section 5 are new. The Cabinet explained that these basic requirements are contained in the administrative regulations that govern certification of small family day care homes. In the past, certification of a provider of three or fewer children was voluntary, and would not have been governed by that certification regulation. This grant program has borrowed requirements from the administration regulation which governed certification of small family homes which were determined to be essential for the "health and safety" of children when a provider comes into the child's home.

Senator Huff sought to clarify whether the corporal punishment prohibition found in Section 5(d)5. was in the certification regulations. The Cabinet responded that intends to regulate in-home providers under the block grant program as they would receive public funds. Nonrelative, in-home providers, under the federal regulations, are

required to meet the minimal health and safety standards imposed by the Cabinet.

Senator Huff asked if nonrelative providers are being reimbursed by the grant program. The Cabinet explained that reimbursement occurs during certification as parents are permitted to choose a nonrelative provider. The Cabinet can only impose minimal health and safety standards on the providers.

Senator Huff expressed concern regarding the issue of corporal punishment and asked the Cabinet to consider an amendment to remove Section 5(d)5. The Cabinet answered that it prefers alternatives to corporal punishment which are just as effective.

Chairman Kerr asked by what statutory authority the Cabinet may usurp or restrict the parent's authority to contract with someone and authorize them to use corporal punishment in the same way that the parent would. The Cabinet responded that this applies only in those situations when there is a provider who is receiving public funds. Chairman Kerr said those parents are denied the those funds if they choose to use corporal punishment simply because the Cabinet has decided that corporal punishment is improper. He concluded that this section is objectionable and without statutory authority.

Senator Huff moved that the administrative regulation should be found deficient. The Subcommittee found the administrative regulation deficient.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

General Government Cabinet: Board of Nursing

The following three regulations were amended in various sections to comply with the drafting requirements of KRS 13A.222, to clarify vague provisions, to provide proper identification of forms incorporated by reference, to establish fees, and to reorganize the format.

201 KAR 20:200 (Definitions for mandatory continuing education.)

201 KAR 20:215 (Contact hours, recordkeeping and reporting requirements for renewal of licensure.)

201 KAR 20:220 (Provider approval.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:170 (Seasons for deer hunting.) The STATUTORY AUTHORITY line in this regulation was amended to add citation of KRS 150.015 and 150.021.

301 KAR 2:210 (Antlerless deer permits.) The STATUTORY AUTHORITY line was amended to add citation of KRS 150.015 and 150.021.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management

The promulgating agency had requested the Regulations Compiler to include additional information in the "Statement of Consideration". The agency was informed that KRS Chapter 13A did not permit the amendment of a Statement of Consideration after it had been filed with the Regulations Compiler, and that this material would be included as part of the material submitted and considered by the Subcommittee and would be forwarded to LRC.

401 KAR 45:010 (Definitions.) Section 1 of this regulation was amended to correct statutory citation of KRS 224.01-100 to KRS 224.01-010.

401 KAR 45:070 (Special waste registered permit-by-rule.) Section 4(1) was amended to add the words "site or facility", which is the terminology used throughout this regulation.

Department for Surface Mining and Reclamation and Enforcement

Bill Caylor, representing the Kentucky Coal Association, objected to concerns relating to Section 2(12) in both 405 KAR 8:030 and 405 KAR 8:040. He stated that, while the Association generally favors fish and wildlife administrative regulations, KCA is concerned with the language in Section 2(12). This section allows the Cabinet to suspend a permit if a permittee has not provided the Cabinet with updated "ownership and control" information. KCA views this new requirement as onerous as it allows for permit suspensions by the Cabinet without an administrative hearing.

More specifically, KCA objects because: (1) although the general ability to suspend is inherent in KRS Chapter 350, the ability to suspend a permit is not required by federal law; (2) the language is misleading because permit suspension cannot occur without an administrative hearing; and (3) the language is repetitive and unnecessary as other sections of these administrative regulations address the Cabinet's ability to suspend permits after an administrative hearing.

Commissioner Higdon replied that a federal computer network tracks permittee "ownership and control" information and often there are inconsistencies in the federal and state computer information. The Cabinet must require that updated "ownership and control" information be submitted so that it may better serve the regulated community in dealing with the federal Office of Surface Mining. Although the state has primacy in administering these programs, the federal OSM has extensive oversight of the state programs. This new language requires the regulated entity to respond to any changes in a permittee's ownership and control. Where records are inconsistent with the federal information, it can often delay the granting of permits for new operations. He added that the coal industry as a whole agrees with the language.

KCA representative again objected that permits should not be suspended without a public hearing.

Chairman Kerr asked whether KCA is concerned because: (1) the Cabinet already has the authority to suspend for failure to provide this information, and therefore does not need to restate this; or (2) KCA believes that the Cabinet should not have the authority to suspend for failure to provide this information in a timely manner.

KCA responded that the Cabinet has the authority to suspend. However, suspension can only occur after an administrative hearing.

The Cabinet agreed to amend Section 2(12) to provide that, on the failure of a permittee to timely submit ownership and control information, the Cabinet may suspend the permit only "after an opportunity for a hearing".

405 KAR 8:030 (Surface coal mining permits.)

405 KAR 8:040 (Underground coal mining permits.)

Corrections Cabinet

501 KAR 6:050 (Luther Luckett Correctional Complex.) This administrative regulation was amended to provide the correct statutory citation in policy LLCC 02-01-03.

Transportation Cabinet: Department of Vehicle Regulation: Commercial Driver's License

601 KAR 11:040 (Medical waivers for intrastate operators of commercial motor vehicles.) This administrative regulation was amended in various sections to comply with the drafting requirements of KRS 13A.222, to clarify vague provisions, to provide proper identification of forms incorporated by reference, and to reorganize the format. This amendment includes an amendment to permit completion of the "Vision Conditions Form" by a licensed optometrist.

Education and Humanities Cabinet: Department of Libraries and Archives: Libraries

The following two administrative regulations were amended in various sections to comply with the drafting requirements of KRS 13A.222, to clarify vague provisions, and to reorganize the format.

725 KAR 2:060 (Certification of public librarians.)

725 KAR 2:070 (Certification renewal of public librarians.)

Workforce Development Cabinet: Department for Adult and Technical Education: Management of the Kentucky Tech System

The following three administrative regulations were amended in various sections to comply with the drafting requirements of KRS 13A.222, to clarify vague provisions, to establish standards for readmission after expulsion and for retraining without charge, and to reorganize the format.

780 KAR 2:100 (Attendance policies for long-term adults in state-operated vocational schools.)

780 KAR 2:110 (Student medical and accident insurance.)

780 KAR 2:120 (Standard for academic progress for postsecondary and adult students.)

Cabinet for Human Resources: Department for Health Services: Sanitation

902 KAR 10:085 (Kentucky on-site sewage disposal system regulation.) This administrative regula-tion was amended to conform to objections raised by the Subcommittee at its August, 1991 meeting. At the ARRS April 1992 meeting, the Cabinet agreed to amend this administrative regulation to comply with the objections raised by the Subcommittee. On that basis, the Subcommittee approved a motion removing its finding of deficiency.

This administrative regulation was further amended. Subcommittee staff summarized the amendment: (1) Section 15(1) clarified that on-site sewage systems would be governed by KRS 211.355(2) and the provisions of Section 15; and (2) Section 15(4), which permits the installation of a seepage pit in the development of a vacant lot, if municipal or public sewage treatment systems are no available, was amended to establish May 1, 1992 as the date by which persons shall have purchased a vacant lot.

Carl Noe, environmental supervisor with the Madison County Health Department, objected to Section 15 and the amendments proposed by the Cabinet on the grounds that by permitting seepage pits would have a detrimental effect on the groundwater quality and, in particular, the environment in Madison County. He distributed material in support of his position to the Subcommittee. He stated that this amendment could result in the violation of KRS 512.070. H e requested that the Subcommittee not approve this administrative regulation.

Representative Yates explained that under the present law seepage pits are legal and this section simply puts restrictions on the use and installation of pits. He also stated that unless this administrative regulation were approved there would be no administrative regulation governing the use of seepage pits because the previous regulation had been found deficient and a statute governing the subject matter had not been enacted during the last regular session.

Mr. Noe responded that the installation of seepage pits within six months of May 1, 1992, would significantly contribute the pollution of the groundwaters. He further stated, that the six month period would result in the installation of seepage pits because they would be the least expensive alternative. He concluded that KRS Chapter 13A would prohibit regulation of the subject matter by local government.

Subcommittee staff explained that KRS Chapter 13A would not prohibit this if the statutes governing seepage pits permitted a local government to enforce standards stricter than the state standards. Subcommittee staff added that if this were the case the local government would pass an ordinance. Cabinet personnel agreed, but was unclear, as to whether Madison County was permitted to enact stricter standards. Mr. Childers advised that the Cabinet will look into the issue further, nevertheless the Cabinet still supports this administrative regulation.

Representative Allen asked Mr. Childers why people would install a seepage pit instead of a septic tank. Cabinet personnel stated that this administrative regulation was required because without it there would be no standard established. He added that under the previous administrative regulation enforcement standards were not consistent. The Cabinet was faced with either selective enforcement or stricter enforcement standards which raised serious constitutional and real property questions.

Representative Allen asked what procedure is in place to govern the issuing of permits to install seepage pits. Cabinet personnel responded that standards are in place and that local health departments issue the permits and monitor the installation of seepage pits.

Representative Allen expressed interest in this issue as it relates to the farmer and objected to the requirement that septic tanks be installed on farms. He asked Mr. Noe for data on the environmental effects on groundwater from sewage on a 400 acre farm. Mr. Noe explained that sewage effluent exposed to the surface then insects can carry diseases from the sewage to other places the farmstead.

Senator Huff clarified that under Section 15(4) a person shall begin bona fide construction of a seepage pit within six months from the effective date of this administrative regulation and must have purchased a vacant lot on or before May 1, 1992.

The administrative regulation, as amended, was approved.

Department for Social Insurance: Public Assistance

904 KAR 2:016 (Standards for need and amount; AFDC.) This administrative regulation was amended by the Cabinet for Human Resources to include: (1) changes in good cause criteria in the AFDC program for recipients who either reduce their employment or fail to report changes in earnings in a timely manner; (2) technical eligibility for married children living with spouses in the homes of their parents; (3) allowing a deduction from JTPA unearned income; and (4) cutbacks in the JOBS programs. The Subcommittee approved the administrative regulation as amended. Chairman Kerr raised a concern regarding a constituent who operates a private employment agency. The employment agency had found a job for an AFDC recipient who was advised by an AFDC social worker not to take the job. This individual was receiving AFDC benefits and participates in the JOBS program. Chairman Kerr asked representatives from the Cabinet to respond to this concern.

904 KAR 2:040 (Procedures for determining initial and continuing eligibility.) This administrative regulation was amended to correct a statutory citation.

Department for Medicaid Services

907 KAR 1:525 (Targeted case management services for severely emotionally disturbed children.) This administrative regulation was amended to conform with KRS Chapter 13A.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: General Administrative Procedures

401 KAR 30:010 (Definitions for 401 KAR Chapters 30 to 49.)

401 KAR 30:031 (Environmental performance standards.)

Special Waste

401 KAR 45:020 (Types of special waste permits.)

401 KAR 45:030 (Obtaining a special waste site or facility permit.)

401 KAR 45:040 (Modification, transfer or revocation of special waste permits.)

401 KAR 45:050 (Public information procedures for special waste site or facility permits.)

401 KAR 45:060 (Special waste permit-by-rule.)

401 KAR 45:080 (Financial requirements and bonds for special waste facilities.)

401 KAR 45:090 (Special waste operator certification.)

401 KAR 45:100 (Landfarming and composting of special waste.)

401 KAR 45:110 (Technical and operating requirements for special waste landfills.)

401 KAR 45:130 (Siting requirements for special waste landfills.)

401 KAR 45:135 (Requirements for emergency and research,

development, and demonstration permits.)
401 KAR 45:140 (Conditions applicable to all special waste permits.)
401 KAR 45:160 (Surface and groundwater monitoring and corrective action for special waste sites or facilities.)
401 KAR 45:210 (Designation of waste as special waste.)
401 KAR 45:250 (Special waste permit fees.)

Department for Surface Mining and Reclamation and Enforcement: Performance Standards for Surface Mining Activities
405 KAR 16:180 (Protection of fish, wildlife, and related environmental values.)

Performance Standards for Underground Mining Activities
405 KAR 18:180 (Protection of fish, wildlife, and related environmental values.)

Corrections Cabinet: Office of the Secretary
501 KAR 6:030. Kentucky State Reformatory.
501 KAR 6:060. Northpoint Training Center.
501 KAR 6:070. Kentucky Correctional Institution for Women.

Personnel System for Certified and Equivalent Employees
780 KAR 3:070. Attendance.

Public Protection and Regulation Cabinet: Department of Financial Institutions: Securities
808 KAR 10:010 (Forms for application, registration; reporting and compliance.)

The following regulations were deferred upon agreement by the promulgating agency and the Subcommittee:

Board of Ophthalmic Dispensers
201 KAR 13:050. (Apprentices.)

General Government Cabinet: Board of Examiners and Registration of Landscape Architects
201 KAR 10:060 (Renewals.)

Board of Registration for Professional Engineers and Land Surveyors
201 KAR 18:040 (Fees.)
201 KAR 18:075 (Examination credit for qualified experience.)

Kentucky Racing Commission: Thoroughbred Racing Rules
810 KAR 1:024 (Racing commission.)
810 KAR 1:025 (Licensing for thoroughbred racing.)
810 KAR 1:026 (Racing associations.)
810 KAR 1:027 (Entries, subscriptions and declarations for thoroughbred racing.)
810 KAR 1:028 (Disciplinary measures.)
810 KAR 1:029 (Hearings, reviews and appeals.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 11:10 a.m. until July 1, 1992 at 2:30 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.

INTERIM JOINT COMMITTEE ON HEALTH & WELFARE
Meeting of May 18, 1992

The Interim Joint Committee on Health and Welfare met on Monday, May 18, 1992, and submits this report:

The Committee voted to approve the following regulations:

902 KAR 13:050
902 KAR 45:005
904 KAR 2:006
905 KAR 6:060
905 KAR 6:070

INTERIM JOINT COMMITTEE ON CITIES
Meeting of May 28, 1992

The Interim Joint Committee on Cities met on May 28, 1992, and submits this report:

The Committee determined that the following administrative regulations complied with KRS Chapter 13A:

815 KAR 7:025 - Kentucky Building Code.
815 KAR 20:030 - Plumbing (License application; qualifications for examination, examination requirements; expiration, renewal, revival or reinstatement of licenses.)
815 KAR 20:050 - Plumbing (Installation permits.)

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **A2**

The Locator Index lists all regulations published in VOLUME 19 of the Administrative Register from July, 1992 through June, 1993. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other action which may affect the regulation. NOTE: The regulations listed under VOLUME 18 are those regulations that were originally published in last year's issues of the Administrative Register but had not yet gone into effect when the last issue of Volume 18 was published.

KRS Index **A7**

The KRS Index is a cross-reference of statutes to which regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication in VOLUME 19 of the Administrative Register.

Subject Index **A10**

The Subject Index is a general index of regulations published in VOLUME 19 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

VOLUME 18

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal.

Regulation Number	18 Ky.R Page No.	Effective Date
11 KAR 5:001E	3301	5-8-92
11 KAR 5:033E	3302	5-8-92
11 KAR 5:034E	3303	5-8-92
11 KAR 5:140E	3303	5-8-92
11 KAR 5:145E	3305	5-8-92
101 KAR 2:036E	3305	5-15-92
101 KAR 2:046E	3307	5-15-92
101 KAR 2:056E	3309	5-15-92
101 KAR 2:066E	3309	5-15-92
101 KAR 2:076E	3310	5-15-92
200 KAR 18:020E	2915	3-6-92
Replaced	3325	6-7-92
201 KAR 18:040E	3310	4-27-92
201 KAR 18:131E	2768	1-21-92
Replaced	3327	6-7-92
302 KAR 16:080E	3130	4/7/92
405 KAR 8:030E	3135	3-18-92
405 KAR 8:040E	3145	3-18-92
405 KAR 16:180E	3158	3-18-92
405 KAR 18:180E	3160	3-18-92
501 KAR 6:150E	3162	3-30-92
Replaced	3024	6-7-92
601 KAR 11:040E	3311	4-22-92
601 KAR 40:020E	2770	2-4-92
Replaced	2702	4-3-92
804 KAR 9:040E	3313	4-24-92
810 KAR 1:024E	3313	4-16-92
810 KAR 1:025E	3315	4-16-92
810 KAR 1:026E	3317	4-16-92
810 KAR 1:027E	3319	4-16-92
810 KAR 1:028E	3321	4-16-92
810 KAR 1:029E	3322	4-16-92
904 KAR 2:016E	3164	3-31-92
905 KAR 2:080E	3172	4-9-92

ORDINARY REGULATIONS:

Regulation Number	18 Ky.R Page No.	Effective Date
11 KAR 3:100	3541	
11 KAR 5:001	3543	
11 KAR 5:033	3544	
11 KAR 5:034	3545	
11 KAR 5:036	3546	
11 KAR 5:110		
Amended	3475	
11 KAR 5:120		
Amended	3476	
11 KAR 5:130		
Amended	3477	
11 KAR 5:140		
Amended	3478	
11 KAR 5:145	3547	
11 KAR 5:150		
Amended	3480	
11 KAR 5:160		
Amended	3481	
11 KAR 5:170		
Amended	3483	
11 KAR 5:180		
Amended	3485	
11 KAR 10:010		
Amended	3486	
11 KAR 10:020		
Amended	3489	
13 KAR 2:020		
Amended	3491	
101 KAR 2:036	3549	
101 KAR 2:046	3551	
101 KAR 2:056	3553	
101 KAR 2:066	3554	
101 KAR 2:076	3555	
102 KAR 1:162		
Expired		7-14-92
105 KAR 1:010		
Amended	3494	
106 KAR 1:040		
Expired***		7-14-92
107 KAR 1:050		
Expried***		7-14-92
108 KAR 1:040	3065	6-7-92
200 KAR 14:010		
Expired***		7-14-92
200 KAR 14:030		
Expired***		7-14-92
200 KAR 14:080		
Expired***		7-14-92
200 KAR 14:090		
Expired***		7-14-92
200 KAR 18:020	3065	
As Amended	3325	6-7-92
201 KAR 1:001	3067	6-7-92
201 KAR 1:005		
Repealed	3067	6-7-92
201 KAR 1:010		
Repealed	3067	6-7-92
201 KAR 1:015		
Amended	2972	6-7-92
201 KAR 1:020		
Amended	2972	6-7-92
201 KAR 1:025		
Repealed	3067	6-7-92
201 KAR 1:030		
Repealed	3067	6-7-92
201 KAR 1:035		
Repealed	3067	6-7-92
201 KAR 1:040		
Amended	2973	6-7-92
201 KAR 1:045		
Amended	2974	6-7-92
201 KAR 1:050		
Amended	2975	6-7-92
201 KAR 1:055		
Repealed	3067	6-7-92
201 KAR 1:065		
Amended	2976	
As Amended	3326	6-7-92
201 KAR 1:070		
Repealed	3067	6-7-92
201 KAR 1:075		
Repealed	3067	6-7-92
201 KAR 1:080		
Amended	2977	6-7-92
201 KAR 1:130	3067	
As Amended	3326	6-7-92
201 KAR 1:140	3069	6-7-92
201 KAR 1:150	3070	6-7-92
201 KAR 10:050		
Amended	3497	
201 KAR 10:060		
Amended	3209	
201 KAR 13:050		
Amended	3209	

ADMINISTRATIVE REGISTER - A3

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	18 Ky.R Page No.	Effective Date
201 KAR 18:040		
Amended	3210	
201 KAR 18:075	3271	
201 KAR 18:131	2450	6-7-92
As Amended	3327	
201 KAR 20:200		
Amended	3211	
As Amended		(See VOLUME 19)
201 KAR 20:215		
Amended	3212	
As Amended		(See VOLUME 19)
201 KAR 20:220		
Amended	3213	
As Amended		(See VOLUME 19)
301 KAR 2:111		
Amended	3498	
301 KAR 2:170		
Amended	3216	
301 KAR 2:210		
Amended	3220	
301 KAR 3:022	3556	
302 KAR 16:080	3271	
401 KAR 5:010		
Amended	3501	
401 KAR 8:030		
Amended	3506	
401 KAR 30:010		
Amended	2978	
Amended	3420	
401 KAR 30:031	3074	
Amended	3430	
401 KAR 45:010	3076	
Amended	3432	
As Amended		(See VOLUME 19)
401 KAR 45:020	3078	
401 KAR 45:030	3080	
Amended	3433	
401 KAR 45:040	3084	
Amended	3436	
401 KAR 45:050	3086	
401 KAR 45:060	3089	
Amended	3437	
401 KAR 45:070	3090	
Amended	3438	
As Amended		(See VOLUME 19)
401 KAR 45:080	3092	
Amended	3439	
401 KAR 45:090	3094	
Amended	3440	
401 KAR 45:100	3097	
Amended	3442	
401 KAR 45:110	3103	
401 KAR 45:130	3106	
401 KAR 45:135	3107	
Amended	3446	
401 KAR 45:140	3109	
401 KAR 45:160	3111	
Amended	3447	
401 KAR 45:210	3115	
401 KAR 45:250	3117	
401 KAR 50:010		
Amended	2599	
Amended	2926	
As Amended	3329	
401 KAR 50:012		
Amended	2604	
Amended	2929	
As Amended	3333	
401 KAR 50:047	2734	
As Amended	3333	
401 KAR 51:001	2737	
Amended	2930	
As Amended	3335	
401 KAR 51:017		
Amended	2605	
401 KAR 59:001	2741	
Amended	2933	
As Amended	3337	
401 KAR 59:185		
Amended	2616	
Amended	2936	
As Amended	3340	
401 KAR 59:190		
Amended	2619	
Amended	2938	
As Amended	3342	
401 KAR 59:210		
Amended	2622	
Amended	2939	
As Amended	3344	
401 KAR 59:212		
Amended	2625	
Amended	2941	
As Amended	3346	
401 KAR 59:214		
Amended	2629	
Amended	2943	
As Amended	3347	
401 KAR 59:225		
Amended	2632	
Amended	2945	
As Amended	3349	
401 KAR 59:230		
Amended	2635	
Amended	2947	
As Amended	3351	
401 KAR 59:240		
Amended	2638	
Amended	2949	
As Amended	3353	
401 KAR 59:315	2744	
As Amended	3354	
401 KAR 61:001	2746	
Amended	2950	
As Amended	3354	
401 KAR 61:050		
Amended	2640	
As Amended	3357	
401 KAR 61:090		
Amended	2643	
Amended	2953	
As Amended	3359	
401 KAR 61:095		
Amended	2646	
As Amended	3361	
401 KAR 61:100		
Amended	2650	
As Amended	3363	
401 KAR 61:105		
Amended	2652	
As Amended	3364	
401 KAR 61:110		
Amended	2655	
As Amended	3366	
401 KAR 61:120		
Amended	2658	
As Amended	3367	
401 KAR 61:122		
Amended	2661	
Amended	2955	
As Amended	3369	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	18 Ky.R Page No.	Effective Date
401 KAR 61:124		
Amended	2664	
As Amended	3371	
401 KAR 61:125		
Amended	2667	
As Amended	3372	
401 KAR 61:130		
Amended	2670	
As Amended	3374	
401 KAR 61:132		
Amended	2672	
Amended	2956	
As Amended	3376	
401 KAR 61:137		
Amended	2676	
As Amended	3377	
401 KAR 61:150		
Amended	2678	
As Amended	3379	
401 KAR 61:155		
Amended	2680	
As Amended	3380	
401 KAR 61:160		
Amended	2682	
As Amended	3381	
401 KAR 61:175		
Amended	2684	
As Amended	3382	
401 KAR 63:001	2750	
Amended	2958	
As Amended	3384	
401 KAR 63:025		
Amended	2686	
As Amended	3386	
405 KAR 8:030		
Amended	2992	
Amended	3450	
As Amended		(See VOLUME 19)
405 KAR 8:040		
Amended	3004	
Amended	3460	
As Amended		(See VOLUME 19)
405 KAR 16:180		
Amended	3017	
Amended	3472	
405 KAR 18:180		
Amended	3020	
Amended	3473	
501 KAR 6:020		
Amended	3513	
501 KAR 6:030		
Amended	3022	6-7-92
Amended	3222	
501 KAR 6:040		
Amended	3514	
501 KAR 6:050		
Amended	3224	
Amended	3515	
501 KAR 6:060		
Amended	3225	
Amended	3517	
501 KAR 6:070		
Amended	3226	
501 KAR 6:150		
Amended	3024	6-7-92
601 KAR 11:040		
Amended	3228	
As Amended		(See VOLUME 19)
603 KAR 3:010		
Expired***		7-14-92
603 KAR 3:020		
Expired***		7-14-92
603 KAR 4:025		
Expired***		7-14-92
603 KAR 5:096		
Expired***		7-14-92
605 KAR 1:150		
Expired***		7-14-92
702 KAR 1:035		
Amended	3518	
702 KAR 3:045		
Amended	3519	
702 KAR 3:250		
Amended	3520	
702 KAR 5:010		
Amended	3026	
As Amended	3387	6-7-92
702 KAR 5:030		
Amended	3027	
As Amended	3388	6-7-92
702 KAR 7:050		
Amended	3521	
704 KAR 3:035		
Amended	3523	
704 KAR 3:303	3558	
704 KAR 3:325		
Amended	3525	
704 KAR 3:440	3559	
704 KAR 20:630	3560	
725 KAR 2:060	3277	
As Amended		(See VOLUME 19)
725 KAR 2:070	3278	
As Amended		(See VOLUME 19)
730 KAR 1:005		
Expired***		7-14-92
780 KAR 2:070		
Amended	3028	6-7-92
780 KAR 2:100		
Amended	3230	
As Amended		(See VOLUME 19)
780 KAR 2:110		
Amended	3232	
As Amended		(See VOLUME 19)
780 KAR 2:120		
Amended	3233	
As Amended		(See VOLUME 19)
780 KAR 2:150	3118	6-7-92
780 KAR 3:020		
Amended	3527	
780 KAR 3:070		
Amended	3234	
803 KAR 1:063		
Amended	3029	
As Amended	3388	6-7-92
803 KAR 2:307		
Amended	3528	
803 KAR 2:320		
Amended	3529	
803 KAR 6:010		
Amended	3532	
804 KAR 4:300	3560	
804 KAR 5:070	3561	
804 KAR 9:040		
Amended	3536	
807 KAR 5:066		
Amended	1968	
As Amended	3388	6-7-92
808 KAR 10:010		
Amended	3238	
810 KAR 1:024	3280	
810 KAR 1:025	3282	
810 KAR 1:026	3285	
810 KAR 1:027	3288	
810 KAR 1:028	3290	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	18 Ky.R Page No.	Effective Date
810 KAR 1:029	3291	
815 KAR 7:025		
Amended	3030	
As Amended	3395	5-28-92
815 KAR 20:030		
Amended	3037	5-28-92
815 KAR 20:050		
Amended	3039	5-28-92
815 KAR 20:078	3561	
815 KAR 20:090		
Amended	3537	
902 KAR 10:085		
Amended	3239	
As Amended		(See VOLUME 19)
902 KAR 13:040		
Repealed	3401	5-18-92
902 KAR 13:050		
Amended	3040	
As Amended	3401	5-18-92
902 KAR 45:005		
Amended	3045	
As Amended	3404	5-18-92
904 KAR 2:006		
Amended	3056	
As Amended	3414	5-18-92
904 KAR 2:016		
Amended	3255	
As Amended		(See VOLUME 19)
904 KAR 2:040		
Amended	3262	
905 KAR 2:080		
Amended	3264	
As Amended		(See VOLUME 19)
905 KAR 6:060		
Amended	3062	
As Amended	3418	5-18-92
905 KAR 6:070		
Amended	3063	
As Amended	3418	5-18-92
906 KAR 1:110	3562	
907 KAR 1:040		
Amended	2729	
907 KAR 1:525		
Amended	3269	
As Amended		(See VOLUME 19)

*Statement of Consideration not Filed within 15 Days Following Hearing, Regulation Dies (KRS 13A.280(2))

***Regulation found deficient by a legislative subcommittee during quadreenail review during the 1990-91 interim; regulation expires on effective date of acts passed during the 1992 General Assembly (KRS 13A.347(4))

VOLUME 19

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal.

201 KAR 10:050E	4	5-18-92
401 KAR 49:009E	4	6-8-92
501 KAR 6:020E	5	5-22-92
704 KAR 3:303E	7	6-12-92
704 KAR 3:440E	7	5-22-92
780 KAR 3:020E	9	6-11-92
902 KAR 100:012E	10	6-4-92
902 KAR 105:020E	10	6-4-92
903 KAR 5:290E	12	6-4-92
906 KAR 1:110E	12	5-22-92
907 KAR 1:013E	14	6-4-92

ORDINARY REGULATIONS:

101 KAR 1:365	
Amended	80
101 KAR 1:375	
Amended	81
201 KAR 20:200	
As Amended	18
201 KAR 20:215	
As Amended	18
201 KAR 20:220	
As Amended	20
201 KAR 22:135	
Amended	83
401 KAR 31:010	
Amended	84
401 KAR 31:040	
Amended	94
401 KAR 31:060	
Amended	106
401 KAR 31:170	
Amended	109
401 KAR 34:020	
Amended	117
401 KAR 34:050	
Amended	120
401 KAR 34:060	
Amended	123
401 KAR 34:070	
Amended	132
401 KAR 34:190	
Amended	137
401 KAR 35:020	
Amended	143
401 KAR 35:050	
Amended	146
401 KAR 35:070	
Amended	149
401 KAR 35:190	
Amended	154
401 KAR 36:030	
Amended	160
401 KAR 37:010	
Amended	162
401 KAR 37:030	
Amended	169
401 KAR 37:040	
Amended	172
401 KAR 37:050	
Amended	175
401 KAR 38:010	
Amended	176
401 KAR 38:020	
Amended	179
401 KAR 38:040	
Amended	182

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	18 Ky.R Page No.	Effective Date
401 KAR 38:050 Amended	187	
401 KAR 38:060 Amended	191	
401 KAR 38:070 Amended	195	
401 KAR 45:010 As Amended	22	
401 KAR 45:070 As Amended	23	
401 KAR 49:011	330	
401 KAR 49:040 Amended	198	
405 KAR 8:030 As Amended	24	
405 KAR 8:040 As Amended	34	
500 KAR 10:001	332	
500 KAR 10:010	333	
500 KAR 10:020	333	
500 KAR 10:030	334	
500 KAR 10:040	335	
501 KAR 6:020 Amended	200	
501 KAR 6:030 Amended	202	
501 KAR 6:060 Amended	204	
501 KAR 6:110 Amended	205	
501 KAR 6:130 Amended	207	
600 KAR 1:070 Amended	208	
600 KAR 3:010 Amended	209	
601 KAR 1:005 Amended	225	
601 KAR 1:015 Amended	227	
601 KAR 1:016 Amended	229	
601 KAR 11:040 As Amended	45	
603 KAR 5:070 Amended	231	
603 KAR 5:075 Amended	235	
603 KAR 5:105 Amended	237	
603 KAR 5:112 Amended	239	
603 KAR 5:260	335	
603 KAR 5:270	338	
725 KAR 2:060 As Amended	48	
725 KAR 2:070 As Amended	49	
780 KAR 2:100 As Amended	50	
780 KAR 2:110 As Amended	52	
780 KAR 2:120 As Amended	52	
780 KAR 9:130	339	
803 KAR 2:015 Amended	242	
803 KAR 2:306 Amended	250	
803 KAR 2:310 Amended	252	
803 KAR 2:317 Amended	257	
806 KAR 2:070 Amended	258	
806 KAR 12:095	340	
806 KAR 17:066 Amended	259	
806 KAR 37:010	343	
811 KAR 1:215 Amended	293	
815 KAR 20:020 Amended	295	
901 KAR 5:050 Amended	298	
902 KAR 2:170	351	
902 KAR 10:021 Amended	298	
902 KAR 10:060 Amended	299	
902 KAR 10:085 As Amended	53	
902 KAR 10:121 Amended	300	
902 KAR 10:130 Amended	301	
902 KAR 45:110 Amended	301	
902 KAR 45:120 Amended	302	
902 KAR 100:012 Amended	303	
902 KAR 105:020 Amended	305	
903 KAR 5:290 Amended	306	
904 KAR 2:016 As Amended	68	
904 KAR 3:010 Amended	307	
904 KAR 3:020 Amended	311	
904 KAR 3:025 Amended	315	
904 KAR 3:035 Amended	317	
905 KAR 2:080 As Amended	74	
907 KAR 1:013 Amended	321	
907 KAR 1:045 Amended	323	
907 KAR 1:376 Amended	325	
907 KAR 1:382 Amended	326	
907 KAR 1:408 Amended	327	
907 KAR 1:412 Amended	327	
907 KAR 1:416 Amended	328	
907 KAR 1:425	351	
907 KAR 1:432 Amended	329	
907 KAR 1:525 As Amended	78	
907 KAR 1:550	352	
907 KAR 1:555	353	

KRS INDEX

KRS SECTION	REGULATION
18A.075	101 KAR 1:365
	101 KAR 1:375
18A.0751	101 KAR 1:365
	101 KAR 1:375
18A.095	101 KAR 1:365
56.610-56.760	600 KAR 3:010
109.011	401 KAR 49:040
109.041	401 KAR 49:011
Chapter 138	601 KAR 1:005
151B.110	780 KAR 9:130
151B.125	780 KAR 9:130
158.160	902 KAR 2:170
161.011	780 KAR 9:130
189.222	603 KAR 5:070
	603 KAR 5:075
	603 KAR 5:270
189.270	601 KAR 1:015
	601 KAR 1:016
	603 KAR 5:075
	603 KAR 5:105
	603 KAR 5:112
	603 KAR 5:260
189.274	601 KAR 1:015
189.273	601 KAR 1:016
194.050	904 KAR 3:010
	904 KAR 3:020
	904 KAR 3:025
	904 KAR 3:035
Chapter 196	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:060
	501 KAR 6:110
	501 KAR 6:130
Chapter 197	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:060
	501 KAR 6:110
	501 KAR 6:130
205.520	907 KAR 1:013
	907 KAR 1:045
	907 KAR 1:376
	907 KAR 1:382
	907 KAR 1:408
	907 KAR 1:412
	907 KAR 1:416
	907 KAR 1:425
	907 KAR 1:432
	907 KAR 1:550
	907 KAR 1:555
205.575	907 KAR 1:013
211.180	902 KAR 2:170
211.350	902 KAR 10:060
211.840-211.852	902 KAR 100:012
211.870	902 KAR 105:020
211.890	902 KAR 105:020
211.972	902 KAR 10:130
211.990	902 KAR 100:012
211.993	902 KAR 105:020
213.141	901 KAR 5:050
217.025	902 KAR 45:110
217.035	902 KAR 45:110
217.037	902 KAR 45:110
217.125	902 KAR 45:110
217.811	902 KAR 45:110
219.021	902 KAR 45:120
219.041	902 KAR 45:120
219.340	902 KAR 45:120
219.350	902 KAR 45:120
221.020	902 KAR 10:021
Chapter 224	401 KAR 49:009E
224.01	401 KAR 31:010
	401 KAR 31:040
	401 KAR 31:170
	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:190
	401 KAR 35:020
	401 KAR 35:050
	401 KAR 35:070
	401 KAR 35:190
	401 KAR 36:030
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 38:010
	401 KAR 38:020
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
	401 KAR 49:011
224.10	401 KAR 31:060
	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:190
	401 KAR 35:020
	401 KAR 35:050
	401 KAR 35:070
	401 KAR 35:190
	401 KAR 36:030
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 38:010
	401 KAR 38:020
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
224.40	401 KAR 31:010
	401 KAR 31:040
	401 KAR 31:060
	401 KAR 31:170
	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:190
	401 KAR 35:020
	401 KAR 35:050
	401 KAR 35:070
	401 KAR 35:190
	401 KAR 36:030
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 38:010

KRS SECTION	REGULATION
	401 KAR 38:020
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
224.40-100	401 KAR 49:040
224.43	401 KAR 31:010
	401 KAR 31:040
	401 KAR 31:060
	401 KAR 31:170
	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:190
	401 KAR 35:020
	401 KAR 35:050
	401 KAR 35:070
	401 KAR 35:190
	401 KAR 36:030
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 38:010
	401 KAR 38:020
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
	401 KAR 49:011
224.43-340	401 KAR 49:040
224.43-345	401 KAR 49:040
224.46	401 KAR 31:010
	401 KAR 31:040
	401 KAR 31:060
	401 KAR 31:170
	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:190
	401 KAR 35:020
	401 KAR 35:050
	401 KAR 35:070
	401 KAR 35:190
	401 KAR 36:030
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 38:010
	401 KAR 38:020
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
224.50	401 KAR 31:060
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 35:020
	401 KAR 35:050
	401 KAR 35:070
224.70	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
224.99	401 KAR 34:190
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 31:010
	401 KAR 31:040
	401 KAR 31:060
	401 KAR 31:170
	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:190
	401 KAR 35:020
	401 KAR 35:050
	401 KAR 35:070
	401 KAR 35:190
	401 KAR 36:030
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 38:010
	401 KAR 38:020
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
Chapter 224A	401 KAR 49:009E
230.770	811 KAR 1:215
Chapter 281	601 KAR 1:005
304.2-210	806 KAR 12:095
304.2-210-304.2-230	806 KAR 2:070
304.3-200	806 KAR 12:095
304.12-010	806 KAR 12:095
304.12-020	806 KAR 17:066
304.12-220	806 KAR 12:095
304.12-230	806 KAR 12:095
304.12-235	806 KAR 12:095
304.13-230	806 KAR 2:070
304.14-400	806 KAR 12:095
304.14-500-304.14-550	806 KAR 17:066
304.17-305	806 KAR 17:066
304.17-318	806 KAR 17:066
304.18-036	806 KAR 17:066
304.18-095	806 KAR 17:066
304.20-070	806 KAR 12:095
304.20-150-304.20-180	806 KAR 12:095
304.24-290	806 KAR 2:070
304.24-390	806 KAR 37:010
304.24-410	806 KAR 37:010
304.32-157	806 KAR 17:066
304.32-165	806 KAR 17:066
304.32-270	806 KAR 17:066
304.37-020	806 KAR 37:010
304.37-030	806 KAR 37:010
304.38-193	806 KAR 17:066
304.38-196	806 KAR 17:066
304.38-200	806 KAR 17:066
Chapter 318	815 KAR 20:020
327.040	201 KAR 22:135
327.050	201 KAR 22:135
Chapter 338	803 KAR 2:015
	803 KAR 2:306
	803 KAR 2:310
	803 KAR 2:313

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	803 KAR 2:317		
341.270	903 KAR 5:290		
342.325	806 KAR 12:095		
Chapter 439	501 KAR 6:020		
	501 KAR 6:030		
	501 KAR 6:060		
	501 KAR 6:110		
	501 KAR 6:130		
1984 Acts c. 344	600 KAR 1:070		
1984 Acts c. 406	600 KAR 1:070		
1992 Acts c. 94	603 KAR 5:270		
1992 Acts c. 255	500 KAR 10:001		
	500 KAR 10:010		
	500 KAR 10:020		
	500 KAR 10:030		
	500 KAR 10:040		
1992 Acts c. 267	806 KAR 37:010		
HB 468, 1992 GA	902 KAR 10:021		
	902 KAR 10:121		
	902 KAR 10:130		
	907 KAR 1:013		
7 CFR	904 KAR 3:010		
	904 KAR 3:020		
	904 KAR 3:025		
	904 KAR 3:035		
23 CFR 658	603 KAR 5:070		
	603 KAR 5:270		
29 CFR 1910	803 KAR 2:306		
	803 KAR 2:310		
	803 KAR 2:313		
	803 KAR 2:317		
40 CFR 268	401 KAR 37:010		
	401 KAR 37:040		
40 CFR 270	401 KAR 38:040		
49 CFR 24	600 KAR 3:010		
49 CFR 390-397	601 KAR 1:005		
PL 101-624	904 KAR 3:020		
	904 KAR 3:025		
	904 KAR 3:035		
PL 102-237	904 KAR 3:010		
	904 KAR 3:020		

SUBJECT INDEX

ADMINISTRATIVE SERVICES, HUMAN RESOURCES
Vital Statistics
Fees; 901 KAR 5:050

ADULT AND TECHNICAL EDUCATION
Adult Education
GED program; progress qualifications; 780 KAR 9:130

CORRECTIONS
Office of the Secretary
Kentucky State Reformatory; 501 KAR 6:030
Northpoint Training Center; 501 KAR 6:060
Policies and procedures; 501 KAR 6:020
Roederer Correctional Complex; 501 KAR 6:110
Western Kentucky Correctional Complex; 501 KAR 6:130

EMPLOYEES, STATE
(See also Personnel)
Personnel Board; 101 KAR Chapter 1

EMPLOYMENT SERVICES, HUMAN RESOURCES
Unemployment Insurance
Employer contribution rates; 903 KAR 5:290

ENVIRONMENTAL PROTECTION
(See Natural Resources, Environmental Protection or individual subject (i.e., Waste Management, Air Quality, etc.)

HAZARDOUS WASTES
(See Waste Management)

HEALTH SERVICES
Communicable Diseases
Medical conditions posing threat to school environment; 902 KAR 2:170
Food and Cosmetics
Hotels, mobile home, recreational vehicle parks; inspection, permit fees; 902 KAR 45:120
Retail food establishments, food manufacturing plants, food storage warehouses, salvage processors, distributors, vending machine companies; permits, fees; 902 KAR 45:110
Radiology
Fee schedule; 902 KAR 100:012
Radiation Operators Certification
General requirements; 902 KAR 105:020
Sanitation
Frozen food locker plant, license fee; 902 KAR 10:021
On-site sewage disposal; 902 KAR 10:060
Public swimming, bathing facility inspection fee; 902 KAR 10:121
Septic tank servicing licensing fee; 902 KAR 10:130

HIGHWAYS
Traffic
Motor vehicle dimension limits; 603 KAR 5:070
Permit, moving farm equipment; 603 KAR 5:260
Permit, moving steel products, materials; 603 KAR 5:270
Permit, moving utility equipment, poles, pipes; 603 KAR 5:112
Permit, moving wood trusses; 603 KAR 5:105
Overweight, overdimensional permits; 603 KAR 5:075

HOUSING, BUILDINGS AND CONSTRUCTION
Plumbing
Parts or materials list; 815 KAR 20:020

HUMAN RESOURCES
Administrative Services
Vital statistics; 901 KAR Chapter 5
Employment Services
Unemployment insurance; 903 KAR Chapter 5
Health Services
Communicable diseases; 902 KAR Chapter 2
Food and cosmetics; 902 KAR Chapter 45
Radiology; 902 KAR Chapter 100
Radiation operators certification; 902 KAR Chapter 105
Sanitation; 902 KAR Chapter 10
Medicaid; 907 KAR Chapter 1
Social Insurance
Food stamp program; 904 KAR Chapter 3

INSURANCE
Administration
Preservation of records; 806 KAR 2:070
Health Insurance Contracts
Medicare supplement insurance; 806 KAR 17:066
Holding Company Systems
Insurance holding company systems; 806 KAR 37:010
Trade Practices and Frauds
Property, casualty insurance; unfair claims; 806 KAR 12:095

JUSTICE CABINET
Community Corrections Grant Program
Administration; 500 KAR 10:020
Annual review for compliance; 500 KAR 10:040
Authority, purpose, name of grant program; 500 KAR 10:010
Community corrections board; 500 KAR 10:030
Definitions; 500 KAR 10:001

LABOR
Occupational safety and health; 803 KAR Chapter 2

MEDICAID SERVICES
Hospital inpatient services payments; 907 KAR 1:013
Incorporation by Reference
Alternative intermediate services/mental retardation manual, revised; 907 KAR 1:425
Home, community based waiver services manual; 907 KAR 1:432
Hospital services manual; 907 KAR 1:376
Nurse-midwife services manual; 907 KAR 1:408
Pharmacy services manual; 907 KAR 1:416
Podiatry services manual; 907 KAR 1:412
Preventive health services manual; 907 KAR 1:382
Targeted case management services adults manual; 907 KAR 1:550
Targeted case management services childrens manual; 907 KAR 1:555
Mental health center services payments; 907 KAR 1:045

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Waste management; 401 KAR Chapters 31 through 49

OCCUPATIONAL SAFETY AND HEALTH
General industry standards; 803 KAR 2:015
29 CFR Part 1910.94-.100; 803 KAR 2:306
29 CFR Part 1910.151-.153; 803 KAR 2:310
29 CFR Part 1910.176-.190; 803 KAR 2:313
29 CFR Part 1910.261-.275

PERSONNEL
Board
Appeal, hearing procedures; 101 KAR 1:365

Employee grievances, complaints; 101 KAR 1:375

PLUMBING
(See Housing, Buildings and Construction)

PUBLIC PROTECTION AND REGULATION
Housing, Buildings and Construction
Plumbing; 815 KAR Chapter 20
Insurance
Administration; 806 KAR Chapter 2
Health insurance contracts; 806 KAR Chapter 17
Holding company systems; 806 KAR Chapter 37
Trade practices, frauds; 806 KAR Chapter 12
Racing Commission
Harness racing; 811 KAR Chapter 1

RACING COMMISSION
Harness Racing
Standardbred development fund; 811 KAR 1:215

SOCIAL SERVICES, HUMAN RESOURCES
Food Stamp Program
Certification process; 904 KAR 3:035
Definitions; 904 KAR 3:010
Financial requirements; 904 KAR 3:020
Technical requirements; 904 KAR 3:025

STATE EMPLOYEES
(See Employees, State or Personnel)

TRANSPORTATION
Administration
Motor pool procedure; 600 KAR 1:070
Highways
Traffic; 603 KAR Chapter 5
Property Acquisition and Uniform Relocation
Relocation assistance payments; 600 KAR 3:010
Vehicle Regulation
Motor carriers; 601 KAR Chapter 1

VEHICLE REGULATION
Motor Carriers
Overweight, overdimensional permits; 601 KAR 1:015; 601 KAR 1:016
Safety regulations; 601 KAR 1:005

WASTE MANAGEMENT
Hazardous Waste; Identification, Listing
General provisions; 401 KAR 31:010
Hazardous wastes lists; 401 KAR 31:040
Rule-making petitions; 401 KAR 31:060
Hazardous waste constituents appendix; 401 KAR 31:170
Hazardous Waste Permitting Process
General provisions; 401 KAR 38:010
Interim status provisions; 401 KAR 38:020
Permit changes, expiration; 401 KAR 38:040
Public information procedure; 401 KAR 38:050
Special types of permits; 401 KAR 38:060
Land Disposal Restrictions
General provisions; 401 KAR 37:010
Prohibitions; 401 KAR 37:030
Storage prohibitions; 401 KAR 37:050
Treatment standards; 401 KAR 37:040
Owners, Operators; Hazardous Waste Facilities
Closure, postclosure; 401 KAR 34:070
General facility standards; 401 KAR 34:020
Groundwater protection; 401 KAR 34:060
Manifest system, recordkeeping, reporting; 401 KAR 34:050
Tanks; 401 KAR 34:190
Owners, Operators; Hazardous Waste Facilities; Interim Status
Closure, postclosure; 401 KAR 35:070
General facilities standards; 401 KAR 35:020
Manifest system, recordkeeping, reporting; 401 KAR 35:050
Tanks; 401 KAR 35:190
Solid Waste Planning
Assistance program; 401 KAR 49:040
General provisions; 401 KAR 49:011
Solid waste grant program; 401 KAR 49:009E
Specific Hazardous Waste, Management Standards
Recyclablel materials; 401 KAR 36:030

WORKFORCE DEVELOPMENT CABINET
Adult and Technical Education
Adult education; 780 KAR Chapter 9