ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on September 3 and 4, 1992. See **tentative** agenda on pages 673-676 in this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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Room 131, Capitol Annex

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907 KAR 1:425. Incorporation by reference of the revised alternative intermediate services/mental retardation services manual. (Repeals 907 KAR 1:424.) (Amended After Hearing)

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
11 KAR 4:020E

This emergency administrative regulation, which constitutes an amendment of 11 KAR 4:020, sets forth the conditions and procedures under which the authority of its delegated officers may assess contractual liabilities, of disapprove, limit, suspend or terminate the participation of eligible educational institutions or eligible lenders in any of the student financial assistance programs administered by the authority. Federal regulations governing the authority's insured student loan program require the authority to establish, disseminate and enforce such standards and procedures. It is necessary to promulgate this administrative regulation as an emergency regulation because the Kentucky Higher Education Assistance Authority anticipates that action may be necessary within the coming month involving one (1) or more institutions. Immediate implementation of this amendment will permit the authority to apply uniform standards and procedures to all of the authority's programs consistent with federal regulations and clarify procedures to assure the due process protection to the institutions. Consistency with federal regulations permits the authority to refer administrative actions to the U.S. Department of Education for nationwide disqualification of institutions in noncompliance. This emergency administrative regulation will be replaced by an ordinary administrative regulation filed with the Regulations Compiler on July 8, 1992.

BRERETON C. JONES, Governor
WAYNE STRATTON, Chairman

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 4:020E. Disapproval, assessment of liabilities [~~probation~~], limitation, suspension or termination of eligibility to participate in authority programs.

RELATES TO: KRS 164.746(6), 164.748(13), 164.748(14), 34 CFR §682.401(b)(10)(i)(C)
STATUTORY AUTHORITY: KRS 164.748(4), 34 CFR §682.401(b)(10)(i)(C)
EFFECTIVE: July 29, 1992
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers programs to provide financial assistance to students to attend postsecondary institutions. The board is empowered by statute to enter into contracts with eligible educational institutions and lenders for participation in these programs and disapprove, limit, suspend or terminate participation. KRS 164.746(6) empowers the board to adopt regulations governing the conduct of the authority's business and to appoint officers and employees and prescribe their duties. This regulation prescribes the ministerial functions of authority officers and sets forth the conditions and procedures under which the authority or its delegated officers may initiate action to assess contractual liabilities or disapprove, [probate,] limit, suspend or terminate the participation [~~eligibility~~] of [~~educational institutions,~~] eligible educational institutions or eligible lenders [~~to participate~~] in any of the student financial assistance programs administered by the authority. Federal regulations governing the authority's insured student loan program require the authority to establish, disseminate and enforce such standards and procedures.

This amendment applies uniform standards and procedures to all of the authority's programs.

Section 1. Definitions. (1) The definition of the term "authority" is governed by KRS 164.740(1).

(2) "Authority program" means a program of student financial assistance administered or funded by the authority pursuant to KRS 164.740 through 164.785 or the federal act.

(3) The definition of the term "board" is governed by KRS 164.740(2).

(4) The term "delegated officer" means the executive director, general counsel, directors of the divisions of program administration or fiscal affairs, or any other individual the board may designate to whom the board has delegated ministerial responsibilities set forth in this regulation.

(5) The definition of the term "eligible institution" is governed by KRS 164.740(5).

(6) The definition of the term "eligible lender" is governed by KRS 164.740(6).

(7) The definition of the term "federal act" is governed by KRS 164.740(9).

(8) The term "funds" means any money, commitments to provide money, and commitments of insurance under any or all authority programs.

(9) The definition of "insured student loan" is governed by KRS 164.740(12).

(10) The term "limitation" means:

(a) A limit on the number or percentage of students enrolled or planning to enroll in a participating institution who may receive funds through an authority program;

(b) A limit, for a stated period of time, on the percentage of a participating institution's total receipts from tuition and fees derived from authority program funds;

(c) A requirement that an institution that is already participating obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students, lenders and the authority funds;

(d) A limit on the number or amount of insured loans that may be made or held by a participating lender or that may be received by students at a participating institution; or

(e) Any special conditions or procedures required in the administration of authority programs.

(11) The definition of "participating institution" is governed by KRS 164.740(15).

(12) The definition of "participating lender" is governed by KRS 164.740(16).

(13) The definition of "secretary" is governed by KRS 164.740(20).

Section 2. Standard of Conduct. (1) A participating institution shall establish and consistently implement policies and procedures to ensure that it:

(a) Fully and continuously complies with all statutory, regulatory, and contractual requirements related to the administration of authority programs and performs all duties and responsibilities to students, participating lenders, the authority, and, if applicable to participation in an authority program, the secretary;

(b) Makes full and accurate representations of facts required to be reported or disclosed or voluntarily disclosed to students, the authority, and, if applicable to participation in an authority program, the secretary;

(c) Disburses, holds, and accounts for funds administered through any authority program with the standard of care and diligence of a fiduciary.

(2) A participating lender in the authority's insured student loan program shall establish and consistently implement policies and procedures to ensure that it:

(a) Fully and continuously complies with all statutory, regulatory, and contractual requirements related to the administration of authority programs and performs all duties and responsibilities to students, the authority, and the secretary;

(b) Performs directly, or by contract with a third party servicer, due diligence in the approval, making, servicing and collection of authority insured student loans and in the timely and accurate filing of insurance claims on those loans.

(c) Makes full and accurate representations of facts required to be reported or disclosed or voluntarily disclosed to students, the authority, and the secretary.

(3) A participating institution and a participating lender shall establish, maintain, and make accessible to the authority, and if applicable to participation in an authority program, to the secretary a system of complete and accurate records sufficient to demonstrate:

(a) Compliance with all statutory, regulatory, and contractual requirements related to the administration of authority programs and the performance of all duties and responsibilities to students, the authority, and, if applicable to participation in an authority program, the secretary;

(b) Full and accurate disclosure of facts required to be reported or disclosed or voluntarily disclosed to students, the authority, and, if applicable to participation in an authority program, the secretary; and

(c) Proper and timely disposition of funds and administration of authority programs.

(4) Noncompliance with the standard of conduct in this section by a participating institution or a participating lender shall be grounds for disapproval, assessment of liabilities, limitation, suspension, or termination.

Section 3. [4.] Disapproval. The board [~~authority~~] or any of its delegated officers may, upon verification of misstatements of fact, financial instability, lack of administrative capability, or failure to meet eligibility requirements under applicable law or regulations, related to an application to participate in an authority administered program, notify the applicant of the authority's intent to disapprove such application. For purposes of requesting review of a limitation on participation (including a requirement of a surety bond or other collateral) imposed as a precondition of initial approval or reinstatement, such limitation shall be regarded as a disapproval.

Section 4. Assessment of Liabilities. (1) [~~2. Probation.~~] The board [~~authority~~] or any of its delegated officers may, initiate action to assess liabilities against a participating institution or a participating lender for reimbursement of funds, upon documentation that a participant has failed through acts of commission or omission, including but not limited to improper disbursement or retention of funds, failure to remit funds due on a timely basis, certification of an application for an ineligible student, or failure to account for funds received or expended, to properly administer any program for which the participant [~~institution~~] has previously been approved[~~, place the participant on probation for a period not to exceed six (6) months~~].

(2) The board or its delegated officer may notify a participating institution or a participating lender that the authority requires the participant to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements or limitations. The corrective action may include payment of any funds to the authority, or to designated recipients, which the participant improperly received, withheld, disbursed or caused to be awarded or disbursed. Corrective action may, for example, relate to:

(a) With respect to the insured student loan program:

1. Ineligible interest benefits, special allowance, or claims paid by the authority; and

2. Discounts, premiums or excess interest paid in violations of rules of the secretary; and

(b) With respect to all authority programs:

1. Refunds due to students under program regulations; and

2. Any grants, work-study assistance, scholarships or loans caused to be awarded or disbursed to ineligible students, in excess of legal maximums, or otherwise in violation of applicable regulations.

Section 5. [3.] Limitation. The board [~~authority~~] or any of its delegated officers may, upon documentation that a participating institution or a participating lender [~~participant in any authority~~

~~administered program~~] has failed through acts of commission or omission to fully adhere to the standard of conduct set forth in Section 2 of this regulation [~~abide by the regulations~~] pertaining to any authority administered program for which the participant has previously been approved, notify the participant of the authority's intent to place limits on the participant's eligibility to participate in authority administered programs [~~for a period not to exceed one (1) year~~].

Section 6. [~~4.~~] Suspension. The board [~~authority~~] or any of its delegated officers may, upon documentation that a participating institution or a participating lender [~~the participant~~] has substantially or repeatedly failed through acts of commission or omission to adhere to the standard of conduct set forth in Section 2 of this regulation [~~abide by the regulations~~] pertaining to any authority administered program for which the participant has previously been approved [~~issued approval~~], notify the participant of the authority's intent to suspend the participant's eligibility to participate in authority administered programs for a period not to exceed sixty (60) days, unless the authority and participant agree otherwise or the delegated officer initiates a limitation or termination during the sixty (60) days [~~one (1) year~~].

Section 7. [~~5.~~] Termination. The board [~~authority~~] or any of its delegated officers may, following any period of [~~probation,~~] limitation or suspension, in the absence of correction of deficiencies which resulted in the adverse action, notify the participant of the authority's intent to terminate a participant's eligibility to participate in all or any of the authority administered programs. The board or any of its delegated officers may, with or without prior limitation or suspension, notify the participant of the authority's intent to terminate the participation of a participating institution or a participating lender upon documentation of an intentional violation or a substantial pattern or practice indicating failure or inability to adhere to the standard of conduct set forth in Section 2 of this regulation, including but not limited to a repetition of previously cited deficiencies. A termination prohibits a participant or the authority from making or increasing awards under authority programs, making any other new obligations against authority funds, and prohibits further guarantee commitments by the authority under the insured student loan programs. The participation of an educational institution or lender shall be deemed automatically terminated without prior action or notice by the authority upon cessation of operation as an ongoing business, loss of state licensure, or termination of its eligibility by the secretary. [~~Participants which have their eligibility terminated may not submit a new application for approval to the authority prior to the expiration of one (1) calendar year immediately following the date of termination.~~]

Section 8. Emergency Action. (1) Under an emergency action, the board acting through its delegated officer may immediately withhold program funds from the students attending a participating institution or from a participating lender, withdraw the right of the participant to certify or approve applications, and preclude the participant from obligating or disbursing funds under any authority program. The delegated officer may initiate an emergency action against a participant only if that officer:

(a) Receives information, determined by the delegated official to be reliable:

1. That the participant is substantially failing to adhere to the standard of conduct set forth in Section 2 of this regulation or is violating any provision of statute, regulation, or any applicable special arrangement, agreement, or limitation; or

2. That the participant has misrepresented any material facts to students, the authority, or, as applicable to participation in an authority program, the secretary; or

3. That the participant ceases to meet the requirements for approval of participation by the authority;

(b) Determines that immediate action is necessary to prevent loss or misuse of funds; and

(c) Determines that the risk of loss or misuse outweighs the importance of delaying the effective date of action through the procedures for limitation, suspension, or termination contained in this regulation.

(2) The emergency action takes effect on the date a notice, personally delivered or mailed to the participant by the delegated officer by certified mail, return receipt requested, is received by the participant. The notice shall state the basis on which the emergency action is based, the consequences of the emergency action to the institution or lender, and that the participant may request an opportunity to show cause why the emergency action is unwarranted. An emergency action may not exceed thirty (30) days unless the board or a delegated officer initiates a limitation, suspension, or termination proceeding under this subpart against the participant within those thirty (30) days, in which case the delegated officer may extend the emergency action until the completion of those proceedings, including any appeal. The continuation, modification, or cessation of the emergency action during the period described in this paragraph is at the sole discretion of the delegated officer.

Section 9. [~~6.~~] Notices. In the event that the delegated officer finds that the authority should assess any liabilities or that participation [~~eligibility~~] of any applicant or participant should be [~~is~~] disapproved, [~~probated,~~] limited, suspended or terminated by act [~~of an officer~~] of the authority, the applicant or participant shall be provided with notice of such action which shall be issued on behalf of the board and signed by [~~in the name of~~] the officer and shall contain a concise statement of the consequences and reason for the disapproval, assessment of liabilities, [~~probation,~~] limitation, suspension or termination of eligibility and sufficient information to reasonably apprise the applicant or participant of the right to request reconsideration of disapproval or appeal other actions to the authority for a hearing on all issues contained therein. The proposed date for payment of any assessed liabilities or the proposed effective date of any limitation, suspension or termination, which shall be more than twenty (20) days after the date of mailing of the notice of intent, shall be specified in the notice. The assessment of liabilities shall be based upon payment by the specified due date, and any extension of that date due to a request for a hearing or further appeal may result in the accrual of additional amounts due if interest accrual is applicable. All requests for hearings must be made to the authority at Frankfort, Kentucky 40601, within twenty (20) days of receipt of the notice. All [~~Such~~] notices to or from the authority shall [~~or appeals may~~] be delivered by an individual eighteen (18) years old or older who shall prove service by his affidavit or signature of the recipient [~~effected in the manner prescribed by law for the service of civil process~~] or by the officer forwarding same to the applicant or participant, or by the applicant or participant forwarding same to the authority by U.S. [~~registered mail or~~] certified mail, postage prepaid, to the address of the applicant or participant (as reflected by the records of the authority) or to the authority at Frankfort, Kentucky 40601. If a party refuses to accept a notice served under this section, the notice shall be deemed received on the date that the party refuses to accept the notice.

Section 10. Request for Review. (1) An eligible institution or an eligible lender seeking reconsideration of a final determination of disapproval shall file a written request together with any relevant records or materials for review with the delegated officer issuing the determination no later than forty-five (45) days from the date it receives the determination. The applicant shall identify the issues and facts in dispute and the applicant's position together with the pertinent facts and reasons supporting that position.

(2) An applicant requesting review of the determination of disapproval issued by the delegated officer shall have the burden of proving that the applicant complied with requirements for approval. An applicant may submit as additional evidence to the delegated officer only materials within one (1) or more of the following categories:

(a) Complete audit reports and audit work papers for audits performed by the United States Education Department or independent audit work papers, records, and other materials;

(b) Complete program review reports and reports of resolution of disputed program reviews;

(c) Complete accreditation or licensure review reports and reports

of resolution of disputed accreditation or licensure findings;

(d) Internal records and other materials if the records or materials are not:

1. Related to a period of time other than the period of time under consideration;

2. Related to an audit or program review of an institution or lender other than the applicant (unless the determination involves a change of ownership); or

3. Related to policies and procedures that have not yet been implemented.

Section 11. Stay of Proceedings. Unless an emergency action is initiated, a limitation, suspension or termination will not be effective on the date specified in the notice if the delegated officer receives a timely request for a hearing, and the proposed effective date shall continue to be stayed pending the outcome of a hearing.

Section 12. [~~7.~~] Hearings. (1) In the event assessment of liabilities [~~disapproval, probation~~], limitation, suspension or termination of eligibility results from the action of a delegated officer of the authority, the [~~applicant or~~] participant may request [~~appeal to the full authority for~~] a hearing to determine the facts in the case. Nothing in this section shall preclude the delegated officer, at his sole discretion, from engaging in informal discussions with representatives of the participant for the purpose of settling the dispute.

(2) Notification of hearing. Upon receipt of a participant's request for a hearing, the delegated officer shall arrange for a hearing on the record before a hearing officer, and within thirty (30) days of the delegated officer's receipt of an institution's request for review, the hearing officer shall establish a schedule for any discovery, prehearing conferences, and the time and place of the hearing, which shall be scheduled to occur no later than 120 days from the date upon which the delegated officer receives the request for a hearing.

(3) At a [~~such~~] hearing the officer or officers of the [~~applicant or~~] participant may be accompanied by counsel of their own choosing and at their own expense. The hearing may be conducted by a hearing officer or a hearing committee appointed by the board. [~~All members of the authority and all persons appointed by the board as hearing officers or as members of a hearing committee are authorized to administer oaths, issue subpoenas for the attendance of witnesses and for the production of books, papers and documents and to cite for contempt before the court having jurisdiction in the county in which the hearing is held for disobedience of its process or for contumacious or disrespectful conduct.~~] The [~~applicant or~~] participant proceeded against shall be entitled to be represented at the hearing in person or by counsel or both and shall be entitled to introduce testimony by witnesses or, if the hearing officer [~~authority~~] so permits, by depositions.

(4) A prehearing conference may be convened by the hearing officer if he or she thinks that such a conference would be useful, or if requested by the authority or the participant to allow the parties to settle or narrow the dispute. If agreed to by the hearing officer and the parties, a prehearing conference may consist of a conference telephone call, an informal meeting, or the submission and exchange of written material.

(5) The hearing process may be expedited as agreed by the hearing officer and the parties. Procedures to expedite may include, but are not limited to, the following:

(a) Scheduling of conferences;

(b) Setting time limits for hearings, submission of written documents, and discovery;

(c) Restricting the number or length of submissions;

(d) Shortening any time limits prescribed in this regulation;

(e) Limiting the hearing to written documentation; or

(d) Stipulation by the parties to facts and legal authorities not in dispute.

(6) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, only evidence that is relevant and material to the proceeding and is not unduly repetitious shall be admissible, and discussions of settlement between the parties or the terms of settlement offers are not admissible. The hearing officer shall not admit evidence that is excludable on constitutional or statutory grounds or privileged as recognized in the courts of the Commonwealth. Hearsay evidence shall be admissible, but shall not be sufficient in itself to support the hearing officer's decision. All testimony shall be made under oath. Evidentiary objections may be made at any time during the prehearing or hearing process and shall be noted in the record of the hearing.

(7) The authority has the burden of persuasion in any assessment of liabilities, limitation, suspension, or termination proceeding under this regulation that a reasonable basis exists under the circumstances for the action being taken.

(8) Discovery, as provided for under the Kentucky Rules of Civil Procedure, is permitted, except that, in recognition of the authority's contractual right to inspect records and the participant's right to inspect public records under KRS 61.870 et seq., the hearing officer may limit the scope, method, and time for discovery as appropriate to expeditiously and fairly resolve the issues, and the hearing officer may summarily rule against a noncomplying party. The hearing officer is not authorized to issue subpoenas. Nothing in this subsection shall be construed as allowing access to the personal notes, observations, or conclusions of authority staff or to the work product of counsel.

(9) The authority shall provide for recording of the proceeding and shall make the record available to the participant upon its request and upon its payment of any fee required by the individual providing a transcript.

(10) The hearing officer shall regulate the course of the proceeding and conduct of the parties during the hearing and take all steps necessary to conduct a fair and impartial proceeding. The parties shall provide available personnel who have knowledge about the matter under review for oral or written examination. The hearing officer shall take whatever measures are appropriate to expedite the proceeding, and may terminate the hearing and issue a decision against a party failing to comply with any time limits or procedure.

(11)(a) Hearing officers and hearing committees shall prepare [~~a proposed~~] findings of fact and conclusions of law based only on evidence considered at the hearing and on matters given official notice, and shall issue a written initial decision to the parties by certified mail, return receipt requested, within sixty (60) days after the last brief is filed, the last day of the hearing (if the hearing officer does not request the parties to submit briefs), or the date on which the hearing officer terminates the hearing [~~present recommendations to a committee of the board~~].

(b) The hearing officer's decision must state whether the imposition of the liabilities, limitation, suspension or termination sought by the delegated officer is warranted, in whole or in part.

(c) If the action brought against a participant involves its failure to provide a surety bond, letter of credit or other collateral in the amount specified by the delegated officer, the hearing officer shall find that the amount of the bond, letter of credit or other collateral specified by the delegated officer was appropriate unless the participant can demonstrate that the amount was unreasonable. [~~If the findings warrant, the committee of the board may uphold the findings of the officer of the authority or may find in favor of the participant.~~]

Section 13. [~~8.~~] Decisions and Appeals. (1) All initial assessing liabilities, [~~decisions~~] disapproving, [~~probating,~~] limiting, suspending or terminating participation [~~eligibility~~] may be made by a delegated [~~an~~] officer of the authority and shall be binding upon the authority and the applicant or participant as the decision of the board in the absence of a request for review or an appeal by the applicant or participant to the authority.

(2) In the event the applicant, participant, or a delegated officer of the authority does not petition the board for a review of the hearing officer's decision [~~hearing~~], the decision resulting from a hearing conducted by the authority shall become final and conclusive as the decision of the board twenty (20) days after notice thereof is given as provided.

(3)(a) An appeal to the board of a hearing officer's initial decision is made by sending a written notice of appeal to the executive director of the authority. This notice must be postmarked not later than twenty (20) days after the issuance of the hearing officer's initial

decision, and the appealing party shall send a copy of its appeal notice to the other party.

(b) Within ten (10) days after submitting the notice of appeal, the party that appeals shall submit a brief to the board explaining why the initial decision of the hearing officer should be overturned or modified. The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by the evidence introduced into the record at the hearing, stipulations of the parties, documentary evidence submitted to the hearing officer (if the hearing consisted of written submissions), or matters that may be officially noticed. The opposing party shall respond within ten (10) days after receipt of a brief and proposed findings of fact or conclusions of law from the appealing party. Neither party may introduce new evidence on appeal to the board. Each party shall provide a copy of its brief to the other party when it submits its brief to the board.

(c) The initial decision of the hearing officer assessing liabilities or limiting, suspending, or terminating participation does not take effect pending the appeal.

(d) The board reviews the hearing officer's initial decision and issues a final decision. The board shall adopt the initial decision unless it is clearly unsupported by the evidence presented at the hearing. The board considers only evidence introduced into the record at the hearing, facts agreed to by the parties, documents submitted to the hearing officer (if the hearing consisted of only written submissions), and matters that may be officially noticed. The board's final decision may affirm, modify or reverse the hearing officer's initial decision and shall include a statement of the reasons for the decision.

(e) An assessment of liabilities becomes binding and a limitation, suspension or termination takes effect upon the date on which notice of the final decision of the board is mailed to the participant.

Section 14. Removal of Limitation. (1) A participating institution or a participating lender whose participation in any or all authority programs has been limited after participation may not apply for removal of the limitation before the expiration of twelve (12) months from the effective date of the limitation.

(2) After the minimum limitation period, the participant may request removal of the limitation in writing and show that the deficiency on which the limitation was based has been corrected.

(3) No later than sixty (60) days after the receipt of the request, the delegated officer shall respond to the participant by granting its request, denying its request, or granting the request subject to other limitations.

(4) If the delegated officer denies the request or establishes other limitations, the participant may request a review in accordance with Section 10 of this regulation and be given an opportunity to show cause why its participation should be fully reinstated.

(5) The participant's request for a review shall not waive its right to participate in any or all authority programs if it complies with the continuing limitation(s) pending the outcome of the review.

Section 15. Reinstatement After Termination. (1) An eligible institution or an eligible lender whose participation in any or all of the authority programs has been terminated may file a request for reinstatement as a participating institution or a participating lender.

(2) Except for an institution or lender whose participation has been terminated for engaging in substantial misrepresentation, a request for reinstatement may not be made before the expiration of eighteen (18) months after the effective date of the termination.

(3) An institution or lender whose participation was terminated because the institution or lender engaged in substantial misrepresentation may not request reinstatement before the expiration of three (3) months after the effective date of the termination.

(4) An institution or lender seeking reinstatement shall:

(a) Demonstrate to the authority's satisfaction that it has corrected the deficiencies on which its termination was based, including payment in full to the authority or to other designated recipients of funds that the institution or lender has improperly received, withheld, disbursed or caused to be disbursed;

(b) Meet all the requirements for initial approval of participation; and

(c) Enter into a new administrative agreement or contract of insurance with the authority.

(5) The board or its delegated officer, within sixty (60) days of receiving the reinstatement request, shall grant the request, deny the request, or grant the request subject to limitations. A denial of the request under this section shall be deemed to be a determination of disapproval under Section 3 of this regulation.

Section 16. If any period of time prescribed by this regulation differs from the corresponding period of time prescribed in 11 KAR 3:060, the shorter period of time shall be controlling.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: June 30, 1992
FILED WITH LRC: July 29, 1992 at 9 a.m.

STATEMENT OF EMERGENCY
401 KAR 50:037E

The Natural Resources and Environmental Protection Cabinet, Division for Air Quality, is mandated by 1992 Kentucky Acts Chapter 462, Parts I(J)(58)(b) and Part IX(20) to promulgate an ordinary regulation which establishes the procedures for the assessment of a fee, based on the emissions of stationary sources of air pollution, to fund the operations of the Division for Air Quality. The proceeds of the fee established in this regulation will replace a portion of the funds provided the division from the General Fund. In order to meet this requirement before General Fund monies expire, the procedures established in this emergency administrative regulation must be in place immediately. It is the intent of the Natural Resources and Environmental Protection Cabinet that this emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 1992.

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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 50:037E. Emissions fee.

RELATES TO: 224.10-100, 224.20-100, 224.20-130, 1992 Kentucky Acts Ch. 462, Part I(J)(58)(b) and Part IX(20)

STATUTORY AUTHORITY: KRS 224.10-100, 1992 Kentucky Acts Ch. 462, Part I(J)(58)(b) and Part IX(20)

EFFECTIVE: July 31, 1992

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the assessment of fees necessary to operate programs which accomplish those purposes.

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

(1) "Actual emissions" means emissions of a pollutant actually emitted in the calendar year immediately preceding the fiscal year during which an emissions fee is assessed, as recorded by the Kentucky Emissions Inventory System (KyEIS).

(2) "Air quality program" means activities of the Kentucky Division for Air Quality, including but not limited to the review of permit applications, registrations, and exemptions; the issuance of permits to construct and operate air pollution sources; inspections of air pollution sources; enforcement activities other than civil or criminal prosecutions in a court of law; air quality and emissions monitoring,

including quality assurance; the preparation of reports, plans, regulations, and statutes; responses to inquiries; the preparation and maintenance of records, including computerized data bases; and air quality modeling. Air quality program does not mean activities directly related to the control of asbestos.

(3) "Calendar year" means the period beginning January 1 and ending the following December 31.

(4) "Emissions fee" means the fee assessed an air pollution source based on the source's subject emissions.

(5) "Fiscal year" means the period beginning July 1 and ending the following June 30.

(6) "Subject emissions" means actual emissions of sulfur dioxide, oxides of nitrogen, PM_{10}, and volatile organic compounds or ethyl alcohol from an air pollution source subject to this regulation, except that actual emissions in excess of 4,000 tons of a single pollutant from a source shall not be subject emissions.

Section 2. Applicability. This regulation shall apply to each air pollution source required to have a permit to operate issued by the cabinet which emitted twenty-five (25) tons per year or more of combined subject emissions. This regulation shall not apply to mobile sources, sources located in an air pollution control district granted concurrent jurisdiction by the cabinet under KRS 224.20-130, or the electric utility units exempted from this fee by 1992 Kentucky Acts Chapter 462, Part I(J)(58)(b) and Part IX(20).

Section 3. Fee Assessment. (1) On July 1, 1992, and again on July 1, 1993, or as soon after each date as practicable, the Division for Air Quality shall calculate and assess an annual emissions fee based on subject emissions for each air pollution source subject to this regulation and shall provide written notification to each source of the amount of fee due.

(2) At least three (3) months but not more than twelve (12) months prior to assessing the emissions fee, the cabinet shall provide each source subject to the emissions fee a written copy of the KyEIS appropriate to that source for updating. Within forty-five (45) days of the date this information is mailed, each source shall provide the cabinet with the information necessary to update the actual emissions. The cabinet may request that a source provide documentation justifying the update.

(3) At least thirty (30) days prior to assessing the fee, the cabinet shall determine whether or not to update the actual emissions, based on the information provided by the source and on other information available to the cabinet. If the cabinet determines that an update should be made, it shall make the update prior to assessing the fee. If the cabinet determines that an update shall not be made, or that an update shall be made based on information other than that provided by the source, the cabinet shall notify the source of this determination at least thirty (30) days prior to assessing the fee. If the cabinet is unable to make its determination in the time allotted, it shall assess the emissions fee based on the information provided by the source. Assessment of this fee shall constitute a final determination by the cabinet.

(4) The emissions fee assessed in fiscal year 1992-93 shall be equal to the subject emissions from each source, measured in tons, multiplied by the dollar amount which shall generate a total sum of $2,131,200 from all emissions fees. The emissions fee assessed in fiscal year 1993-94 shall be equal to the subject emissions from each source, measured in tons, multiplied by the dollar amount which shall generate a total sum of $2,664,000 from all emissions fees.

(5) Each source subject to this regulation shall pay the emissions fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the cabinet mails to the source the written notification of the amount of fee due.

Section 4. Suspension of Permit to Operate. In addition to other penalties contained in KRS Chapter 224, a source which fails to pay the assessed emissions fee within ninety (90) days after the date on which the cabinet mails to the source the written notification of the amount of fee due shall have its permit to operate suspended until the emissions fee is paid or until a schedule of payment acceptable to the cabinet has been established.

Section 5. Use of Fees. All fees collected pursuant to this regulation shall be deposited in a trust and agency account and shall be used solely for funding the air quality program.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: July 22, 1992
FILED WITH LRC: July 31, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
405 KAR 7:001E

This emergency administrative regulation, which is being filed in conjunction with 405 KAR 7:091E, 405 KAR 7:092E amends 405 KAR 7:001 by including terms which are used in 405 KAR 7:091 and 405 KAR 7:092. In addition to the amendments pertaining to 405 KAR 7:091 and 405 KAR 7:092, the definition of "person" has been amended to include the definition of person under KRS 446.010 which includes inter alia governmental bodies. The definitions set forth in this emergency administrative regulation will apply to all administrative hearings and conferences arising under KRS Chapter 350, including those cases pending at the time this emergency administrative regulation is filed. It is necessary to promulgate this emergency administrative regulation in order to comply with Acts 1992, c. 304, (the Act) which went into effect on July 14, 1992. As noted in the Statement of Emergency accompanying 405 KAR 7:091 and 405 KAR 7:092, the cabinet is obligated to propose administrative regulations prescribing the procedure for the conduct of any administrative hearing arising under KRS Chapter 350. This regulation, which defines key terms as used in 405 KAR 7:091 needs to be immediately effective so that the cabinet may have in place a complete regulatory program for the prompt adjudication of administrative cases. In addition to the provisions of the Act, the Governor signed an Executive Order which established the Office of Administrative Hearings (OAH) as a replacement for the Division of Hearings. Although the regulatory changes are not required by the Executive Order, the OAH is responsible for administering all administrative hearings and conferences that may arise under this new system, and thus, these regulations need to be immediately effective so that OAH can carry out its duties and responsibilities under the Executive Order. Given the fact that it is exceedingly important for the cabinet to have in continuous effect a procedure for the administrative adjudication of any case arising under KRS Chapter 350 and given the new administrative hearings procedure mandated by 1992 Acts, c. 304, the filing of this administrative regulation as an emergency regulation is clearly warranted so that the cabinet may fulfill its obligations under these new statutes and have in place the definition of key terms. The emergency administrative regulation will allow the cabinet to continue to conduct with a minimum of disruption administrative hearings and conferences while the ordinary administrative regulation is being reviewed pursuant to KRS Chapter 13A. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on July 15, 1992.

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

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

405 KAR 7:001E. Definitions for 405 KAR Chapter 7.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

EFFECTIVE: July 24, 1992

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 7.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(2) "Administrative hearing" means a formal adjudicatory hearing conducted pursuant to 405 KAR 7:091 and 405 KAR 7:092 before the cabinet.

(3) [~~(2)~~] "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(4) [~~(3)~~] "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) [~~(4)~~] "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(6) [~~(5)~~] "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(7) [~~(6)~~] "Approximate original contour" is defined in KRS 350.010.

(8) [~~(7)~~] "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(9) [~~(8)~~] "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(10) [~~(9)~~] "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(11) [~~(10)~~] "Cabinet" is defined in KRS 350.010.

(12) [~~(11)~~] "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(13) [~~(12)~~] "CFR" means Code of Federal Regulations.

(14) [~~(13)~~] "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(15) [~~(14)~~] "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(16) [~~(15)~~] "Coal mine waste" means coal processing waste and underground development waste.

(17) [~~(16)~~] "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(18) [~~(17)~~] "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(19) [~~(18)~~] "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.

(20) [~~(19)~~] "Cumulative production" means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total shall be governed by Section 7 of 405 KAR 7:035.

(21) [~~(20)~~] "Cumulative revenue" means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(22) [~~(21)~~] "Day" means calendar day unless otherwise specified to be a working day.

(23) [~~(22)~~] "Department" means the Department for Surface Mining Reclamation and Enforcement.

(24) [~~(23)~~] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(25) [~~(24)~~] "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(26) [~~(25)~~] "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(27) [~~(26)~~] "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line, or similar construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to

that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(28) "Final order" means final order of the secretary, which includes findings of fact, conclusions of law, and an order.

(29) [~~(27)~~] "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(30) [~~(28)~~] "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency, or office of the unit which, directly or through another unit of government, finances construction.

(31) [~~(29)~~] "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(32) "Hearing officer" means the individual duly qualified and assigned as presiding officer to conduct administrative hearings; the term includes the chief hearing officer.

(33) [~~(30)~~] "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(34) [~~(31)~~] "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland".

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(35) [~~(32)~~] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(36) [~~(33)~~] "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(37) [~~(34)~~] "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(38) [~~(35)~~] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(39) "Individual", as used in 405 KAR 7:091 and 7:092, means a natural person.

(40) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(41) "Initiating document" means a petition for administrative hearing, an administrative complaint, a show cause order, or any other document which commences an administrative proceeding.

(42) [~~(36)~~] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(43) "Interim report" means statements made by a hearing officer in written form which are not intended to be considered by the secretary and which are not subject to judicial review.

(44) [~~(37)~~] "KAR" means Kentucky administrative regulations.

(45) [~~(38)~~] "Knowingly" means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

(46) [~~(39)~~] "KRS" means Kentucky Revised Statutes.

(47) [~~(40)~~] "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(48) [~~(41)~~] "Mining area", as used in 405 KAR 7:035, means an individual excavation site or pit from which coal, other minerals, and overburden are removed.

(49) [~~(42)~~] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(50) [~~(43)~~] "MSHA" means Mine Safety and Health Administration.

(51) [~~(44)~~] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(52) "Office", as used in 405 KAR 7:091 and 7:092, means the office of administrative hearings.

(53) [~~(45)~~] "Operations" is defined in KRS 350.010.

(54) [~~(46)~~] "Operator" is defined in KRS 350.010.

(55) [~~(47)~~] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(56) [~~(48)~~] "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(57) [~~(49)~~] "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(58) [~~(50)~~] "Overburden" is defined in KRS 350.010.

(59) [~~(51)~~] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(60) [~~(52)~~] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(61) [~~(53)~~] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(62) [~~(54)~~] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(63) [~~(55)~~] "Person" is defined in KRS 350.010 and KRS 446.010(26).

(64) [~~(56)~~] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(65) [~~(57)~~] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(66) [~~(58)~~] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(67) [~~(59)~~] "Reclamation" is defined in KRS 350.010.

(68) "Record" means the transcript of a proceeding, if any, and rulings; and all pleadings, motions, and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon, proposed findings and recommended orders; and legal briefs and orders.

(69) [~~(60)~~] "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(70) [~~(61)~~] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(71) [~~(62)~~] "SCS" means Soil Conservation Service.

(72) [~~(63)~~] "Secretary" is defined in KRS 350.010.

(73) [~~(64)~~] "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(74) [~~(65)~~] "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(75) [~~(66)~~] "Small operator", as used in 405 KAR 7:080, means an operator whose combined actual and attributed production of coal does not exceed 300,000 tons during any period of twelve (12) consecutive months.

(76) [~~(67)~~] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(77) [~~(68)~~] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(78) [~~(69)~~] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(79) [~~(70)~~] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(80) [~~(71)~~] "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

(81) [~~(72)~~] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(82) [~~(73)~~] "Surface coal mining operations" is defined in KRS 350.010.

(83) [~~(74)~~] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from

coal refuse piles, or by recovery of coal from slurry ponds.

(84) [~~(75)~~] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(85) [~~(76)~~] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(86) [~~(77)~~] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(87) [~~(78)~~] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(88) [~~(79)~~] "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence, or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions.

(89) [~~(80)~~] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: July 15, 1992
FILED WITH LRC: July 24, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
405 KAR 7:091E

This administrative regulation, which is being filed in conjunction with 405 KAR 7:092E, 405 KAR 7:001E and 405 KAR 12:020E prescribes the general provisions for the conduct of administrative hearings arising under KRS Chapter 350 by the Natural Resources and Environmental Protection Cabinet ("Cabinet") and sets forth in detail the duties and responsibilities of the administrative hearing officer as well as time limitations for the submission of reports and recommended orders to the secretary. In addition this administrative regulation sets forth the requirements for service of any document served in any administrative proceeding; prescribes standards of conduct for all parties participating in an administrative hearing and establishes basic procedures for the filing and retention of documents by the Office of Administrative Hearings. As noted in Section 1, with certain exceptions, this administrative regulation will apply to all administrative hearings and conferences arising under KRS Chapter 350, including those cases pending at the time this administrative regulation is filed. It is necessary to promulgate this administrative regulation in order to comply with Acts 1992, c. 304, (the Act) which went into effect on July 14, 1992. The enactment of this bill reimposed upon the cabinet the obligation inter alia to establish by regulation a procedure to require prepayment of civil penalties prior to any administrative hearing as to the amount of the penalty. The new legislation also makes clear, however, that a contest as to the fact of the violation does not require prepayment of the assessed penalty. Finally, the Act states that an individual can avoid the necessity of prepaying the assessed penalty if he is able to demonstrate with substantial evidence that he is not able to prepay the assessed amount. This regulation is directly germane to 405 KAR 7:092E which implements the requirements of the Act. In addition to the provisions of the Act, the Governor signed an Executive Order which established the Office of Administrative Hearings (OAH) as a replacement for the Division of Hearings. Although the regulatory changes are not required by the Executive Order, the OAH is responsible for administering all administrative hearings and conferences that may arise under this new system. Given the fact that it is exceedingly important for the cabinet to have in continuous effect a procedure for the administrative adjudication of any case arising under KRS Chapter 350 and given the new administrative hearings procedure mandated by 1992 Acts, c. 304, the filing of this administrative regulation as an emergency regulation is clearly warranted so that the cabinet may fulfill its obligations under these new statutes. The administrative regulation will allow the cabinet to continue to conduct with a minimum of disruption administrative hearings and conferences while the ordinary administrative regulation is being reviewed pursuant to KRS Chapter 13A. This administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on July 15, 1992.

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

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

405 KAR 7:091E. General practice provisions.

RELATES TO: KRS 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 1992 Acts c. 304, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.255, 350.465, 350.610, 1992 Acts c. 304, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

EFFECTIVE: July 24, 1992

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth hearing, notice and other procedural and due process provisions for the permanent regulatory program. This administrative regulation and 405 KAR 7:092 contain the substance of 405 KAR 7:090 which has been repealed.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350, including those pending at the time this administrative regulation becomes effective, and for public participation, pertaining to the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4); determinations on performance bond amount, duration, release, and forfeiture; administrative hearings on orders to abate or alleviate issued pursuant to KRS 224.10-410 to surface coal mining and reclamation operations; and all other matters including participation in administrative hearings by any person adversely affected by a determination of the cabinet which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet or arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as set forth in KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 2. Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.

Section 3. General Provisions for Conducting Administrative Hearings. (1)(a) Hearings generally. All administrative hearings shall be de novo as to all issues of fact and law, provided that those findings previously adjudicated by a final order of the secretary shall be binding against any party to the administrative hearing leading to the final order. A party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practice and Section 2 of this administrative regulation. Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 and 400 KAR 1:040 shall apply to cases before the cabinet, consistent with KRS Chapter 350 and 405 KAR Chapters 7 through 24. The hearing officer shall permit any party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause, shall be grounds for default.

(b) Evidence. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible to proof under rules of evidence, evidence not admissible thereunder may be admitted, except where designated as confidential by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken by the hearing officer of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the administrative hearing, or by reference in reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized by the hearing officer in the evaluation of the evidence.

(2) Hearing officer's duties. The hearing officer shall in his discretion:

(a) Administer oaths and affirmations;

(b) Issue subpoenas in accordance with Section 9 of this administrative regulation;

(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;

(d) Rule on procedural requests or similar matters;

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

(f) Regulate the course of the administrative hearing;

(g) Rule on offers of proof and receive relevant evidence;

(h) Take any other action authorized by administrative regulation, KRS Chapter 350 and 405 KAR Chapters 7-24; and

(i) Make or recommend decisions or reports in accordance with KRS Chapter 350 and the administrative regulations.

(3) Prehearing conference. A hearing officer may order a prehearing conference:

(a) To simplify and clarify issues;

(b) To receive stipulations and admissions;

(c) To explore the possibility of agreement disposing of any or all of the issues in dispute; and

(d) For any other purposes as may be appropriate, including but not limited to summary disposition of the case.

(4) Summary disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedure shall apply:

(a) The moving party shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(b) A hearing officer may grant a motion and render a report and recommended order to the secretary under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that:

1. There is no disputed issue as to any material fact; and

2. The moving party is entitled to a summary disposition as a matter of law.

(c) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall issue an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate.

(5) Hearing officer's report. The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and recommended order to the secretary, except that the administrative hearing officer shall, within twenty (20) days of the close of the hearing record, make a report and recommended order in administrative hearings on permit determinations under 405 KAR 7:092, Section 8. The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. If granted by the secretary, all parties shall be notified at the time of the granting of the extension. The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record. The parties may file exceptions and responses to the exceptions as provided under 1992 Acts c. 304. There shall be no other or further submissions.

(6) Secretary's order.

(a) The secretary shall consider the report and recommended order, any exceptions filed, and any responses to exceptions, and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as a final order, or issue his own final order.

(b) The final order of the secretary shall be mailed postage prepaid to parties and their attorneys of record.

(c) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

Section 4. Standards of Conduct. (1) Ex parte communications.

(a) Prohibition. Except to the extent required for the disposition of ex parte matters as authorized by law, there shall be no communication concerning the merits of a proceeding between a party to the proceeding or a person interested in the proceeding or a representative of a party or interested person and office personnel involved or who may reasonably be expected to become involved in the decision making process of an administrative hearing or conference, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties. Communications concerning case status or advice concerning compliance with procedural requirements are not prohibited unless the area of inquiry is in fact an area of controversy in the administrative hearing or conference. Oral communications made in violation of this administrative regulation shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record. Written communications made in violation of

this administrative regulation shall be included in the record. Copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

(b) Sanctions. The hearing officer, who has responsibility for the matter in which a prohibited communication has been knowingly made, may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why his claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; and invoking such sanctions against other offending persons as appropriate.

(2) Disqualification. The hearing officer shall withdraw from a case if he deems himself disqualified under the recognized canons of judicial ethics. If prior to a decision of the hearing officer an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of disqualification.

Section 5. Service. (1) A proposed penalty assessment, notice of assessment conference, notice of administrative hearing, or other documents required to be served, including administrative summonses, shall be served either under 400 KAR 1:030 or by one (1) of the following methods:

(a) The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The cabinet shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by paragraph (c) of this subsection. The return receipt shall be proof of the time, place and manner of service. To the extent the United States postal regulations allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by such authorized representative shall constitute service on the addressee; or

(b) The cabinet may cause the document, with necessary copies, to be transferred for service to a person authorized by the secretary or by a statute to deliver them, or to a person authorized to serve an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(c) Service may be made upon a person issued a permit by the cabinet, upon a person specified as an operator in the permit application, or upon a person who has submitted an exploration notice or application pursuant to 405 KAR 8:020 by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee or the operator specified in the permit application (at the address specified on the face of the permit, at the permanent address for the permittee or operator specified in the permit application, or at any new address that has been specified in writing by the permittee or operator), or in the case of coal exploration, by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the person authorized to conduct the coal exploration and addressed to said person's permanent address as noted in the exploration notice or application.

(2) Service shall be effective upon acceptance of the document by any person eighteen (18) years of age or older at the permanent address, upon refusal to accept the document by any person at the permanent address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (c) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document.

(3) Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) A copy of each document filed in a proceeding pending before the office must be served by the filing party on all other parties in the case. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case. Service of any document relating to the proceeding shall be made upon the attorney in addition to any other service specifically required by law or by order of the cabinet.

(5) Service shall be made upon the cabinet by serving the commissioner of the Department of Law and shall be effective upon receipt by the Department of Law.

Section 6. Administrative Summons and Public Notice of Hearing. (1) Upon receipt of an initiating document, the office shall promptly serve in accordance with Section 5 of this administrative regulation, a copy of the document upon all parties designated to be served along with an administrative summons notifying the responding party that an initiating document has been filed against him and unless a written defense is timely served, action adverse to his interests may be taken. If appropriate and at the direction of the hearing officer, the administrative summons may also designate that a prehearing conference or administrative hearing shall be held along with the date, time and place of the prehearing conference or administrative hearing. An administrative summons shall also include a statement of the legal authority for the hearing and reference to the statutes and regulations involved.

(2) For all administrative hearings initiated pursuant to 405 KAR 7:092, Section 5, notice of the scheduled hearing shall also be mailed to any intervenors, shall be posted at the department's appropriate regional office and, if practicable, shall be published in a newspaper of general circulation in the area of the surface coal mining and reclamation operations or coal exploration operations.

Section 7. Filing and Retention of Documents. (1) Filing of documents. A document is considered filed in the office when the document is received and stamped by the office.

(2) Retention of documents. All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in a proceeding before the cabinet will be retained with the official record of the proceedings. The withdrawal of original documents may be permitted while the case is pending upon terms and conditions as may be directed by the hearing officer. When an order of the secretary has become final, the hearing officer in his discretion may, upon request and after notice to the other parties, authorize the withdrawal of original exhibits or any part by the authorized party. The substitution of true copies of exhibits or any part may be required by the hearing officer in his discretion as a condition of granting permission for withdrawal.

(3) Record address. A person who files a document for the record in connection with an administrative hearing before the office shall at the time of initial filing in the matter state his mailing address and telephone number. Thereafter, he shall promptly inform the office of a change in mailing address or telephone number, giving the file number relating to all matters in which he has made a filing. The successors of the person shall likewise promptly inform the office of their interest in the matters and state their addresses and telephone numbers. If a person fails to furnish a record address and telephone number as required, he will not be entitled to notice in connection with the proceedings.

(4) Transcripts. All administrative hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties. Costs of transcripts shall be borne by the requesting parties. Fees for transcripts prepared from recordings by office employees will be at rates which cover the cost of manpower, machine use and materials. If the reporting is done pursuant to a contract between the reporter and the cabinet, costs of transcripts will be at rates established by the contract.

Section 8. Time. (1) Computation of time for the initiation of an

administrative proceeding or the subsequent filing of a document shall be in accordance with KRS 446.030 and 400 KAR 1:030, Section 4.

(2) The time for filing or serving any document may be extended by a hearing officer except for the time for filing a petition for an administrative hearing under 405 KAR 7:092 or if an extension is contrary to law or regulation.

(3) A request for an extension of time shall be filed within the time allowed for filing or serving the document.

Section 9. Subpoenas. The office shall issue subpoenas requiring the attendance of witnesses or production of books, papers, documents, or tangible things designated therein, or both, at administrative hearings to be held before or at the taking of depositions to be held before other officers. Subpoenas shall be issued on a form approved by the office. A subpoena may be served by a person who is not a party and is not less than eighteen (18) years of age. The original subpoena bearing a certificate of service shall be filed with the office or the subpoena may be served by certified mail, return receipt requested. The return receipt if signed by the addressee or his authorized agent shall constitute proof of service of the subpoena.

Section 10. Location of Administrative Hearings and Penalty Assessment Conferences. (1) A penalty assessment conference shall be held in the department's regional office for the mine site, unless a closer location is approved by the conference officer.

(2) Administrative hearings shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the petition or other initiating document or answer at the time the petition or other initiating document or answer is filed with the office. The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

Section 11. Intervention and Consolidation. (1) Who may file. A person may petition in writing for leave to intervene at any stage of a proceeding under 405 KAR 7:092. A petitioner shall set forth a statement setting forth the interest of the petitioner and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the petitioner:

1. Had a statutory right to initiate the proceeding in which he wishes to intervene; or

2. Has an interest which is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria set forth in paragraph (a) of this subsection does not apply, the hearing officer shall consider the following in determining whether intervention is appropriate:

1. The nature of the issues;

2. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

3. The ability of the petitioner to present relevant evidence and argument; and

4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or, if desired, in a limited capacity. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the hearing officer.

(4) Consolidation. When proceedings involving the same parties or a common question of law or fact are pending before the cabinet, the proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 12. Judicial Review, Effect, and Subsequent Proceedings. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 1992 Acts c. 304 as applicable.

(2) Effect of final order pending judicial review. The commencement of proceedings for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remands from courts. Whenever a matter is remanded from any court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate hearing officer, a report recommending procedures to be followed in order to comply with the court's order. The hearing officer will review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by any court.

Section 13. 405 KAR 7:090, Hearings, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: July 15, 1992
FILED WITH LRC: July 24, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
405 KAR 7:092E

This emergency administrative regulation, which is being filed in conjunction with 405 KAR 7:091E, 405 KAR 7:001E and 405 KAR 12:020E prescribes the general provisions for the conduct of administrative hearings arising under KRS Chapter 350 by the Natural Resources and Environmental Protection Cabinet ("cabinet"). In particular this regulation establishes specific procedures by which a person adversely affected by a cabinet's determination or enforcement action can petition for an administrative hearing or conference. In order to cover the full spectrum of possible challenges, this regulation sets forth specific procedures for inter alia: (1) enforcement determinations, (2) penalty assessments, (3) bond release decisions, (4) any type permit issuance or denial determinations, (5) proceedings by which the cabinet may initiate an administrative complaint for revocation, suspension and bond forfeiture of a surface mining and reclamation permit, (6) proceedings for temporary relief and (7) pursuant to 1992 Acts, c. 304 an omnibus provision allowing petitions to be filed for determinations made under KRS Chapter 350 not otherwise specifically covered. In addition to these provisions, the cabinet, in conformity with 1992 Acts, c. 304, has proposed a provision establishing a conference process for informal review of a proposed civil penalty assessment at the cabinet's regional offices. Upon issuance of the conference officer's report, further administrative challenges of the assessment is possible, provided the recommended amount is paid into the cabinet's escrow account. Prepayment is required only for the contesting of the civil penalty. Other provisions of the regulation, however, make it emphatically clear that the fact of the violation can be contested at both the administrative and judicial levels without having to prepay the proposed penalty assessment. Finally, there is a provision in this regulation which allows an individual to obtain a waiver of the prepayment requirements on the grounds of inability pay. In addition to the provisions of the Act, the Governor signed an Executive Order which established the Office of Administrative Hearings (OAH) as a replacement for the Division of Hearings. Although the regulatory changes are not required by the Executive Order, the OAH is responsible for administering all administrative hearings and conferences that may arise under this new system, and thus, these regulations need to be in effect so that OAH can carry out its duties and responsibilities under the Executive Order. Given the fact that it is exceedingly important for the cabinet to have in continuous effect a procedure for the administrative adjudication of any case arising under KRS Chapter 350 and given the new administrative hearings procedure mandated by 1992 Acts, c. 304, which went into effect on July 14, 1992, the filing of this administrative regulation as an emergency regulation is clearly warranted so that the cabinet may fulfill its obligations under these new statutes. The emergency administrative regulation will allow the cabinet to continue to conduct with a minimum of disruption administrative hearings and conferences while the ordinary administrative regulation is being reviewed pursuant to KRS Chapter 13A. This

emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on July 15, 1992.

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

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

405 KAR 7:092E. Administrative hearings and assessment conferences.

RELATES TO: KRS 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 1992 Acts c. 304, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.255, 350.465, 350.610, 1992 Acts c. 304, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

EFFECTIVE: July 24, 1992

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth hearing, conference, notice, penalty assessment and other procedural and due process provisions for the permanent regulatory program. This administrative regulation and 405 KAR 7:091 contain the substance of 405 KAR 7:090 which has been repealed.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350, including those pending at the time this administrative regulation becomes effective, and for public participation, pertaining to the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4); determinations of performance bond amount, duration, release, and forfeiture; administrative hearings arising under KRS 224.10-410 on orders to abate or alleviate issued to surface coal mining and reclamation operations; and all other matters including participation in administrative hearings by any person adversely affected by a determination of the cabinet which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet and arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as set forth in KRS Chapter 350 and 405 KAR Chapters 7 through 24, except that the provisions pertaining to the payment of proposed assessments into an escrow account as set forth in Sections 3 and 6 of this administrative regulation and the waiver of payments as provided in Section 15 of this administrative regulation shall only be applicable to those notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance issued on or subsequent to the effective date of this administrative regulation. If requests for formal hearings have been timely filed at the time this administrative regulation takes effect, cases shall not be dismissed for the reason that they do not conform to the new procedural requirements of this administrative regulation for filing administrative complaints and answers.

Section 2. Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.

Section 3. Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing. (1) Notification. The cabinet shall notify a person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance in writing of its proposed penalty assessment. The proposed assessment shall be made by authorized personnel of the department.

(2) Criteria. In determining the amount of the penalty, consideration shall be given to the permittee's or operator's history of previous violations at the particular surface coal mining and reclamation operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee, operator, or person was negligent; and the demonstrated good faith of the permittee, operator, or person in attempting to achieve rapid compliance after notification of the violation, except that good faith consideration shall not be applicable to any violation determined not to be correctable. If a violation has been cited against a person conducting coal exploration operations consideration shall be given to the above factors as applicable in determining the amount of the penalty.

(3) Service.

(a) Method; time. The notice of proposed penalty assessment shall be served under 405 KAR 7:091, Section 5, together with copies of applicable worksheets, to the person to whom the notice or order was issued within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

(b) Failure to timely serve; substantial prejudice. Failure to serve the proposed assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of the assessment unless the person against whom the proposed penalty has been assessed proves actual and substantial prejudice as a result of the delay and makes a timely written objection to the delay. An objection shall be timely only if made on or before the last date to request an assessment conference under subsection (4)(b) of this section.

(4) Options of person issued notice of proposed assessment. (a) Waiver; final order to enter. The person issued the notice of proposed penalty assessment may choose not to contest the assessment and a final order of the secretary shall be entered finding that:

1. The person to whom the notice or order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order. If a petition requesting an administrative hearing as to the fact of the violation has been timely filed pursuant to Section 7 of this administrative regulation, the finding in subparagraph 2 of this paragraph shall be omitted and the proposed penalty assessment shall be due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

(b) Assessment conference. Within thirty (30) days of service of the notice of proposed assessment or if the document is returned undeliverable, unclaimed or refused, thirty (30) days from the date of the return, the person to whom the notice of proposed penalty assessment was sent may request review of the penalty assessment by requesting in writing an assessment conference pursuant to Section 4 of this administrative regulation in which case payment of the proposed assessment into the cabinet's escrow account shall not be required; or

(c) Petition for administrative hearing. The person to whom a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance was issued may contest the proposed penalty assessment or the fact of the violation or both by submitting a petition for an administrative hearing in accordance with Section 6 of this administrative regulation. If an assessment conference has been held pursuant to Section 4 of this administrative regulation, the person may contest the amount assessed in the conference officer's report or the fact of the violation or both by submitting a petition for an administrative hearing in accordance with

Section 6 of this administrative regulation. The fact of the violation may not be contested if it has been adjudicated by a final order of the secretary pursuant to an administrative hearing commenced under Section 7 of this administrative regulation. Nothing in this paragraph shall be construed as infringing upon any person's right to contest the fact of the violation without having to pay the proposed assessment into the cabinet's escrow account if such petition was timely filed in accordance with Section 7 of this administrative regulation.

Section 4. Procedures for Assessment Conference. (1) In general.

(a) Time for filing. Following issuance by the cabinet of a notice of proposed penalty assessment, the person to whom the notice was sent may request an assessment conference on the proposed penalty assessment. The request for an assessment conference shall be filed with the office within thirty (30) days of the date of receipt of the proposed penalty assessment or, if the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return.

(b) Waiver; final order to enter. Failure to timely request an assessment conference shall constitute a waiver of the right to a conference. If a petition for review of the proposed penalty assessment has not been timely filed under Section 6 of this administrative regulation a final order shall be entered in conformity with Section 6(1)(c) of this administrative regulation.

(c) Date of conference; failure to timely schedule; substantial prejudice. If an assessment conference is requested, it shall be scheduled for a date no later than sixty (60) days after the cabinet's receipt of the request. Failure by the cabinet to timely schedule an assessment conference shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the assessment conference and proves actual and substantial prejudice as a result of the delay. The scheduling of the assessment conference shall not operate as a stay of any notice or order.

(2) Service; public participation. Notice of the assessment conference shall be served under 405 KAR 7:091, Section 5 and a copy of the notice shall also be sent to any person who filed a report which led to the issuance of the notice or order being contested. The cabinet shall post notice of the assessment conference at the department's appropriate regional office at least five (5) days before the conference. Any person shall have the right to attend and participate in the assessment conference.

(3) Conference officer; requirements for administrative hearings not applicable. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the requirements for administrative hearings or by the provisions of 400 KAR 1:040. (4) Report of conference officer. The conference officer shall consider all relevant information pertaining to the proposed assessment. Within thirty (30) days after the conference is held, the conference officer shall issue a report recommending to the secretary to either affirm, raise, lower, or dismiss the proposed penalty assessment.

(5) Service of report; documentation. The conference officer's report shall be promptly served by mail, postage prepaid, and shall include a worksheet if the penalty has been raised or lowered. The reasons underlying the conference officer's report shall be fully documented.

(6) Agreed order.

(a) Waiver of further review. If an agreed order is entered into, the person assessed shall be deemed to have waived all rights to further review of the fact of the violation and penalty in question. The agreed order shall contain a clause that any petition for review of the fact of the violation filed in accordance with Section 7 of this administrative regulation shall be deemed withdrawn.

(b) Enforcement of agreed order. If full payment of the amount specified in the agreed order is not received by the cabinet within thirty (30) days after the date of the secretary's signature, the cabinet may take necessary steps to enforce the agreed order.

(7) Failure to attend; report to issue. If the person requesting an assessment conference fails to attend the scheduled conference, the assessment officer shall within thirty (30) days of the date of the scheduled conference issue a report to the secretary recommending that the proposed penalty assessment be affirmed.

(8) Statements not to be introduced at administrative hearings. In any administrative hearing commenced under Sections 6 or 7 of this administrative regulation no evidence as to statements made by one (1) party at a conference shall be introduced by another party as evidence or to impeach a witness.

(9) Administrative hearing; who may request. Any person issued a proposed penalty assessment may request under Section 6 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty. The cabinet may request under Section 5 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty.

(10) Failure to timely request; order to enter. If a request for an administrative hearing is not filed with the office within thirty (30) days of mailing of the conference officer's report, an order of the secretary shall be entered and mailed containing the following:

(a) That the person to whom the notice or order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

(b) That the fact of the violation is deemed admitted; and

(c) That the penalty assessment contained in the conference officer's report is deemed accepted and is due and payable to the cabinet within thirty (30) days after the entry of the final order. If a petition requesting a hearing as to the fact of the violation has been timely filed pursuant to Section 7 of this administrative regulation, the finding set forth in paragraph (b) of this subsection shall be omitted and the penalty assessment contained in the conference officer's report shall be due and payable within thirty (30) days of the mailing of the final order affirming the fact of a violation.

Section 5. Administrative Hearings Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing and may seek revocation of the permit and forfeiture of the bond or suspension of the permit whenever:

1. It has reason to believe that a violation of KRS Chapter 350; 405 KAR Chapters 7 through 24; or a permit condition has occurred or is occurring; or

2. A permittee, operator, or person has failed to pay a civil penalty assessed in a final order of the cabinet or to undertake remedial measures mandated by an order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or

3. The provisions of KRS 350.990(9) apply; or

4. The cabinet has reason to believe additional remedies should be sought or an order should be entered against any person to protect the environment or the health and safety of the public; or

5. The criteria of 405 KAR 10:050, Section 3(2) or (3) apply.

(b) The cabinet may initiate an administrative hearing to contest a conference officer's recommended penalty and seek any combination of the relief set forth in subsection (2) of this section, in which case prepayment of the proposed penalty assessment is not required.

(c) The cabinet shall initiate an administrative hearing and shall seek revocation of the permit and forfeiture of the bond or suspension of the permit whenever:

1. The permittee, operator, or person has willfully failed to comply with an order for cessation and immediate compliance; or

2. The criteria of 405 KAR 10:050, Section 3(1) apply.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek a combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalties;

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future operations;

(e) A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; or

(f) Any other relief to which it may be entitled by KRS Chapter 350.

(3) Procedures for administrative hearings initiated by the cabinet.

(a) Filing of administrative complaint. Contents. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief; and

3. A copy of any notice or order upon which relief is sought.

(b) Answer or responsive pleading. The person named in an administrative complaint shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint which shall contain:

1. A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint; and

2. Any defenses to each claim for relief.

(c) Amendments. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The person named in the administrative complaint shall have ten (10) days from the filing of an administrative complaint amended as a matter of right or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend the administrative complaint, the time for an answer to be filed shall be set forth in the order granting the motion.

(4) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall have the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense. A responding party claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(5) Default.

(a) In a proceeding where the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 6. Administrative Hearing for Review of Proposed Assessment. (1) Filing petition; waiver. Any person issued a proposed penalty assessment may file with the office a petition for an administrative hearing to review the penalty.

(a) A petition for review of a proposed penalty assessment shall be filed in the office within thirty (30) days of service of the proposed assessment, or if the notice of proposed penalty assessment is returned undeliverable, unclaimed or refused, within thirty (30) days of the date of return; or

(b) If a timely request for an assessment conference has been made pursuant to Section 4 of this administrative regulation, a petition for review must be filed in the office within thirty (30) days from mailing of the conference officer's report.

(c) An extension of time shall not be granted for filing a petition for review of a proposed penalty assessment as required by this section. If a petition for review is not timely filed, the petition, if any, shall be dismissed and a final order shall be entered which contains the following:

1. That the person to whom the notice of order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment or the assessment as amended by the conference officer;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty assessment, or the assessment as amended by the conference officer is deemed admitted and shall be due and payable to the cabinet within thirty (30) days after the entry of the final order. If a petition requesting an administrative hearing on the fact of the violation has been timely filed under Section 7 of this administrative regulation, the finding set forth in subparagraph 2 of this paragraph shall be omitted and the penalty assessment shall be due and payable within thirty (30) days after the entry of a final order affirming the fact of the violation.

(2) Contents of petition; payment required.

(a) The petition shall include:

1. A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation or both is being contested;

2. If the amount of penalty is being contested based upon a misapplication of the penalty formula, a statement indicating how the penalty formula contained in 405 KAR 7:095 was misapplied, along with a proposed penalty utilizing the penalty formula;

3. Identification by reference to the noncompliance or cessation order number of all violations being contested; and

4. The identifying number of the cashier's check, certified check, bank draft, or bank money order accompanying the petition.

(b) The petition shall be accompanied by full payment of the proposed penalty assessment, or the assessment as amended by the conference officer, in the form of a cashier's check, certified check, bank draft, or bank money order made payable to the Kentucky State Treasurer to be placed in an escrow account pending final determination of the assessment; and, on the face of the payment an identification, by reference to the noncompliance or cessation order identification number, of the violations for which payment is being tendered.

(c) An extension of time shall not be granted for full payment of the proposed assessment. If payment is not timely made, the petition shall be dismissed, and a final order shall be entered in conformity with subsection (1)(c) of this section.

(3) Answer or responsive pleading. The cabinet shall have thirty (30) days from service of a copy of the petition to file an answer or responsive pleading with the office. An answer shall contain a statement specifically admitting or denying the alleged errors stated in the petition and setting forth other matters to be considered on review.

(4) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The cabinet shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(5) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) day period is waived in writing.

(6) Burden of proof. In administrative hearings under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the fact of the violation and the amount of the assessment and the ultimate burden of persuasion as to the amount of the assessment. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

(7) Default.

(a) In a proposed penalty assessment proceeding if the person against whom the proposed penalty is assessed fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with subsection 1(c) of this section.

(c) If the person against whom the proposed penalty is assessed fails to appear at a hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with subsection 1(c) of this section.

(8) Hearing officer's report; contents. If an administrative hearing is conducted, the hearing officer shall incorporate in his report and recommended order concerning a civil penalty, findings of fact on each of the four (4), criteria set forth in 405 KAR 7:095, Section 3, and conclusions of law.

Section 7. Administrative Review of Notices of Noncompliance and Orders for Remedial Measures and Orders for Cessation and Immediate Compliance. (1) Who may file. A person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance by the cabinet pursuant to the provisions of KRS Chapter 350 or administrative regulations or a person having an interest which is or may be adversely affected by such a notice or order may file a petition for review with the office.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days of the receipt of a notice or order or within thirty (30) days of receipt of notice of modification, vacation, or termination of the notice or order or if any of the foregoing documents is returned as undeliverable, unclaimed or refused within thirty (30) days of the date of the return.

(b) An extension of time shall not be granted for filing a petition for review. If a petition for review is not timely filed, the petition shall be dismissed.

(c) Failure to file a petition for review of a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance under this section shall not preclude challenging the fact of violation at an administrative hearing requested under Section 6 of this administrative regulation.

(3) Contents of petition. A person filing a petition for review shall incorporate in the petition regarding each claim for relief the following:

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) A copy of the notice or order sought to be reviewed;

(d) A statement as to whether the person waives the opportunity for an evidentiary hearing; and

(e) Other relevant information.

(4) Answer or responsive pleading. The cabinet and interested parties shall have thirty (30) days from service of a copy of the petition within which to file an answer or other responsive pleading. The answer shall contain a statement specifically admitting or denying the alleged facts stated by the petitioner and setting forth other matters to be considered on review.

(5) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The cabinet and other interested parties shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) A petitioner shall file a copy of any subsequent notice or order which modifies, vacates, or terminates the notice or order sought to be reviewed and shall file a copy of any subsequent order for cessation and immediate compliance for failure to timely abate the violation which is the subject to the notice sought to be reviewed within ten (10) days of receipt of the notice or order. If a petitioner desires to challenge a subsequent notice or order, the petitioner must file a separate petition for review. Petitions for review of related notices or orders are subject to consolidation.

(7) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the hearing at least twenty-one (21) days prior to the hearing, unless the twenty-one (21) day period is waived in writing.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order affirming the notice or order and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the person shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order affirming the notice or order and dismissing the petition.

(9) Burden of proof. In review of notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice, order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner.

Section 8. Request for Review of Permit Determinations. (1) Who may file. The permit applicant, permittee, or person having an interest which is or may be adversely affected by a permit determination of the cabinet may file a petition for review of the following:

(a) Applications for new permits;

(b) Applications for permit revisions and amendments, permit renewals, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revisions and amendments ordered by the cabinet, except challenges of permit revisions ordered as a remedial measure in a notice of noncompliance shall be reviewed in an administrative hearing pursuant to Section 6 or 7 of this administrative regulation; and

(d) Applications for coal exploration permits.

(2) Time to file; waiver. A petition for review shall be filed with the office within thirty (30) days from the date the person has actual notice of the determination or could reasonably have had notice. Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed.

(3) Contents of the petition. The petition for review shall include:

(a) A clear statement of the facts entitling the one requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet 's decision, including reference to the statutory and regulatory provisions allegedly violated;

(c) A request for specific relief;

(d) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(e) Other relevant information.

(4) Answer or responsive pleading. The cabinet and interested parties shall file an answer or responsive pleading within thirty (30) days of service of the petition. An answer shall contain a statement specifically admitting or denying facts or alleged errors stated in the petition and setting forth other matters to be considered on review.

(5) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. An interested party shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) day period is waived in writing.

(7) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion

of administrative review.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(9) Burden of proof.

(a) In a proceeding to review a decision on an application for a new permit:

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations or that the permit terms or conditions are improper.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations, or that the cabinet should have imposed certain terms or conditions on the permit that were not imposed.

(b) In a proceeding to review the approval or disapproval of an application for a permit renewal, those parties opposing renewal shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the renewal application should be disapproved or that the cabinet should have imposed certain terms or conditions on the renewal permit that were not imposed.

(c) In a proceeding to review the approval or disapproval of an application for a permit revision or amendment, or an application for the transfer, assignment, or sale of rights granted under permit:

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations; and

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

(d) In a proceeding to review a permit revision or amendment ordered by the cabinet, the cabinet shall have the burden of going forward to establish a prima facie case that the permit should be revised or amended and the permittee shall have the ultimate burden of persuasion that the revision or amendment is not appropriate.

(e) In a proceeding to review a decision on an application for a coal exploration permit:

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

Section 9. Review of Cabinet Determinations. (1) Who may file. A person who considers himself aggrieved by a determination of the cabinet for which an administrative hearing is not specifically provided in any other section of this administrative regulation may file a petition for review of the determination pursuant to this section.

(2) The petition for review shall be filed with the office within thirty (30) days after the petitioner has had actual notice of the determination complained of, or could reasonably have had notice. Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed.

(3) Contents of petition. The petition for review shall contain:

(a) A statement of the facts entitling the one requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief; and

(d) Other relevant information.

(4) Answer or responsive pleading. The cabinet and interested parties shall file an answer or other responsive pleading within thirty (30) days of receipt of the petition specifically admitting or denying facts or alleged errors stated in the petition and setting forth any other matters to be considered on review.

(5) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The cabinet and interested parties shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) days period is waived in writing.

(7) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why that person should not be deemed to have waived his right to an administrative hearing and why his petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that he has waived his right to an administrative hearing and dismissing the petition.

(9) Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 10. Proceedings for Suspension or Revocation of Permits Because of Pattern of Violations. (1) Initiation of proceedings.

(a) A proceeding on a show cause order issued by the cabinet pursuant to KRS 350.028(4), 350.465(3)(f) and 405 KAR 12:020, Section 8, shall be initiated by the filing of a copy of the show cause order by the cabinet with the office at the same time the order is issued to the permittee.

(b) A show cause order shall set forth:

1. A list of the unwarranted or willful violations which contribute to a pattern of violations;

2. A copy of each order or notice which contains the violations listed as contributing to a pattern of violations;

3. The basis for determining the existence of a pattern of violations; and

4. Recommendations whether the permit should be suspended or revoked, including the length and terms of a suspension.

(2) Answer. The permittee shall have thirty (30) days from service of the show cause order within which to file an answer with the office

which shall state:

(a) The reasons in detail why a pattern of violations, as described in 405 KAR 12:020, Section 8, does not exist or has not existed including all reasons for contesting:

1. The fact of the violations alleged by the cabinet as constituting a pattern of violations;

2. The willfulness of the violations; or

3. Whether the violations were caused by the unwarranted failure of the permittee;

(b) Mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Other alleged relevant facts; and

(d) Whether an evidentiary hearing on the show cause order is desired.

(3) Burden of proof. In a show cause proceeding, the cabinet shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(4) Determination by the hearing officer .

(a) Upon a determination by the hearing officer pursuant to 405 KAR 12:020, Section 8, that a pattern of violations exists or has existed, the hearing officer shall recommend the permit either be suspended or revoked and the permittee directed to complete necessary remedial measures and reclamation operations. In making such a recommendation, the hearing officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the hearing officer may recommend preconditions to be satisfied prior to the suspension being lifted.

(5) Default. If the permittee fails to timely file an answer or appear at the administrative hearing, the permittee shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order containing the following:

(a) That each violation listed in the show cause order occurred;

(b) That the violations were caused by the permittee's unwarranted failure or were willfully caused;

(c) That a pattern of violations exists;

(d) That the permit shall be suspended or revoked in accordance with the recommendation contained in the show cause order.

Section 11. Procedures for Abate or Alleviate Orders. (1) In general. If pursuant to KRS 224.10-410, the secretary issues an order to abate or alleviate to a surface coal mining and reclamation operation, the cabinet shall provide the person to whom the order was issued an opportunity to be heard. The holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligations imposed on a person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

(2) Notice.

(a) Upon issuance of an order to abate or alleviate under the provisions of KRS 224.10-410, the secretary shall file with the office a copy of the order.

(b) Upon filing an order to abate or alleviate, the office shall issue an administrative summons pursuant to 405 KAR 7:091, Section 6, and shall set the time and place for an administrative hearing to be held not less than ten (10) days from the date the order to abate or alleviate was signed by the secretary.

(3) Response.

(a) The person named in the order to abate or alleviate shall prior to or at the hearing file a response to the order specifically admitting or denying facts alleged in the order, setting forth other matters to be considered on review, and setting forth evidence, if any, that the condition or activity does not violate the provisions of KRS 224.10-410.

(b) In lieu of a response, the person named in the order to abate or alleviate may contact the office in writing or by other means and state that an administrative hearing is not needed, and that he does not desire to contest the order.

(4) Hearing procedure. The administrative hearing shall be held in accordance with 405 KAR 7:091, Section 3. In addition the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the hearing which may be orally supplemented on the record at the hearing, or if written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the administrative hearing.

(5) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to validity of the order to abate or alleviate. The person named in the order to abate or alleviate shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 224.10-410, or that the condition or activity has been discontinued, abated or alleviated.

(6) Default. Upon notification by the person named in the order to abate or alleviate that a hearing is not needed or upon failure of the person to appear at the administrative hearing, the hearing officer shall promptly prepare a report stating that the hearing has been waived and the order to abate or alleviate stands as issued.

(7) Effect of proceedings. The scheduling of an administrative hearing pursuant to this section shall not operate to terminate or stay the effect of the order or to relieve the person named in the order from performing the affirmative obligations imposed in the order to abate or alleviate.

Section 12. Temporary Relief. (1) Pending the completion of the investigation and hearings provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a notice or order issued pursuant to KRS Chapter 350 or administrative regulations, or a permit or bond release decision of the cabinet. A petition for relief shall be in writing, shall contain a detailed statement giving reasons why such relief should be granted and shall be filed with the office. A hearing officer may grant temporary relief after making a written finding that relief is warranted, and shall state the reasons for the finding. A hearing officer shall grant or deny relief expeditiously; except if the person requests temporary relief from an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4), or from a bond release decision, a hearing officer shall grant or deny temporary relief within five (5) working days of receipt by the office of a request.

(2) A hearing officer may grant temporary relief from notices and orders of the cabinet issued pursuant to 405 KAR 12:020, Sections 2 and 3 under conditions as is deemed appropriate, if:

(a) An administrative hearing on the request for temporary relief has been held in the locality of the permit area, or at any other location acceptable to the cabinet and the person to whom the notice or order was issued, in which all parties were given an opportunity to be heard;

(b) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(3) If a person requests temporary relief from a permit or coal exploration determination, the hearing officer under conditions as may be prescribed pending final determination of the proceeding may grant temporary relief if:

(a) The parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(c) The relief will not affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the cabinet, nor release of a bond when a bond release request has been denied.

(4) Determinations on petitions concerning orders for cessation

and immediate compliance issued pursuant to KRS 350.130(1) or (4) or bond release decisions shall be handled as follows:

(a) If the five (5) day requirement set forth in subsection (1) of this section is waived, the hearing officer shall expeditiously conduct a hearing and render a decision on the petition.

(b) If a waiver of the five (5) day requirement set forth in subsection (1) is not made, the following shall apply:

1. The five (5) day time for decision shall not begin to run until the petition for temporary relief is filed with the office;

2. The petition shall identify the permit number, permittee, the date and number of the noncompliance or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;

3. In addition to the service requirements of 405 KAR 7:091, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the application. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed and the contents of the petition;

4. The representative of the Department of Law and other parties may indicate their objection to the application by communicating the objection to the hearing officer and the applicant by telephone. However, ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of Department of Law and other parties may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the hearing officer and immediately served upon the petitioner;

5. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time and date for the administrative hearing by communicating the information to the Department of Law, other parties, and the petitioner by telephone. The hearing officer shall reduce the communications to writing in the form of a memorandum to the file;

6. If an evidentiary hearing is held:

a. The hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing which may be orally supplemented on the record at the hearing or where written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing;

b. The hearing officer shall either rule from the bench on the petition, orally stating the reasons for his decision or shall within twenty-four (24) hours of completion of the hearing issue a written decision. If the hearing officer makes an oral ruling, he shall issue a written decision within three (3) working days; and

7. If at any time after the initiation of the expedited procedure, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement.

Section 13. Penalties. (1) Any person who violates any of the provisions of KRS Chapter 350; 405 KAR Chapters 7 through 24; or a permit condition or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit, exploration approval or other authorization or who violates any determination or order promulgated pursuant to those provisions, may be assessed a civil penalty of not more than $5,000 for each day during which the violation continues. A civil penalty of not more than $5,000 for each day shall be assessed against a person issued an order pursuant to KRS 350.130(4).

(2) If violation has not been abated during the abatement period set forth in a notice of noncompliance and order for remedial measures or in an order for cessation and immediate compliance, a civil penalty of not less than $750 shall be assessed for each day during which the failure to abate continues, up to a maximum of thirty (30) days, except that:

(a) A penalty for failure to abate the violation shall not be assessed for more than thirty (30) days for each violation. If the person has not abated the violation within the thirty (30) day period, the cabinet shall take appropriate action pursuant to KRS 350.990(3), (4), (9), or the pattern of violations provisions of KRS 350.028(4) within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate; and

(b) If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, and the abatement requirements are suspended in a temporary relief proceeding pursuant to Section 12 of this administrative regulation, then the abatement period shall be extended until the date a final order concerning the violation in question is issued.

(3) A person who engages in surface coal mining and reclamation operations or coal exploration operations without first securing a permit or exploration approval according to KRS Chapter 350 and 405 KAR Chapters 7 through 24, shall be assessed a civil penalty of not less than $5,000 nor more than $25,000. Each day shall constitute a separate violation. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where a permittee through inadvertence has exceeded the boundaries of the permit in effect at that time.

(4) Whenever a corporate permittee violates any provision of KRS Chapter 350 or the administrative regulations or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

(5) Penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky or the Natural Resources and Environmental Protection Cabinet by the cabinet's Department of Law, or upon the secretary's request, by the attorney general.

(6)(a) If any party seeks judicial review of a final order of the cabinet involving a penalty, the proposed penalty shall continue to be held in escrow until completion of the review. If judicial review is not sought, the escrowed funds shall be transferred to the cabinet for payment to the Kentucky State Treasurer as provided by law.

(b) If a final order of the secretary or final decision of a reviewing court results in the reduction or elimination of the proposed penalty, the cabinet shall within thirty (30) days of receipt of the order refund the appropriate amount with interest at the statutory rate from the date of payment into escrow.

(c) If a final order of the secretary or final decision of a reviewing court increases the penalty, the person to whom the notice or order was issued shall pay the difference to the cabinet within thirty (30) days after receipt of the order.

Section 14. Costs and Expenses. (1) Who may file. A person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of the person's participation in a proceeding held pursuant to this administrative regulation which results in an order of the secretary. The petition for an award of costs and expenses, including attorneys' fees, shall be filed with the cabinet within forty-five (45) days of mailing of the final order. Failure to timely file the petition shall constitute a waiver of the right to an award.

(2) Contents of petition. A petition filed under this section shall include the name of the party from which costs and expenses are sought and the following shall be submitted in support of the petition:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of the costs and expenses; and

(c) If attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for the services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(3) Answer. A person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer or other responsive pleading specifically admitting or denying the allegations stated in the petition and setting forth other matters to be considered.

(4) Criteria for awarding of costs. Appropriate costs and expenses including attorneys' fees may be awarded as follows:

(a) To a person from the permittee, if the person initiates an

administrative proceeding reviewing an enforcement action, upon a finding that, on or after May 18, 1982, a notice of noncompliance or order for cessation was issued for violations of KRS Chapter 350, 405 KAR or permit conditions or that an imminent hazard existed, or to a person who participates in an enforcement proceeding where such a finding is made, if the hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues; or

(b) To a person other than a permittee or his representative from the cabinet, if the person initiates or participates in any proceeding under KRS Chapter 350 upon a finding that the person made a substantial contribution to a full and fair determination of the issues; or

(c) To a permittee from the cabinet when the permittee demonstrates that the cabinet issued an order of cessation or a notice of noncompliance or initiated an administrative hearing in bad faith and for the purpose of harassing or embarrassing the permittee; or

(d) To a permittee from a person where the permittee demonstrates that the person initiated an administrative hearing or conference under this administrative regulation or participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the permittee; or

(e) To the cabinet where it demonstrates that a person applied for review pursuant to this administrative regulation or that a party participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(5) An award under this section may include reimbursement for:

(a) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation or participation or both in an administrative hearing or conference under this administrative regulation; and

(b) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the cabinet.

Section 15. Determinations as to Inability to Prepay. (1) Inability to pay. Notwithstanding the provisions of Section 6(2) of this administrative regulation, an individual, upon filing a petition for review pursuant to Section 6 of this administrative regulation, may, in lieu of paying into the cabinet's escrow account the amount of the proposed assessment, simultaneously submit a petition and affidavit requesting the office to accord the individual a waiver of the requirement to prepay.

(2) Contents of petition. The petition for waiver of prepayment requirements shall set forth:

(a) A statement of facts underlying the request for a determination that the individual is unable to comply with Section 6(2) of this administrative regulation; and

(b) An affidavit, subject to penalties for perjury, setting forth the applicant's income, property owned, outstanding obligations, the number and age of dependents, and a copy of his most recent Kentucky and federal income tax returns.

(3) Response. Within fifteen (15) days of service of the petition, the cabinet may file an answer or responsive pleading admitting or denying the contents of the petition for waiver. Failure by the cabinet to submit an answer or responsive pleading shall not relieve the office from making an independent determination as to the validity of the contents of the petition for waiver, and whether the waiver should be given.

(4) Interim report. Within thirty (30) days of filing of the petition, the office shall issue an interim report accepting or denying the petition for waiver. If the waiver is accepted, it shall be so noted in the record and shall remain in effect, subject to review upon proper motion. If the waiver is denied, the applicant shall be informed in writing and the applicant shall be given thirty (30) days from the mailing of the interim report to pay into the cabinet's escrow account the amount of the assessment as set forth in the notice of proposed assessment or as set forth by the conference officer under the provisions of Section 4 of this administrative regulation.

(5) Presumptions.

(a) It shall be prima facie evidence that the individual is unable to comply with Section 6(2) of this administrative regulation if the petition is accompanied by a certified copy of a petition for bankruptcy or the individual is receiving or is eligible to receive public assistance payments at the time a petition for waiver is filed.

(b) It shall be prima facie evidence a person is not eligible for a waiver if he owns real property; is not receiving, or is not eligible to receive, public assistance payments at the time the affidavit is submitted; or owns more than one (1) motor vehicle.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: July 15, 1992
FILED WITH LRC: July 24, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
405 KAR 12:020E

This emergency administrative regulation, which is being filed in conjunction with 405 KAR 7:091E, 405 KAR 7:092E, and 405 KAR 7:001E, is an amendment of 405 KAR 12:020 and sets forth procedures for informal hearings where an immediate cessation of coal mining operations is directed by the Natural Resources and Environmental Protection Cabinet hereinafter "cabinet". This amended regulation also pertains to the suspension or revocation of surface mining and reclamation operations and provides for criteria under which a determination can be made that a surface mining and reclamation operation should be suspended or revoked for a pattern of violations, subject to an administrative hearing as provided under 405 KAR 7:092. The remaining changes appearing in this amended regulation are technical in nature and do not have any substantive impact. This emergency administrative regulation will be applicable in conjunction with other emergency regulations to any determination that a surface mining operation should cease coal removal activities or that such an operation should be suspended or revoked pursuant to a determination that a pattern of violations exists or has existed. It is necessary to promulgate this emergency administrative regulation in order to comply with Acts 1992, c. 304, (the Act) which went into effect on July 14, 1992. The enactment of this bill reimposed upon the cabinet the obligation inter alia to establish by regulation a procedure by which administrative hearings can be conducted. As noted above, the regulation prescribes procedures for informal hearings and also pertains to the criteria for pattern of violation determinations. The informal hearing process replaces in part the preliminary hearing regulation, (405 KAR 7:090, Section 4) by which such "stop coal" determinations were previously resolved. The criteria for pattern of violations determination originally appeared in 405 KAR 7:090, Section 5, and for technical reasons is now being transferred to this amended regulation. The 405 KAR 7:090 provisions are repealed in 405 KAR 7:091. Administrative hearings on both stop coal and pattern of violation cases will now be heard under 405 KAR 7:092. Thus this emergency administrative regulation is directly germane to 405 KAR 7:091 and 405 KAR 7:092 and needs to be immediately effective so that the cabinet will have in place a procedure by which "stop coal removal" orders and pattern of violation show cause orders can be resolved. Given the fact that it is exceedingly important for the cabinet to have in continuous effect a procedure for the administrative adjudication of stop coal or pattern of violation cases that may arise under KRS Chapter 350 and given the new administrative hearings procedure mandated by 1992 Acts, c. 304, the filing of this administrative regulation as an emergency regulation is clearly warranted so that the cabinet may fulfill its obligations under these new statutes. The emergency administrative regulation will allow the cabinet to continue to conduct with a minimum of disruption such administrative hearings and conferences while the ordinary administrative regulation is being reviewed pursuant to KRS Chapter 13A. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on July 15, 1992.

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

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

405 KAR 12:020E. Enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990, 30 CFR Parts 730-733, 735, 840.13-.14, 840.16, 843, 30 USC 1253, 1255, 1271

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.050, 350.130, 350.465, 30 CFR Parts 730-733, 735, 840.13-.14, 840.16, 843, 30 USC 1253, 1255, 1271

EFFECTIVE: July 24, 1992

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part directs the cabinet to rigidly enforce administrative regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This administrative regulation sets forth various kinds of notices and orders to be issued by authorized representatives of the cabinet. The administrative regulation directs that there be issued a notice of noncompliance and order for remedial measures. The administrative regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of imminent harm. The administrative regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate the [~~such~~] orders or notices. This administrative regulation sets forth procedures for an informal hearing. The administrative regulation sets forth requirements if a permit is suspended or revoked [~~procedures for suspension or revocation of a permit~~] and procedures for a determination of [~~whether~~] a pattern of violations [~~exists~~]. This administrative regulation contains a portion of 405 KAR 7:090 which has been repealed.

Section 1. General. (1) The secretary of the cabinet may from time to time or for a definite period designate, by written order or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the regulations contained in Title 405, Chapters 7 through 24.

(2) Subject to [~~Unless otherwise provided to the contrary in~~] Title 405, Chapters 7 through 24 or unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the commissioner of the department [~~of Surface Mining Reclamation and Enforcement~~] are deemed the authorized representatives of the cabinet for the purposes of Sections 2, 3, and 4 of this regulation.

Section 2. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized representative of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he [~~or she~~] finds a violation of KRS Chapter 350; Title 405, Chapters 7 through 24; any term or condition of a permit; any term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval); or any other applicable requirement.

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The notice shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps if appropriate; and

(d) A reasonable description of the portions of the surface coal mining and reclamation operations or coal exploration and reclamation operations to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner set forth in Section 5 of this regulation.

(4) Extension. An authorized representative of the cabinet may, by written notice, extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued.

(a) The total time for remedial action under the [~~such~~] notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice except upon a showing by the permittee or the person conducting the coal exploration and reclamation operations that it is not feasible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances set forth in paragraph (b) of this subsection. An abatement period exceeding ninety (90) days pursuant to this subsection shall not be granted for situations in which the permittee's failure or the failure of the person conducting the coal exploration and reclamation operations to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the permittee or the person conducting the coal exploration and reclamation operations in completing the remedial action required.

(b) The following circumstances [~~which~~] may qualify surface coal mining and reclamation operations or coal exploration and reclamation operations for an abatement period of more than ninety (90) days [~~are situations in which~~]:

1. The permittee of the ongoing surface coal mining and reclamation operations or the person conducting the coal exploration and reclamation operations has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but the [~~such~~] permit or approval, for reasons not within the control of the permittee or the person conducting the coal exploration and reclamation operations, has not been and will not be issued prior to ninety (90) days after the valid permit or approval expires or is required;

2. There is a valid judicial order precluding abatement within ninety (90) days to which the permittee or the person conducting the coal exploration and reclamation operations has diligently pursued all rights of appeal and to which he [~~or she~~] has no other effective legal remedy;

3. The permittee or the person conducting the coal exploration and reclamation operations cannot abate within ninety (90) days due to a labor strike; or

4. Weather conditions preclude abatement within ninety (90) days; due to weather conditions abatement within ninety (90) days would clearly cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(c) If [~~Whenever~~] an abatement period in excess of ninety (90) days is approved by the cabinet, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public and the environment.

(d) If any of the conditions in paragraph (b) of this subsection exist, the permittee or the person conducting the coal exploration and reclamation operations may request the authorized representative of the cabinet to grant an abatement period exceeding ninety (90) days. The authorized representative of the cabinet shall not grant such an abatement period without the approval of the Director of the Division of Field Services or his [~~or her~~] designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee or the person conducting the coal exploration and reclamation operations shall have the burden of establishing by clear and convincing proof that he [~~or she~~] is entitled to an extension under the provisions of this subsection. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative of the cabinet may consider [~~any~~] relevant written or oral information from the permittee, the person conducting the coal exploration and reclamation operations, and [~~any~~] other sources. The authorized representative of the cabinet shall promptly and fully document in the applicable file his [~~or her~~] recommendation for granting or denying the request and the reasons

therefor. The authorized representative's immediate supervisor shall review this document before approving or disapproving the extended abatement period and shall promptly and fully document the reasons for his [~~or her~~] approval or disapproval in the applicable file.

(e) A [~~Any~~] determination made under paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review pursuant to 405 KAR 7:092 [~~7:090~~].

(f) No extension granted under this subsection may exceed ninety (90) days in length. In situations in which the condition or circumstance that prevented abatement within ninety (90) days exists at the expiration of the extension, the permittee or the person conducting the coal exploration and reclamation operations may request a further extension in accordance with the procedures of this subsection.

(5) Modification. An authorized representative of the cabinet may, by written notice, modify an order for remedial measures for good cause.

(6) Termination. An authorized representative of the cabinet shall, by issuance of a notice of inspection of noncompliance, provide written notice to the person to whom a notice of noncompliance and order for remedial measures has been issued that the [~~such~~] notice is terminated when the authorized representative of the cabinet determines that all violations listed therein have been corrected. The [~~Such~~] termination shall not affect the right of the cabinet to assess civil penalties for those violations pursuant to 405 KAR 7:092 [~~7:090~~] or to impose [~~any~~] other applicable sanctions as authorized by law.

(7) Vacation. Based upon the written recommendation of the regional administrator and the authorized representative of the cabinet who issued the notice of noncompliance and order for remedial measures, the Director of the Division of Field Services may vacate a notice of noncompliance and order for remedial measures determined to have been issued in error.

Section 3. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the person to whom a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of the [~~such~~] notice within the time for remedial action established in the notice [~~therein~~] or as subsequently extended, an authorized representative of the cabinet shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he [~~or she~~] finds, on the basis of an inspection, any condition or practice; any violation of KRS Chapter 350; any violation of Title 405, Chapters 7 through 24; or any violation of a term or condition of the applicable permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) An authorized representative of the cabinet shall immediately issue an order for a cessation and immediate compliance if he [~~or she~~] finds, on the basis of an inspection, that surface coal mining and reclamation operations are being conducted by a person without a valid surface coal mining and reclamation operations permit for the activities or that coal exploration and reclamation operations are being conducted without proper notice of intention to explore or approval for the [~~such~~] operations, as applicable, in accordance with 405 KAR 8:020.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall set forth with reasonable specificity:

1. The nature of the violation;

2. A reasonable description of the portions of the operations in which it applies;

3. The remedial measures, if any, necessary to abate the violation in the most expeditious manner possible; and

4. The time established for abatement, if appropriate, including the time for complying with any interim steps.

(b) At the same time that the authorized representative of the cabinet issues an order for cessation and immediate compliance pursuant to subsection (1)(b) or (c) of this section, he [~~or she~~] shall also issue a notice of noncompliance and order for remedial measures.

(3) Service. Service of an order for cessation and immediate compliance shall be in the manner set forth in Section 5 of this administrative regulation.

(4) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of all surface coal mining and reclamation operations, all coal exploration and reclamation operations, or the portions or operations thereof relevant to the condition, practice, or violation covered by the order. The order shall require the person to whom it is issued to take any affirmative steps which the authorized representative of the cabinet deems necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice, or violation has been abated; until the order is vacated, modified, or terminated in writing pursuant to subsection (5) of this section; until it is vacated, modified, or terminated by a hearing officer pursuant to 405 KAR 7:092 [~~7:090~~]; or until the order expires pursuant to Section 6 of this regulation.

(c) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless [~~otherwise provided in~~] the order states that the reclamation operations and other activities shall cease.

(5) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet may, by written notice, modify or terminate an order for cessation and immediate compliance issued under [~~pursuant to~~] this section for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his [~~or her~~] authorized representative shall terminate an order for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he [~~or she~~] determines that all conditions, practices, and violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations under 405 KAR 7:092 [~~7:090~~] or to impose any other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet who issued the order for cessation and immediate compliance, the Director of the Division of Field Services may vacate an order for cessation and immediate compliance determined to have been issued in error.

(6) Within sixty (60) days after issuing an order for cessation and immediate compliance, the cabinet shall notify in writing a [~~any~~] person who has been identified under 405 KAR 8:010, Section 18(5) and either 405 KAR 8:030, Section 2(3) and (4) or 405 KAR 8:040, Section 2(3) and (4) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Section 4. Notice of Inspection and Noncompliance. (1) Issuance. If an authorized representative of the cabinet issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he [~~or she~~] shall reinspect the areas affected by the surface coal mining and reclamation operations or the coal exploration and reclamation operations on or soon after the date given in the notice or order for completion of remedial measures. At the time of reinspection, the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the

notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed. Following such a determination, the cabinet shall:

1. For the situations in which the inspection was a reinspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a reinspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated [~~following the preliminary hearing~~], initiate an administrative [~~a formal~~] hearing for suspension or revocation of the permit or approval, initiate an administrative [~~a formal~~] hearing for bond forfeiture, or initiate administrative hearings [~~proceedings~~] for other appropriate relief.

(3) Service. Service of a notice of inspection for noncompliance shall be in the manner set forth in Section 5 of this regulation.

Section 5. Service of Notices and Orders. (1) A [~~Any~~] notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, or notice of inspection of noncompliance shall be served on the person to whom it is issued or the person's designated agent [~~promptly after issuance~~].

(2) Each notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, and notice of inspection of noncompliance shall be served by hand, by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been issued or to his [~~or her~~] designated agent for service. The notice or order shall also be served by hand to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the surface coal mining and reclamation operations or coal exploration and reclamation operations referred to in the notice or order. If no such individual can be located at the site, a copy of the notice or order may be tendered to an [~~any~~] individual at the site who appears to be an employee or agent of the person to whom the notice or order has been issued. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. For surface coal mining and reclamation operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the permittee as identified on the permit or in the application; or, if no address is identified for the permittee in the application, to any [~~such~~] other address as is known to the cabinet. For coal exploration and reclamation operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the person conducting the coal exploration and reclamation operations as identified in the notice of intention to explore or in the application for coal exploration and reclamation approval submitted pursuant to 405 KAR 8:020; or, if no address is identified for the person conducting the coal exploration and reclamation operations in the notice or the application submitted pursuant to 405 KAR 8:020, to any [~~such~~] other address as is known to the cabinet. If no person is present at the site of the surface coal mining and reclamation operations or the coal exploration and reclamation operations, service by mail shall by itself be sufficient notice.

(3) Designation by a [~~any~~] person of an agent for service of notices and orders issued pursuant to this administrative regulation and notices of hearing issued pursuant to 405 KAR 7:092 [~~7:090~~] shall be made a part of the applicable permit application, notice of intention to explore, or application for coal exploration and reclamation approval. The [~~Such~~] person shall continue as agent for service of process until [~~such time as~~] written revision of the permit, a notice of intention to explore, or coal exploration and reclamation approval is made which designates another person as agent.

(4) The cabinet may furnish copies of notices and orders to a [~~any~~] person having an interest which is or may be adversely affected by the coal exploration and reclamation operations or by the surface coal mining and reclamation operations and a [~~any~~] person having an interest in the permit or exploration area.

Section 6. Expiration. (1) Except as provided in subsection (2) of this section, if [~~When~~] a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance requires cessation of coal removal expressly or by implication, the [~~such~~] notice or order shall expire thirty (30) days after it is served unless an informal [a] hearing [~~pursuant to 405 KAR 7:090~~] is held at or near the mine site or the exploration site within that time except that [~~such~~] notices or [~~and~~] orders shall not expire if the condition, practice, or violation in question has been abated or if the person to whom the notice or order has been issued has waived the informal [~~preliminary~~] hearing or has agreed to its postponement. Expiration of the notice or order shall not affect the rights of the cabinet to assess appropriate penalties and to impose applicable sanctions with respect to the time period during which the notice or order was in effect for the violations for which the notice or order was issued. The granting or waiver of an informal public hearing shall not affect the right of a person to an administrative hearing.

(2)(a) The informal public hearing will be deemed waived if the person to whom the notice or order was issued is informed by written notice served in the manner provided in paragraph (b) of this subsection that he will be deemed to have waived an informal public hearing unless the hearing is requested within thirty (30) days after service of the notice, and an informal public hearing is not requested within that time.

(b) The written notice referred to in paragraph (a) of this subsection shall be delivered by an authorized representative or sent by certified mail, return receipt requested, no later than five (5) days after the notice or order is served.

(c) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if the request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(3)(a) The cabinet shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to the person to whom the notice or order was issued, and a person who filed a report which led to the issuance of the notice or order.

(b) The cabinet shall also post notice of the informal public hearing at the department's regional office for the mine site and, if practicable, publish it in a newspaper of general circulation in the area of the mine.

(4) Requirements for administrative hearings shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the cabinet who may accept oral or written arguments and other relevant information from any person attending.

(5) Within five (5) days after the close of the informal public hearing, the cabinet shall affirm, modify, or vacate in writing the notice or order. The decision shall be sent to the person to whom the notice or order was issued, and any person who filed a report which led to the issuance of the notice or order.

(6) The person conducting the informal public hearing for the cabinet shall determine if the mine site shall be viewed during the informal public hearing. In making this determination the only consideration shall be whether viewing the mine site will assist the person conducting the informal public hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

Section 7. Suspension and Revocation of Permits and Exploration Approvals. (1) The cabinet may initiate administrative [~~formal~~] hearings for suspension or revocation of permits and coal exploration and reclamation approvals, may initiate administrative [~~formal~~] hearings for bond forfeitures, and may initiate administrative [~~formal~~] hearings or judicial proceedings for other appropriate relief [~~measures~~].

(2) If the cabinet revokes or suspends the permit or exploration approval, surface coal mining operations on the permit area or disturbances on the exploration area shall immediately cease, and the permittee or person conducting coal exploration operations shall:

(a) If the permit or exploration approval is revoked, complete reclamation within the time specified in the order; or

(b) If the permit or exploration approval is suspended, complete

all affirmative obligations to abate all conditions, practices, and violations as specified in the order.

Section 8. Pattern of Violations. (1) If the cabinet determines that a pattern of violations of the requirements of KRS Chapter 350, the administrative regulations, or a permit condition imposed under KRS Chapter 350 or administrative regulations exists or has existed and that the violations are caused by the unwarranted failure of the permittee or were willful violations, the cabinet shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(2) The cabinet may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area within any twelve (12) month period, after considering the circumstances, including:

(a) The number of violations, cited on more than one (1) occasion, of the same or related requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or permit conditions;

(b) The number of violations, cited on more than one (1) occasion, of different requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or permit conditions; and

(c) The extent to which the violations were isolated departures from lawful conduct.

(3) The cabinet shall promptly review the history of violations of a permittee who has been cited for violations of the same or related requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24 or permit conditions during three (3) or more inspections of the permit area within any twelve (12) month period. If after the review the cabinet determines that a pattern of violations exists or has existed, the cabinet shall issue a show cause order pursuant to this section and 405 KAR 7:092, Section 10.

(4) In determining the number of violations within any twelve (12) month period, the cabinet shall only consider violations cited as a result of inspections carried out on or after May 3, 1978.

(5) If a permittee fails to abate a violation cited in a notice of noncompliance or cessation order within the abatement period set in the notice of order or as subsequently extended, the cabinet shall review the permittee's history of violations to determine whether a pattern of violations exists or has existed pursuant to this section and shall initiate a show cause order as provided in this section and 405 KAR 7:092, Section 10.

Section 9. [~~8.~~] Inability to Comply. (1) No notice or order issued pursuant to the administrative regulations of this Title may be vacated because of inability to comply.

(2) Inability to comply may not be considered in determining whether a pattern of violations exists.

(3) Rapid compliance, good faith, diligence, and inability to comply may be considered in mitigation of proposed penalty assessments under 405 KAR 7:092 [~~7:090~~].

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: July 14, 1992
FILED WITH LRC: July 24, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
501 KAR 6:020E

In order to continue to operate the Department of Corrections in accordance with KRS Chapter 196, the department needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected policy must be revised immediately as the department must reduce its budget expenditures because of a statewide financial crisis effective July 14, 1992. KRS 197.180 was amended to delete the payment of up to $75, upon discharge, to each inmate. Currently, the policy is mandatory that $25 be given to each inmate upon his discharge from a penal institution. This emergency regulation will allow state institutions to only furnish clothing and transportation for each inmate upon release with an expected savings of $100,000 annually. This emergency regulation shall be replaced by the ordinary administrative regulation filed with LRC on July 17, 1992 in accordance with KRS Chapter 13A.

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

JUSTICE CABINET
Department of Corrections

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: July 28, 1992
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind administrative 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 administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised July 27 [~~June 15~~], 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, Kentucky Department of 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 (Amended 7/17/92)
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen [~~(Amended 6/15/92)~~]
2.2	Warden's Fund (Amended 7/17/92)
2.10	Surplus Property (Amended 7/17/92)
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	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 (Amended 7/17/92)
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18.11 Kentucky Correctional Psychiatric Center Transfer Procedures (Amended 7/17/92)
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
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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
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27-23-01 In-state Transfer
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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: July 17, 1992
FILED WITH LRC: July 28, 1992 at 9 a.m.

STATEMENT OF EMERGENCY
902 KAR 10:035E

Emergency regulation 902 KAR 10:035E is necessary in order to implement the provisions of Senate Bill 337. An ordinary administra-

tive regulation cannot be in effect in time to meet the effective date of July 14, 1992, for Senate Bill 337 which requires an administrative regulation for inactive status. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A. The ordinary regulation was filed to the Regulations Compiler for the July 1992 filing.

BRERETON JONES, Governor
LEONARD E. HELLER, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 10:035E. Inactive status registration.

RELATES TO: KRS 223.030(3)
STATUTORY AUTHORITY: KRS 194.050(1), 223.030
EFFECTIVE: July 24, 1992
NECESSITY AND FUNCTION: KRS 223.030(3) provides for an inactive status for those persons previously registered by the cabinet but not engaged in environmental health practice in the Commonwealth. The function of this administrative regulation is to provide procedures for inactive status.

Section 1. Definitions. As used in this administrative regulation:
(1) "Active status" means the status of a person engaged in program areas of environmental health activity that is the responsibility of the cabinet.
(2) "Inactive status" means the status of a person previously registered by the cabinet as a registered sanitarian or environmental health specialist and not engaged in environmental health activity that is the responsibility of the cabinet.

Section 2. Procedure for Applying to be in Inactive Status. (1) A person wishing to be placed in an inactive status must make a request by letter to the cabinet for inactive status.
(2) The cabinet may after review of the request, grant inactive status.
(3) Any person with inactive status shall pay the annual registration fee.
(4) A person placed in an inactive status may request by letter to the cabinet for active status at any time.

RICE C. LEACH, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: July 9, 1992
FILED WITH LRC: July 24, 1990 at 10 a.m.

STATEMENT OF EMERGENCY
905 KAR 2:100E

This emergency administrative regulation repeals the current regulation and establishes standards for the issuance, monitoring, renewal, denial, revocation, and suspension of a mandatory certification program for family child care homes. This administrative regulation imposes minimum staff to child ratios and health and safety requirements for certified family child care homes. It is necessary to promulgate an emergency regulation to implement these standards as SB 211 becomes effective July 14, 1992. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation shall be filed with the Regulations Compiler on or about July 15, 1992.

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

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:100E. Certification of family child care homes.

RELATES TO: KRS 17.165, Senate Bill 211 1992 GA, 42 USC 602
STATUTORY AUTHORITY: KRS 194.050, Senate Bill 211 1992 GA
EFFECTIVE: July 24, 1992
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. In compliance with SB 211, the Department for Social Services has established standards for the certification of family child care homes. These standards are intended to protect the health, safety and welfare of children. This administrative regulation contains the substance of 905 KAR 2:070 which is herein repealed.

Section 1. Definitions. (1) "Assistant" means a person:
(a) Sixteen (16) years of age or older;
(b) Under direct supervision of a provider or substitute provider; and
(c) Has obtained a criminal records check and tuberculosis skin test.
(2) "Cabinet" means the Kentucky Cabinet for Human Resources.
(3) "Child" means a person under thirteen (13) years of age, or under eighteen (18) years of age if the person has been identified as having special child care needs.
(4) "Commissioner" means the Commissioner for the Department for Social Services.
(5) "Family child care home" as governed by SB 211.
(6) "Family child care" means the provision of regular care and supervision to six (6) or fewer children for part of a twenty-four (24) hour period, in the caregiver's own home, as a supplement to regular parental care.
(7) "Home" means the private primary residence of the provider.
(8) "Infant" means a child under one (1) year of age.
(9) "Nighttime care" means family home child care in which a child receives regular full, or part-time care during the night, and beginning at 6 p.m.
(10) "Provider" means a person providing care for preschool or school-age children or both inside his own home for less than twenty-four (24) hours a day, and who is not required to be licensed under 905 KAR 2:090.
(11) "Provider's own child" means the providers's own children, grandchildren, nieces, nephews, and children in legal custody under the age of six (6).
(12) "Regular" means the provision of child care services in the caregiver's home on more than one (1) day in one (1) week or more than ten (10) hours per week.
(13) "School-age child" shall be considered as one attending kindergarten or above.
(14) "Special needs child" means children who have multiple or severe problems and the Department for Social Service staff has confirmed the need for ongoing specialized care.
(15) "Substitute provider" means a person:
(a) Who is twenty one (21) years of age;
(b) Has obtained a criminal records check and a tuberculosis skin test; and
(c) Is available to provide care in a family child care home.
(16) "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. The department shall be responsible for the certification of family child care homes. Authorized representatives of the department have the authority to inspect premises, records required by this administrative regulation, and program of family child care homes. Inspections by the department shall be unannounced. A provider shall apply for certification if the

provider is caring for four (4) to six (6) children and may apply if caring for three (3) or fewer children as governed by SB 211.

(1) A provider making application for certification shall:

(a) Complete the DSS-78, Application for Family Child Care Certification, incorporated by reference herein;

(b) Complete the DSS-79, Self-Check List, incorporated by reference herein;

(c) Meet the minimum requirements as governed by SB 211;

(d) Submit a criminal records check for adult persons living in the home;

(e) Comply with provisions set forth in Sections 3 and 4 of this regulation; and

(f) Within three (3) months of the date of preliminary permission to operate, demonstrate completion of training as governed by SB 211 and comply with deficiencies cited during the inspection of the home specified in subsection (2) of this section.

(2) Upon receipt of the application and fee:

(a) Staff shall review the application and, if acceptable, shall issue a written preliminary permission to operate; and

(b) An initial inspection of the home shall be made by a representative of the department as governed by SB 211.

(3) If the requirements have been met, the home shall be certified and a certificate shall be issued for a two (2) year period.

(a) The certificate shall be displayed where parents can read it and shall contain:

1. The name and address of the provider;
2. Limit of children to be served;
3. Identification number; and
4. Effective and expiration dates.

(b) The certification shall be valid for the certified caregiver and the address listed. A change of address or move change shall be reported to the Department for Social Services and an updated DSS-79 completed.

(4) If the provider does not wish or cannot comply with the standards set forth in this administrative regulation, within three (3) months of the initial inspection, then the application shall be denied.

(5) Renewal. The renewal certification process shall be repeated every two (2) years.

(6) The cabinet shall review and may deny, suspend, revoke or refuse certification:

(a) If the provider or an adult living in the provider's home:

1. Has been convicted of a crime related to abuse, neglect or exploitation of a child;
2. Refuses to provide a criminal records check; or

(b) If the family child care home fails to comply with certification standards set forth in this administrative regulation.

(7) Appeal.

(a) If the cabinet denies, suspends, revokes or refuses to renew a certification, the cabinet shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(b) If the provider feels an action of the Department for Social Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within fifteen (15) days after receiving the notice of the action from the cabinet.

(c) Upon receipt of the request for hearing, the commissioner, or commissioner's designee, shall notify the provider in writing within fifteen (15) days of the time and place of the hearing. The commissioner shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(d) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision shall be final. The provider shall be notified in writing of the decision of the hearing officer.

(e) If certification, denial or revocation is upheld, the commissioner's notification shall specify the date by which the family child care home shall close.

(f) A family child care home continuing to have four (4) to six (6) children in attendance after the closing date established by the commissioner shall be subject to legal action by the cabinet as provided by law.

Section 3. Standards for the Provider. (1) Qualifications of provider and staff:

(a) The provider shall be at least twenty-one (21) years of age;

(b) The provider shall meet minimum requirements as governed by SB 211; and

(c) Beginning with the second year of operation, the provider shall participate annually in at least six (6) hours of training in child development approved by the Department for Social Services.

(2) Staff-child ratio. A certified provider may not care for more than six (6) children including the provider's own children under the age of six (6).

(a) If children under the age of two (2) are present, the limitation on the maximum number of children shall be as follows:

Number of Children Under the Age of Two Years	Maximum Total Number of Children*
0	6
1	6
2	6
3	5
4	5

*The total does not include the provider's own children six (6) years of age and older.

(b) If more than four (4) infants are in care, the provider shall have an assistant before additional children may be in care.

(3) The family child care home environment. The provider's home and play areas used for child care shall be safe and have adequate heat, light and ventilation.

(a) Each floor level used for child care shall have at least one (1) unblocked exit and at least one (1) smoke detector and fire extinguisher.

(b) The home shall be free of hazards and the following items shall be kept inaccessible to children:

1. Medications and drugs;
2. Cleaning supplies, poisons and insecticides;
3. Guns, knives, scissors and sharp objects;
4. Power tools, lawn mowers, hand tools, nails and other equipment;
5. Matches, cigarettes, lighters and flammable liquids;
6. Alcoholic beverages;
7. Plastic bags; and
8. Litter and rubbish.

(c) Electrical outlets not in use shall be covered.

(d) Electric fans, floor furnaces, or freestanding heaters or fi replaces, shall be out of the reach of children or have a safety guard on them to protect children from injury.

(e) The home shall have at least one (1) telephone in working order with a list of emergency numbers posted by each telephone, including numbers for the:

1. Police;
2. Fire station;
3. Emergency medical care, rescue squad; and
4. Poison control center.

(f) Equipment and toys shall be developmentally appropriate for the ages and number of children in care and be kept in good repair.

(g) Stairs and steps used for children in care shall be solid, safe and railed. Indoor stairs with more than two (2) steps shall be blocked if children in care are infants or toddlers.

(h) The provider shall maintain first aid supplies that are easily accessible for use in an emergency, and shall wash superficial wounds with soap and water before bandaging. First aid supplies shall include a fully equipped first aid kit containing unexpired items approved by the American Red Cross.

(i) Indoor areas, including furnishings, used for child care shall

contain a minimum of thirty-five (35) square feet per child for play and for activities which meet the development needs of the children in care.

(j) Outdoor play areas shall be free of hazards and shall be fenced or the provider shall make provisions to assure that the children are under direct supervision in outdoor play areas.

(k) Outdoor stationary play equipment shall be securely anchored.

(l) Practice fire and tornado drills shall be conducted with the children at least monthly and documented.

(m) Health and sanitation for the child care environment shall require that the provider:

1. Have a home that is kept clean, uncluttered and free of insects and rodents;

2. Have a water supply properly located, protected, adequate, and of a source approved by the local health department;

3. Have bathrooms, including toilets, sinks, and potty chairs that are sanitary and in good working condition;

4. Assure that a covered, leak-proof container which is emptied and cleaned daily is available for soiled diapers;

5. Refrigerate perishable food and beverages. The refrigerator shall be in working order and maintain a temperature of forty (40) degrees or below and frozen food shall be kept at temperatures to remain frozen, except if being thawed for preparation or use;

6. Label bottles for each individual child, except if there is only one (1) bottle-fed child in care;

7. Serve only pasteurized milk or milk products;

8. Screen windows and doors used for ventilation;

9. Have household pets vaccinated for rabies;

10. Store indoor and outdoor garbage in waterproof containers with tight-fitting covers;

11. Provide adequate space for a rest-time for each child in care for more than four (4) hours. Individual linens shall be provided for each child and shall be changed at least weekly or if they become soiled or wet.

(4) Program for children. A plan for daily activities and routines shall be established.

(5) Children shall be released from the family child care home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; and

(c) A person in an emergency designated over the telephone by the parent.

(6) Child health care. To assure a healthy environment, the provider shall:

(a) Maintain current immunizations certificates for each child within thirty (30) days of enrollment;

(b) Maintain for each child a health and emergency information form completed and signed by the child's parent or guardian. The completed form shall be on file on the first day the child attends and includes the following information:

1. The child's name, address, and date of birth;

2. The names of individuals to whom the child may be released;

3. The general status of the child's health;

4. Allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;

5. The names and phone numbers of persons to be contacted in an emergency situation;

6. The name and phone number of the child's physician and preferred hospital; and

7. Authorization by the parent or guardian for the provider to seek emergency medical care in the parent's absence.

(c) Provide a quiet, separate area which can be easily supervised for children too sick to remain with other children;

(d) Prohibit prescription medications or aspirin to be administered to a child except as authorized by a licensed physician and with written daily request of the parent or guardian; and

(e) Administer nonprescription medication to a child only with written daily request of parent or guardian.

(7) Transportation. To assure the safety of children if transportation is provided or arranged by the provider, the provider shall:

(a) Have written permission from a parent or guardian to transport his child;

(b) Have a car or van equipped with seat belts which allows each child to be individually secured;

(c) Require that each child shall have a seat and remain seated while the vehicle is in motion. A child under four (4) years of age or under forty (40) inches in height shall be transported restrained in an approved safety seat;

(d) Have a valid driver's license issued by the Division of Motor Vehicles;

(e) Have emergency and identification information about each child in the vehicle whenever children are being transported; and

(f) Conform to state laws pertaining to vehicles, drivers license and insurance as governed by KRS 281.600, 138.655, and 186.020.

(8) Child records. The provider shall not disclose or knowingly permit the use of information concerning the child or family directly or indirectly except to representatives of the Cabinet for Human Resources or as governed by this administrative regulation.

(9) Provider and parent communication. The program shall ensure ongoing communication with a child's parent by:

(a) Developing written information about the service which specifies the charge for child care and the expected frequency of payment for the program;

(b) Make available a copy of the certification standards to each parent;

(c) Give each parent the name and address and telephone number of the cabinet, to register complaints if he believes the family child care home provider is not meeting the standards; and

(d) Post and provide to each parent copies of children and parent rights pursuant to SB 211.

Section 4. The provider shall comply with the following:

(1) Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.

(2) Wash hands with soap and water before and after diapering a child.

(3) Use sanitary procedures when preparing and serving food.

(4) Assure that children shall not share cups, eating utensils, wash cloths or towels.

(5) The provider or other persons in the home shall not be under the influence of alcohol or drugs while children are in care except those drugs prescribed by a physician.

(6) Prohibit smoking in the presence of children in care.

(7) The provider or other person in the home shall not use physical punishment:

(a) A child shall not be:

1. Handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking and spanking; or

2. Placed in a locked room, closet, box or other confined space;

(b) The provider or other person in the home shall not:

1. Use disciplinary methods which humiliate, shame or frighten the child; or

2. Use harsh or demeaning language in the presence of the children;

(c) Discipline shall not be:

1. Delegated to another child; or

2. Related to food, rest or toileting:

a. Food shall not be withheld or given as a means of discipline;

b. A child shall not be disciplined for lapses in toilet training; or

c. A child shall not be disciplined for not sleeping during rest time.

(8) In the absence of the provider, a substitute provider shall be physically present at the family child care home during hours of operation. The provider shall not be employed outside the home during regular hours of operation. Children are not permitted off the premises without the caregiver. An exception may be made for school-age children, as long as their whereabouts are known, and the parents have given written permission.

(9) An infant's formula shall be prepared and provided by the parent. An exception may be made for providers that provide formula as a fringe benefit to the parent.

(10) Infants in care shall be held during feeding and bottles shall

never be propped.

(11) If overnight care is provided, the provider shall:

(a) Remain awake until every child in care is asleep;

(b) Sleep on the same level as infants and toddlers; and

(c) Provide comfortable, clean and safe bedding for each child.

(12) Serve meals which include a food from each of the four (4) basic food groups and snacks appropriate in amount and type of foods served for the ages of the children in care.

(13) Provide opportunities for outdoor play or fresh air.

(14) Be able to recognize symptoms of childhood illnesses.

(15) Visually supervise children who are awake and be able to respond to the children immediately.

(16) Be able to provide basic first aid.

(17) Never leave children in a vehicle unattended by an adult.

(18) Never use the back of pick-up trucks to transport children.

(19) Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes.

Section 5. Incorporation by Reference. (1) Forms necessary for the implementation of the certification of family child care homes shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected or copied at the Department for Social Services, Cabinet for Human Resources Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

Section 6. Repeal. 905 KAR 2:070 is hereby repealed.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: July 15, 1992
FILED WITH LRC: July 24, 1992 at 10 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:025E

This emergency administrative regulation is being amended to provide for an extension of the period for interim rate adjustments for nursing home reform cost and to exclude the cost of drugs from the all-inclusive payment rate for ventilator and brain injury units. These actions are being taken to comply with nursing home reform requirements and meet federal requirements with regard to upper limits for payments for drugs. This action must be taken on an emergency basis to meet federal requirements in a timely manner. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 2, 1992.

BRERETON JONES, Governor
LEONARD E. HELLER, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455; 456; 42 USC 1396, a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

EFFECTIVE: July 24, 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. This administrative regulation sets forth the method for determining amounts payable by the cabinet for nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. For purpose of Sections 2 through 6 of this administrative regulation, the following definitions shall prevail unless the specific context dictates otherwise:

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which except for ventilator therapy services and brain injury unit services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Physical, occupational and speech therapy.

(b) Laboratory procedures.

(c) X-ray.

(d) Oxygen and other related oxygen supplies.

(e) Respiratory therapy (excluding the routine administration of oxygen).

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only).

(g) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(3) "Nursing facility (NFs)" means a facility certified to the Medicaid program by the state survey agency as meeting all nursing facility requirements, and in at least thirty-five (35) percent of the facility's Medicaid participating beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare program. The phrase "nursing facility" also includes a nursing facility with waiver unless the context specifies otherwise.

(4) "Nursing facilities with waiver (NFs/W)" means facilities certified to the Medicaid program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(5) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(6) "Nursing services costs" are the direct costs associated with nursing services.

(7) "All other costs" are other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(8) The "basic per diem cost" for each major cost category (nursing services costs and all other costs) is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(9) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(10) "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(11) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(12) "Upper limit" means the maximum level at which the cabinet shall reimburse, on a facility by facility basis, for routine services.

(13) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(14) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(15) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(16) "Nursing facility with a mental retardation specialty (NF/MRS)" means a skilled nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

Section 2. Reimbursement for Nursing Facilities (NFs) (Including Nursing Facilities with Waiver) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). All nursing facilities (NFs) (including nursing facilities with waiver) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022, Nursing facility and intermediate care facility for the mentally retarded services. A nursing facility desiring to participate in Medicaid shall be required to have at least thirty-five (35) percent of its Medicaid participating beds (but not less than ten (10) beds; for a facility with less than ten (10) beds, all beds) participate in the Medicare program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, is prohibited from participation in Medicare. If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least thirty-five (35) percent of its Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) beds, all beds) participate in the Medicare Program. The Medicaid program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual, revised July 1, 1992 [~~1991~~] which is hereby incorporated by reference) and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medical Assistance Program Nursing Facility 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 upon payment of an appropriate fee which shall not exceed approximate cost.

Section 4. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Medicare Principles of Reimbursement, with the system utilizing the [~~such~~] principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section, including the provisions contained in subsections (13) and (14) of this section. Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit). The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year with prospective rates based on cost reports which are not audited or desk reviewed subject to adjustment when the audit or desk review is completed. Appropriate cost report adjustments will be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990. (Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports are subject to adjustment to the audited amount. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

(a) Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF/MRs, NF/IMDs, and NF/pediatric facilities) shall be divided into urban and rural arrays. The urban array shall include all facilities within a standard metropolitan statistical area (SMSA). The rural array shall include all facilities in non-SMSA counties. For purposes of arraying, current multilevel facilities (i.e., SNF and ICF) shall be considered as one (1) facility,

and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey). The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

(b) Nursing facility upper limits. The following NF upper limits shall be applied:

1. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable).

2. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities.

3. The upper limit for NF/MRS shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

(c) Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

1. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost.

2. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year; the swing bed rates shall change effective January 1, 1991 and each January 1 thereafter.

3. Hospital dual licensed beds shall be paid at the hospital based facility upper limits.

4. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be equal to projected costs.

5. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at $360 per diem.

(d) Other factors relating to costs and upper limit determination.

1. When the cabinet has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the cabinet shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors is to avoid paying the facilities twice for the same costs. When the trending and indexing factors include costs related to a minimum wage increase, the cabinet shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

2. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

3. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureaus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

4. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

5. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of such indebtedness may include, but shall not be limited to, notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation shall be based on total licensed beds (all levels). Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist when an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship shall be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April

22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the cabinet shall determine the allowable costs of these [~~such~~] arrangements based on the general reasonableness of the [~~such~~] costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless the [~~such~~] costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Notwithstanding the provisions contained in subsection (9) of this section, or in any other section or subsection of this administrative regulation or the "Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (9)(e) of this section) shall be determined in accordance with the methodology set forth herein for the reevaluation of assets of [~~skilled~~] nursing [~~and intermediate care~~] facilities.

(a) No increase shall be allowed in capital costs.

(b) The allowable historical base for depreciation for the purchaser shall be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price.

(c) The amount of interest expense allowable to the purchaser shall be limited to the amount that was allowable to the seller at the time of the sale.

(11) Each facility shall maintain and make available any records (in a form acceptable to the cabinet) which the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report.

(c) Cabinet approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the [~~such~~] costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(13) The cabinet shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The cabinet may develop and utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, IMDs, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive (CSI). Facilities qualifying for the CSI (except for NF/MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array. The CSI shall be computed at ten (10) percent of the difference between the facility's cost and the

upper limit for the array with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array. NF/MRSs shall qualify for the CSI when the NF/MRS has costs less than the NF/MRS upper limit, and the CSI shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. No return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$ 96.99 & below	$1.38	$.87
97.00 -102.99	1.29	$.75
103.00 -108.99	1.18	$.62
109.00 -114.99	1.06	$.47
115.00 -120.99	.92	$.31
121.00 -126.99	.76	$.13
127.00 -133.49	*.53	----

*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992. This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system. For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, IMDs, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low-intensity), the PRO will then determine the case weight). The average case weight thereafter shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available). The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the CSI adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs. Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost. Upon authorization by the Medicaid agency, the cost shall be allowable. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the CSI factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost). Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment. Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform. Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs. The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency. A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed. No interim rate adjustments for nursing home reform shall be allowed for periods after June 30, 1992.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual; however, the cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division of Reimbursement Operations, a reevaluation of the point at issue. This request shall be received within forty-five (45) days following notification of the prospective rate or forwarding of the desk review or audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further informa-

tion or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services, a review by a standing reimbursement review panel to be established by the commissioner. This request must be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement Operations. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement Operations, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement Operations) as designated by the Commissioner, Department for Medicaid Services, with such designated member to act as chairperson of the review panel. A date for the reimbursement review panel to convene shall be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1992 [~~1991~~].

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: July 15, 1992
FILED WITH LRC: July 24, 1992 at 10 a.m.

REGULATIONS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee at its August 6-7, 1992 meeting, unless otherwise noted.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Weights and Measures
(As Amended)

302 KAR 16:080. Qualifications and inspection criteria for bungee (bungy) jumping or similar apparatus permit [~~Designated bungee (bungy) or similar apparatus~~].

RELATES TO: KRS 247.232, 247.234
STATUTORY AUTHORITY: KRS 246.040, 247.232, 247.234, 247.236, 247.990
NECESSITY AND FUNCTION: To establish the criteria for obtaining a permit to operate an amusement ride or attraction in the Commonwealth of Kentucky: designated bungee ("bungy") or similar apparatus.

Section 1. Definitions. The following definitions shall apply to this administrative regulation:

(1) "Air bag" means a device which cradles the body and which uses an air release breather system to dissipate the energy due to a fall, thereby allowing the person to land without an abrupt stop.

(2) "Bungy cord" means the elastic rope to which the jumper is attached.

(3) "Bungy jumping" means a person falling from a height, including either a permanent or mobile jumping facility, where the descent is limited by attachment to the bungy cord.

(4) "Bungy jump site" means the area designated for the bungy jump operation by the owner or operator and approved by the Kentucky Department of Agriculture.

(5) "Carabineer" means a shaped metal device with a gate used to connect sections of the bungy cord, jump rigging, equipment or safety gear. Carabineers used for life supporting activities must be of the locking design.

(6) "Catapulting, launching, negative or reverse jumping" means the practice of stretching the bungy cord while attached to the jumper who is held on the ground then released and propelled into the air.

(7) "Dynamic loading" means the load placed on the bungy cord, rigging, harness, etc. by the weight of the jumper plush and the G forces involved.

(8) "G force" means the unit of force equal to the gravity exerted on a body at rest.

(9) "Harness" means an assembly to be worn by a jumper and to be attached to a bungy cord designed to prevent the wearer from becoming detached from the bungy system.

(10) "Lift" means a device or similar equipment utilized to transport customers, general public or employee to work area or jump launch area.

(11) "Military specification (Mil-Spec) cord" means preloaded or prestretched rubber cords originally developed for military use. These cords are made in conformance with military specifications and are often referred to as "Mil-Spec". These cords are usually cotton or nylon sheathed. There are some nonmilitary sheathed cords in use that may meet the specifications. This type of cord is usually made of three (3) to five (5) sheathed cords contained in one (1) outer sheathing.

(12) "New Zealand cord" means all rubber cords made of synthetic or natural rubber using continuous loops or strands. These types were developed in New Zealand. These type cords do not usually utilize any sheathing, and are configured as one (1) large cord made of several hundred small rubber strands.

(13) "Platform" means the launch area where jumpers will be assembled and depart from.

(14) "Safe working load (SWL)" means the maximum rated load which can be safely handled by equipment or a component of the rigging under specified conditions, expressed in pounds.

(15) "Safety factor" means the ratio obtained by dividing the breaking load of any piece of equipment by its working load.

(16) "Safety harness (safety belt)" means an assembly worn by a jump master, etc. designed to be attached to a safety line to stop the wearer from falling.

(17) "Safety line" means a line used to connect the safety harness or belt to an anchorage point or rail in situations where there is a risk of a fall.

(18) "Sandbagging" means the practice of a jumper holding onto any object (including another person) while jumping, for the purpose of exerting more force on the bungy cord in order to stretch it further, and then releasing the object at the bottom of the jump causing the jumper to rebound with more force than could be created by the jumper's weight alone.

(19) "Stunt jumping" means the combining of any other activity with bungy jumping with disregard for safety clearances as outlined in this criteria.

(20) "Tandem, multiple, or double jumping" means the practice of two (2) or more harnessed together while jumping simultaneously from the same platform.

(21) "Ultimate tensile strength" means the point when the applied load reaches a maximum prior to failure, expressed in pounds.

Section 2. Applicability and Inspection Criteria. (1) Applicability.

(a) This administrative regulation shall apply to bungy jumping sites and operations open to the general public.

(b) This administrative regulation shall not apply to bungy jumping sites and operations the department determines are for demonstration or exhibition purposes only and which are not open to the general public.

(2) Inspection criteria. This administrative regulation provides inspection criteria for:

(a) Site and site approval;
(b) Design;
(c) Equipment testing;
(d) Management operation;
(e) Operation procedures;
(f) Emergency provisions; and
(g) Emergency procedures.

Section 3. Operating Approval. (1) The owner or operator of a bungy jumping site or facility shall be issued a permit from the Kentucky Department of Agriculture pursuant to KRS 247.234 and 302 KAR 16:080 prior to operation in the state of Kentucky.

(2) The owner or operator of a bungy jumping site or facility shall comply with all relevant statutes and administrative regulations throughout the permit period.

(3) The following permit periods and inspection fee shall apply to all bungy jumping sites or facilities operating in the Commonwealth of Kentucky.

(a) For permanent and mobile installations the permit of operation shall be renewed annually.

(b) For mobile operations an inspection fee will be charged at each "set-up".

(4) Site plan and equipment design and construction.

(a) A report shall be submitted to the construction or "set-up" which shall contain site plans, safety zones, drawings, specifications and certification of equipment and structures, and operating manuals.

(b) The department may require a registered engineer's

report that the design and construction of the structures, equipment, access ways, operating areas, and intended method of operations meet applicable engineering standards and local codes.

(c) The owner or operator of a bungy jumping site or facility shall provide a certificate of insurance to the department that an insurance policy exists covering any spectator or patron in the amount required by law.

[Section 1. Establishes the following inspection criteria for bungy jumping operations open to the general public. The regulation does not apply to bungy jumping operations that are for demonstration/exhibition purposes, or deemed not open to the general public.]

[Section 2. Scope. This criteria specifies and gives guidance on the site and site approval, the design, testing of equipment, the management of the operation, the operating procedures, the emergency provisions and procedures. In this criteria the term "bungy (bungee) jumping" includes and refers to permanent and mobile jumping facilities and operations. Each time a mobile operation moves to a new location or each time a mobile operation dismantles and reassembles on the same location shall be considered a new "set up" for application and inspection purposes.]

[Section 3. Definitions. The definitions as applied to amusement ride and attractions revised statute and applicable regulation and the following shall apply:

(1) Air bag. A device which cradles the body and which uses an air release breather system to dissipate the energy due to a fall, thereby allowing the person to land without an abrupt stop. Bungee and bungy shall or similar item or material will be considered the same throughout this regulation.

(2) Bungy cord. The elastic rope to which the jumper is attached.

(3) Bungy jumping. When a person free falls from a height and the descent is limited by attachment to the bungy cord.

(4) Bungy jump site. The area designated for the bungy jump operation by the owner or operator and approved by the Kentucky Department of Agriculture.

(5) Carabineer. A shaped metal device with a gate used to connect sections of the bungy cord, jump rigging, equipment of safety gear. Carabineers used for life supporting activities must be of the locking design.

(6) Catapulting, launching, negative or reverse jumping. The practice of stretching the bungy cord while attached to the jumper who is held on the ground then released and propelled into the air.

(7) Dynamic loading. The load placed on the bungy cord, rigging, harness, etc. by the weight of the jumper plush and the G forces involved.

(8) G force. The unit of force equal to the gravity exerted on a body at rest.

(9) Harness. An assembly to be worn by a jumper and to be attached to a bungy cord. It is designed to prevent the wearer from becoming detached from the bungy system.

(10) Lift. Device or similar equipment, any device utilized to transport customers, general public or employee to work area or jump launch area.

(11) Military specification (Mil Spec) cord. Preloaded or pre-stretched rubber cords originally developed for military use. These cords are made in conformance with military specifications and are often referred to as "Mil Spec". These cords are usually cotton or nylon sheathed. There are some nonmilitary sheathed cords in use that may meet the specifications. This type of cord is usually made of three (3) to five (5) sheathed cords contained in one (1) outer sheathing.

(12) New Zealand cord. All rubber cords made of synthetic or natural rubber using continuous loops or strands. These types were developed in New Zealand. These type cords do not usually utilize any sheathing, and are configured as one (1) large cord made of several hundred small rubber strands.

(13) OSHA standards. Occupational Safety and Health Administration 29 CFR 1910, or 1926, latest edition.

(14) Platform. Launch area where jumper will be assembled and depart from.

(15) Safe working load (SWL). The maximum rated load which can be safely handled by equipment or a component of the rigging under specified conditions, expressed in pounds.

(16) Safety factor. The ratio obtained by dividing the breaking load of any piece of equipment by its working load.

(17) Safety harness (safety belt). An assembly worn by a jump master, etc. it is designed to be attached to a safety line to stop the wearer from falling.

(18) Safety line. A line used to connect the safety harness or belt to an anchorage point or rail in situations where there is a risk of a fall.

(19) Sandbagging. The practice of a jumper holding onto any object (including another person) while jumping, for the purpose of exerting more force on the bungy cord in order to stretch it further, and then releasing the object at the bottom of the jump causing the jumper to rebound with more force than could be created by the jumper's weight alone.

(20) Stunt jumping. The combining of any other activity with bungy jumping with disregard for safety clearances as outlined in this criteria.

(21) Tandem, multiple, or double jumping. The practice of two (2) or more harnessed together while jumping simultaneously from the same platform.

(22) Ultimate tensile strength. Achieved when the applied load reaches a maximum prior to failure, expressed in pounds.]

[Section 4. Operating Approval. (1) The owner/operator shall be issued a permit under KRS 247.234 and applicable KARs (302 KAR 16:010 through 16:060) from the Kentucky Department of Agriculture.

(a) For permanent and mobile installations the permit of operation shall be renewed annually.

(b) For mobile operations inspection fee will be charged at each "set up".

(2) Site plan and equipment design and construction.

(a) A report shall be submitted to the construction or "set up" which shall contain site plans, safety zones, drawings, specifications and certification of equipment and structures, and operating manuals.

(b) The department may require a registered engineer's report that the design and construction of the structures, equipment, access ways, operating areas, and intended method of operations meet applicable engineering standards and local codes.

(c) The owner/operator shall provide a certificate of insurance to the department that an insurance policy exists covering any spectator or patron in the amount required by law.]

Section 4. [5.] Permanent Platform. **All bungy jumping sites or facilities shall be equipped with a platform which meets the following criteria:**

(1) The safety working load (SWL) shall be determined by the maximum weight on the platform at any one (1) time, with a safety factor of not less than five (5), to include any dynamic loads from the jumping operation.

(2) Where the platform is not an integral part of the structure to which they are attached, shall have a safety factor of at least five (5) over the total design load, to include any dynamic loads from the jumping operation.

(3) Where the platform is not an integral part of the structure, these platforms will have a back-up safety at all times with a safety factor of at least five (5).

(4) On either type of platform, a balance load must be maintained during all operations.

(5) The platform shall have a slip-resistant floor surface. The platform shall be constructed of an open mesh type steel to insure jump master has visual site of jumper at all times during the jump operation from jump until recovery.

(6) The platform shall have anchor points for safety harness belt lanyards, designed and placed to best suit the operator's need.

(7) The platform shall be constructed to have sufficient working space, for the intended number of persons, as specified in the site

manual.

(8) There shall be a self-closing gate with an automatic positive lock system across the jump point when a jumper is not present at the jump point.

(9) Access and platform walkways, stairways, ladders, handrails, etc. shall meet minimum OSHA standards and Kentucky Building Code when and where applicable.

(10) All shackles shall be safety-wired.

(11) The system for recovering the jumper shall be operated by either the jump operator or jump master.

(12) There shall be an alternative method of jumper recovery should the main recovery system fail to recover the jumper.

(13) In a human powered retrieval system or in a friction lowering system, an eleven (11) mm or larger rock climbing rope shall be used.

(14) In a human powered retrieval system where a jumper is pulled back up to the jump platform, a locking mechanism (for example, and ascender or jumper) shall be used to stop and hold the jumper in one (1) place once the applied force on the retrieval rope is removed.

(15) In a friction lowering system there shall be a "dead man switch" or locking mechanism that will stop the lowering action of the system should a situation arise where the person in charge of lowering the jumper becomes unconscious or unable to perform the lowering duties safely.

(16) All bungy cords shall be attached to the anchor point at all times the cord is in the connection area.

Section 5. ~~[6.]~~ Bungy Cord(s). **All bungy cords used at bungy jumping sites or facilities shall meet the following criteria:**

(1) The minimum factor of safety (FS) for any configuration bungy cord shall be not less than five (5). The maximum dynamic load possible for a jumper to exert on a bungy cord shall be no greater than one-fifth (1/5) or twenty (20) percent of that cord's minimum breaking strength. Minimum breaking strength shall be no less than that recommended by the manufacturer.

(2) The maximum G force allowable to a jumper using waist and chest harness is four and five-tenths (4.5) Gs. The maximum G force allowable to a jumper using an ankle harness is three and five-tenths (3.5) Gs.

(3) In a multiple cord design (Mil-Spec) the cords shall be entirely enclosed in a protective sheath.

(4) In a single cord system the binding shall hold the cord threads in the designed positions. The binding shall have the same characteristics as the cords itself.

(5) Bungy cord design, manufacturing, and testing shall meet the following specifications:

(a) All bungy cord manufacturers shall perform conclusive ultimate tensile strength testing on a representative amount of all manufactured bungy cords with stress to failure of the bungy samples. The bungy cord sample must have been constructed using the manufacturer's standard methods which shall include bungy cord end connections. All tests shall be performed or supervised by an independent testing laboratory or a certified engineer. Test results shall be readily available, upon request. The ultimate tensile strength is reached when the applied load reaches a maximum before failure.

(b) A load verses elongation curve, resulting from the aforementioned test shall be used to calculate the maximum G force exerted by the cord on a jumper within the proper weight range. Documentation of these calculations shall be readily available upon request.

(c) All bungy cord manufacturers shall provide specifications on maximum allowable usage of bungy cords expressed in number of jumps.

(d) All bungy cord manufacturers shall provide specifications on maximum deterioration or damage to cords allowed. This may include but is not limited to hours of ultraviolet light exposure, percentage of broken threads, evidence of thread wear, etc.

(6) Bungy cords shall be removed from use and destroyed when:

(a) They exhibit deterioration or damage;

(b) They do not react according to specifications;

(c) They have reached the maximum usage expressed in number of jumps as specified by the manufacturer;

(d) They exhibit any abnormalities as specified by the manufacturer.

(7) Bungy cords shall be considered destroyed when they are cut into lengths not greater than five (5) feet.

(8) All operators shall have an audible system for recording the number of jumps on each individual cord in use. This data shall be readily available to the manufacturer, any jumper, and any regulating authority. This recording system shall be documented in the site manual:

(a) Cord manufacturer;

(b) Cord lot;

(c) Cord serial number;

(d) Total allowable jump per manufacturer specifications;

(e) Record name of jumper to include address and phone number;

(f) Jump date and time.

(9) Any material such as "webbing" used in either of the two (2) end attachment points of a bungy cord regardless of whether it is designed as a single or multiple cord system shall have a strength of at least three (3) times the ultimate tensile of the cord.

(10) All end attachment points subject to wear are to be retired and destroyed when that cord is retired and destroyed.

(11) The unloaded length of the bungy cord plus the rigging system shall be less than one-half (1/2) the designed extended length.

Section 6. ~~[7.]~~ Jumper Harness and Hardware. **All bungy jumping harnesses and hardware shall meet the following criteria:**

(1) All harness, webbing, bindings, ropes, and hardware shall meet or exceed the standards as set by **the National Fire Prevention Association (NFPA) 1983 Standard on Fire Service Life Safety Rope, Harness, and Hardware (1990 Edition)** ~~[Union International Alpinism Association (UIAA) or, the requirements of ANSI A10.14-1975, latest edition]~~.

(2) A jumper harness shall be either a full body harness, a sit harness with shoulder straps, or an ankle harness. Harnesses shall be specifically designed and manufactured for mountaineering or bungy jumping.

(3) Harnesses shall be available to fit the range of patron sizes accepted for jumping.

(4) There shall be a redundant connection (back-up) between the harnesses and the cord(s).

(5) All load supporting slings or webbing shall be flat tubular mountaineering webbing or its equivalent. Minimum breaking strength shall be 6,000 pounds. Slings or webbing shall be formed by sewing, or properly tied with a "water knot" with taped ends.

(6) Carabineers shall be the steel crew gate type with a minimum breaking strength of 6,000 pounds. All carabineers shall be designed and constructed using the standards for mountaineering gear.

(7) All ropes, pulleys, and shackles used to raise, lower, or hold the jumper shall have a minimum breaking strength of 6,000 pounds. All pulleys shall be compatible with the rope.

(8) All anchors shall meet or exceed the following:

(a) Where a single anchor is used to attach the bungy cord to the platform, it shall have a factor of safety of twenty (20).

(b) Where two (2) anchors are used to attach the bungy cord to the platform, each shall have a safety factor of five (5).

(c) Where the anchor(s) is made of wire rope, it shall have swagged ends with the thimble eyes.

(d) Where the anchor(s) is made of "webbing" it shall be manufactured by a company that normally supplies these anchors to crane and rigging companies.

(9) Test of all jumper harnesses and hardware have to be available to the inspector.

(10) All items to be serial numbered.

Section 7. ~~[8.]~~ Equipment Inspection and Testing. **All bungy jumping sites or facilities shall comply with the following equipment inspection and testing criteria:**

(1) All bungy cords shall be inspected by the jump master. Frequency of inspection shall be stated in the operations manual. As a minimum the cord(s) shall be inspected prior to opening the site each day, and any other inspections as specified by the bungy cord manufacturer.

(2) All jump rigging lowering system, platform, anchors, and safety gear shall be regularly inspected for damage or wear, by the jump master. Frequency of inspection shall be stated in the operations manual. As a minimum the equipment shall be inspected prior to opening the site each day, and any other inspections as specified by the equipment manufacturers.

(3) All harnesses and harness rigging shall be inspected for damage or wear before use by each jumper.

(4) Hardware subject to abnormal loadings, being impacted against hard surfaces, or having surface damage, shall be replaced.

(5) Ropes, webbing, and slings subject to abnormal shock load shall be replaced.

(6) Any items of equipment, rigging, or safety gear that are found to be substandard shall be replaced immediately. If a replacement is not available, jumping shall cease immediately, until a proper replacement is available.

(7) Each item shall have its own permanent individual identification.

(a) The application of this identification shall not harm the material of the item.

(b) The identification shall be clearly visible to the operators during daily operations.

(c) The identification shall be recorded on the equipment log sheet.

(d) Recovery time between reusage on each bungy cord after each use will be marked on cord and/or entered in log book by serial number.

Section **8. Jump Area or Jump Space. The following criteria regarding the jump space or jump area shall apply to all bungy jumping sites or facilities:** [~~9.~~] (1) Jump Area.

(a) The jump space is defined using dimensions in the lateral (perpendicular), and longitudinal (parallel) directions with respect to the jumper's direction of launch. The following **criteria shall be** [~~is~~] used to design this space:

1. Maximum system length - the maximum stretched length of a bungy cord system including static line length.

2. Average cord length - the average of the unstretched (static) bungy cord system length and the maximum system length.

(b) The jump space is defined in two (2) parts: top jump space and bottom jump space. The top jump is directly above the bottom jump space. The jump space is longitudinally and laterally centered under the jump point.

(c) The bottom jump space is a box-shaped volume extending from ground level upward to an altitude lying below the jump point by a distance equivalent to fifty (50) percent of the maximum system length. The longitudinal dimension of this volume (length) is equivalent to 200 percent of the unstretched, static length of the bungy cord system.

(d) The top jump space is a pyramid-shaped volume. The four (4) base points of this pyramid shape are coincident with the topmost four (4) points of the bottom jump space. The top point of this pyramid shape is coincident with the jump point. (See Annex 1)

(e) The jump space shall be free of obstructions with the exceptions of the water or air bag.

(2) Over land.

(a) The jump area shall be fenced or other barriers provided. The fence or barriers shall be designed to prevent people and animals from entering the jump area.

(b) The jump area shall be free of spectators at all times.

(c) The jump area shall be free of any equipment or staff when a jumper is being prepared on the jump platform and until the jumper is stable after the jump.

(d) If the jumper is lowered for recover, a clean, smooth, nonabrasive surface shall be provided for the jumper and cord(s). This recovery area shall be at least ten (10) feet by ten (10) feet.

(e) A place for the jumper to sit and recover shall be provided close to, but outside the landing area.

(f) An air bag certified for a fall from the platform height shall be in place centered under the jumper.

(g) There shall be adequate clearance between the jumper at full extension and the surface of the air bag.

(h) Adequate storage shall be provided on site to protect equipment from damage. The storage shall be secured against unauthorized entry.

(3) Over water.

(a) The jump space/landing area shall be free of other vessels, floating and submerged objects and the public, and when in open water shall be defined by the deployment of buoys. A sign of appropriate size which reads "BUNGY JUMPING KEEP CLEAR" shall be fixed to the four (4) sides of the buoy line.

(b) Minimum water depth shall be nine (9) feet.

(c) The recovery vessel shall:

1. Be properly registered and/or certified by appropriate authorities.

2. Be positioned accurately and remain in a constant position for the recovery.

3. Have a landing pad size of at least five (5) feet by five (5) feet, within and lower than the sides of the vessel.

4. Be able to be maneuvered in the range of water conditions expected and will enable staff to pick up a jumper or other person who has fallen into the water.

5. Have a minimum of two (2) operators: one (1) pilot the vessel and at least one (1) other to assist jumper recovery. At least one (1) jumper recovery assistant shall be certified life guard.

(d) Where the landing area is part of a constructed swimming pool complex or is specially constructed for bungy jumping the following shall apply:

1. The pool size shall meet the requirements for the jump area size.

2. The minimum water depth shall be nine (9) feet.

3. Rescue equipment shall be available.

4. The jump space and landing area shall be fenced.

5. Only the operators and participants of the bungy jump shall be within the jump space and landing area.

Section **9.** [~~10.~~] Site Manual. (1) Each site shall have an operating manual, referred to as the site manual, for the safe operation of the site. A copy of the manual and any amendments shall be held at each site, and shall be freely available to the staff. As a minimum, the manual shall include:

(a) A site plan view of the site with all components in place, fencing and the jump zone defined.

(b) Job descriptions/position duties and responsibilities.

(c) Personnel qualifications - required and actual.

(d) Staff training procedures and documentation.

(e) Inspection/maintenance procedures - to include inspection frequency, inspection standards, follow-up actions.

(f) Equipment descriptions/certifications/test documentation.

(g) Disaster/emergency plans procedures.

(h) Accident/incident reporting procedures.

(i) Examples of forms to be used.

(j) Examples of logs to be kept.

(k) Daily preopening inspection/maintenance procedures.

(l) Jumper restrictions - age, weight, medical, physical and mental condition.

(m) No jumper below the age of eighteen (18).

(n) No signed certificate allowed for permission for under the age of eighteen (18).

(o) Jumper interview and acceptance procedures.

(p) Jumper preparation procedures.

(q) Jump procedures.

(r) Recovery procedures.

(s) Close-down procedures.

(t) State maximum weather conditions for safe operation.

(2) Any amendments to the site manual shall be approved in writing by the Kentucky Department of Agriculture, Amusement Rides

and Attractions Inspection Section before implementation.

Section 10. [11.] Operations. (1) There shall be an operating public address system on site.

(2) There shall be a telephone communication link to emergency medical and rescue services within a reasonable distance.

(3) A sign shall be posted listing the medical, weight, and age restrictions for jumpers. The sign shall be clearly visible to intending jumpers. Letters not less than one-half (1/2) inch.

(4) Symbol not less than three and one-half (3 1/2) inches across at any point required for person(s) not able to read the English language.

(5) KRS 247.236, Operation and Construction of Amusement Rides and Attractions, and applicable KARs will be complied with.

(a) Jumper jump area will be secured (enclosed with a mesh type fence constructed of steel, not less than five (5) feet four (4) inches in height with no opening less than two (2) inches except at gate hinge points and at locking catch and these areas only large enough for operation. Landing zone operator must clear the area during jump. Assign position or position will be marked for operator during jump.

(b) Floor will be constructed of steel where no solid material - material of steel to be mesh with no opening less than one (1) inch not greater than two and one-half (2 1/2) inch opening.

(c) The jumpers shall be instructed and prepared in a place separated from the jump point.

(d) Safety type ring to frame to connect to jumper while being prepared for jump at all times.

(e) Approved scales to be used in weighing jumper when fully prepared for jump (Kentucky Department of Agriculture, Division of Weights and Measures inspection of weighing device report must be posted.)

(f) Adjustments for the weight of each jumper shall be made by the jump masters selection of bungy cord(s) and/or adjustment of the length of the rigging.

(g) The jump master shall stop the jumping operations when the weather conditions affect the safe operation of the site.

1. Wind speed and direction indicator with readout will be at jump platform.

2. Ceases operation instruction will be posted at each site indicating limitation due to operation height and wind speeds or other factors due to weather.

(h) The mobile platform for jumping shall be a constant height above the ground or surface.

(i) All staff members shall be easily identifiable from the public or jumpers, by means of uniforms or similar clothing colors, etc.

(j) All operations and passengers on mobile platforms shall wear a safety belt\harness and lanyard attached to the anchor points, at all times the platform is elevated.

(k) The jumper, on a mobile platform shall wear a safety lanyard attached to the anchor points until jump height is reached.

(l) Bungy "catapulting", "negative jumping", "reverse jumping" or "launching" is prohibited.

(m) "Tandem", "double" or "multiple" jumping is prohibited.

(n) "Sandbagging" is prohibited.

Section 11. [12.] Unacceptable Operation Activities. **The following equipment shall not be used at any bungy jumping site or facility in the Commonwealth of Kentucky:**

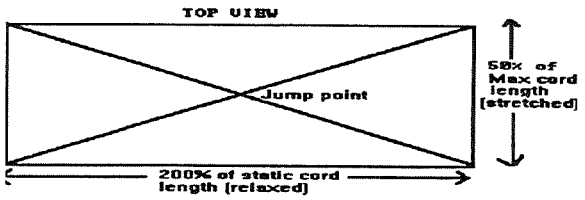
(1) Mobile or fixed type cranes not designed, manufactured, tested nor intended to primarily handle personnel.

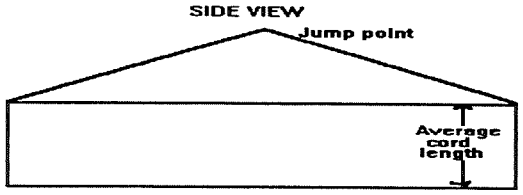
(2) Lighter than air type aircraft or aircraft not regulated by the Federal Aviation Administration such as hot air balloon, blimp, helicopter or other craft not specified that somehow have escaped to be regulated by Federal Aviation Administration.

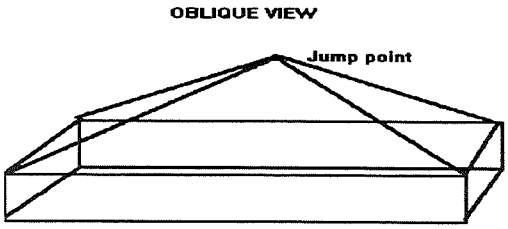
Section 12. Incorporation by Reference. (1) The National Fire Prevention Association (NFPA) 1983 Standard on Fire Service Life Safety Rope, Harness and Hardware (1990 Edition) and the Safety Air Cushion Standards (1992) are incorporated by reference.

(2) The NFPA (1983) Standard on Fire Service Life Safety Rope, Harness and Hardware (1990 Edition) and the Safety Air Cushion Standards (1992) can be inspected and copied, subject to copyright, at the offices of the Division of Weights and Measures, Kentucky Department of Agriculture, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

ANNEX 1
JUMP SPACE DIAGRAM







Average cord length =

$$\frac{\text{stretched length + relaxed length}}{2}$$

Cord length = length of bungy cord + length of any rigging from jumper harness to anchor point.

ED LOGSDON, Commissioner
APPROVED BY AGENCY: April 6, 1992
FILED WITH LRC: April 7, 1992 at 2 p.m.

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

401 KAR 5:010. Certification of wastewater system operators.

RELATES TO: KRS 224.10-110, 224.73-110 [~~224.032, 224.135~~]
STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.10-110, 224.73-110 [~~224.032, 224.033, 224.045~~]
NECESSITY AND FUNCTION: The secretary is directed to adopt administrative regulations applicable to certification of wastewater system operators. This administrative regulation establishes standards for classification of wastewater systems; qualifications of applicants; examination procedures; duties of the Kentucky Board of Certification of Wastewater System Operators [~~board~~]; provisions relating to the issuance and [~~,~~] renewal [~~or revocation~~] of certificates; disciplinary actions; a fee schedule and other provisions necessary for certification of operators[~~; and other operational provisions related to the functions of the wastewater operators certification board~~].

Section 1. Definitions. The following terms shall have the meanings set forth below unless the context clearly indicates otherwise:

(1) "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and assists authorities in establishing new certification programs and upgrading existing programs.

(2) [~~(1)~~] "Board" means the Kentucky Board of Certification of Wastewater System Operators.

(3) [~~(2)~~] "Cabinet" has the meaning given it in KRS 224.01-010. [~~means the Kentucky Natural Resources and Environmental Protection Cabinet.~~]

[~~(3) "Secretary" means the secretary of the cabinet.~~]

(4) "Certificate" means a certificate of competency issued by the secretary or his designated agent stating that the operator has met the [~~all~~] requirements for the specified operator classification as set by this administrative regulation.

(5) "Certified operator" means a wastewater operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of this administrative regulation.

(6) [~~(5)~~] "Division" means the Division of Water[~~, Natural Resources and Environmental Protection Cabinet~~].

(7) [~~(6)~~] "Operator" means any [~~the~~] person involved in the operation of a wastewater system [~~having primary responsibility of a wastewater system or any portion thereof which may affect the performance of the system~~].

(8) [~~(7)~~] "Primary responsibility" means having the authority to conduct [~~or supervise~~] the procedures and practices necessary to insure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws and administrative regulations of the Commonwealth, or to supervise others in conducting these practices.

(9) "Secretary" has the meaning given it in KRS 224.01-010.

(10) [~~(8)~~] "Wastewater system" means sewage system as defined in KRS 224.01-010. [~~the system of pipes, structures, equipment and processes required to collect, carry, and treat domestic, or industrial wastewater, or both, including solids handling. The term "wastewater system" is synonymous and interchangeable with the term "sewage system."~~]

[~~(9) "Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities (ABC)" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems and state programs, and assists authorities in establishing new certification programs and upgrading existing ones.~~]

Section 2. General Provisions. (1) Each wastewater system shall be operated under the supervision of an individual holding a [~~current~~] Kentucky operator's certificate for at least the class of system [~~he or she~~] supervised. [~~Certified operators are required for the operation of all wastewater treatment facilities.~~]

(2) If the certified operator [~~with primary responsibility~~] is not physically present while a system is operating, the certified operator [~~he or she~~] shall be reasonably available. [~~Such~~] Availability shall be determined by the board and cabinet [~~on a case-by-case basis~~].

(3) Facilities whose classification changed from Class I to Class II as a result of revisions to Section 8 of this administrative regulation as in effect on the effective date of this administrative regulation shall employ a certified Class II or higher operator by January 1, 1994.

(4) Certificate display. If a wastewater system office is available at the wastewater treatment plant or within the sewer service area, the operator's certificate shall be prominently displayed on the wall.

(5) Wallet card. Certified operators shall carry the cabinet-issued wallet card showing current certification status while on duty.

Section 3. Duties of the Board. [~~(1)~~] In carrying out its responsibilities and with consideration given to the minimum standards and guidance of the ABC, the board may [~~shall among other things~~]:

(1) [~~(a)~~] Examine the qualifications of applicants and recommend qualified applicants to the cabinet for certification;

(2) Review and approve substitutions for education and experience requirements;

[~~(b) Recommend qualified applicants for certification by the cabinet.~~]

(3) [~~(c)~~] Review and provide comments to the cabinet on proposed wastewater treatment plant operator certification administrative regulations; [~~or revisions to regulations dealing with wastewater treatment plant operator certification.~~]

(4) [~~(d)~~] Review and make recommendations to the cabinet on proposed training courses and seminars designed to provide continuing education to certified operators; [~~training materials and methods dealing with the certification of wastewater treatment plant operators.~~]

(5) Review and assist the cabinet in the preparation of examinations;

[~~(e) Perform such other and further acts as may be necessary to carry out the duties and responsibilities as herein described.~~]

(6) [~~(f)~~] Review and provide comments to the cabinet on proposed fees for the training and certification of operators; [~~approve by the first of January of the first year of the renewal period the draft schedule of reasonable fees submitted by the cabinet.~~]

(7) Review the certification administrative regulations of states which are seeking reciprocity with the Commonwealth; and

(8) Review evidence and advise the cabinet regarding disciplinary actions for certified operators who fail to comply with the applicable laws and administrative regulations.

[~~(g) Provide for distribution of the approved fee schedule to all affected operators prior to the beginning of each renewal period.~~

~~(2) In carrying out its certification responsibilities, the board may establish minimum criteria and provide a general recommendation for certification for all applicants who exceed them.~~]

[~~Section 4. Application for Certification. (1) An operator desiring to be certified shall file application with the cabinet preceding examination on an application form provided by the cabinet.~~

~~(2) The executive secretary and treasurer of the board shall assemble all the information needed by the board or cabinet to determine eligibility of the applicant for examination and certification.~~

~~(3) The board or cabinet shall review applications and supporting documents, determine the eligibility of the applicant for examination and notify him or her of his or her status.~~]

Section 4. Application and [~~5.~~] Examinations for Certification. (1) Application. An individual desiring to be certified shall file an application with the cabinet and pay the applicable fee specified in Section

5 of this administrative regulation. Applications shall be made on a form provided by the cabinet and incorporated by reference in Section 11 of this administrative regulation. Applications shall not be filed with the cabinet until the individual has met the qualifications specified in this administrative regulation.

(2) Examinations. The board and the cabinet shall be jointly responsible for preparation of the examinations which shall [to] be used in determining knowledge, ability and judgment of the applicants. The cabinet shall administer written exams unless the cabinet and board grant a waiver to allow an oral exam. Oral exams may be administered to applicants who meet the minimum qualifications of Section 10 of this administrative regulation. The cabinet shall grade the examinations and notify the applicant of the outcome. Applicants shall achieve a score of seventy (70) percent to pass the examination. Examinations shall not be returned to the applicant, but results may be reviewed with a member of the board or cabinet upon written request by the applicant. [The examination questions promulgated by the ABC shall be used as a guideline.]

(3) Scheduling examinations. [(2)] Examinations shall be conducted at least semiannually [held] at places and times set forth by the cabinet. The cabinet shall provide advance announcement of these examinations. [The examinations shall be conducted at least semiannually.]

[(3) Except in cases which the board may decide represent proper exceptions, all examinations shall be written. All examinations shall be graded by the board, or by the cabinet and the applicant notified of the outcome. Papers shall not be returned to the applicant, but means will be provided to review the results with a member of the board or cabinet upon request by the applicant.]

(4) Exam content. The cabinet [Separate examinations] **shall** [will] [be] prepare[d] examinations to address the [cover] basic differences in the duties and responsibilities of certified operators, types of facilities, [variations in waste]water quality standards, conditions of receiving waters and other pertinent matters.

(5) Applicants who fail to pass an examination may register to take [reapply for] the examination again on [at] a regularly scheduled examination date [or by appointment with the cabinet].

Section 5. [6.] Fees. (1) Fees for certification of operators of wastewater systems shall not exceed the following:

(a) Examination: thirty-five (35) dollars.

(b) Renewal of certificate: thirty-five (35) dollars per biennium. Limited certificates: twenty (20) dollars per year.

(c) Certification by reciprocity: thirty-five (35) dollars.

(d) Reinstatement of lapsed certificate: not to exceed thirty-five (35) dollars plus renewal fee.

(2) For training sessions conducted by the cabinet: not to exceed five (5) dollars per contact hour.

(3) Fees shall [accompanying applications will] not be returned to applicants [those] who do not pass the examination.

(4) The cabinet shall provide an estimate of program costs for the upcoming renewal period and a draft schedule of reasonable fees for that renewal period to the board for approval [by the first of November] prior to the beginning of the new renewal period.

Section 6. [7.] Issuance of Certificates. (1) Certification. Upon satisfactory fulfillment of the requirements of this administrative regulation [provided herein] and upon recommendation of the board [of certification], the cabinet shall issue a [suitable] certificate to the applicant designating [his or her competency. This certificate will indicate] the classification of the wastewater system for which the operator has demonstrated competency. If information related to the operator's employment or mailing address changes from the application filed for certification, the certified operator shall provide written notification to the division within thirty (30) days. If a certified operator becomes permanently incapacitated while employed by a wastewater treatment plant, the employer shall notify the division. [is qualified.]

(2) Duration and renewal of certificates.

(a) Certificates for all certified operator classes, except limited, as identified in Section 8 of this administrative regulation, shall be valid for up to two (2) years after each renewal, unless suspended or revoked for cause or replaced by that of a higher classification. [All] Certificates shall expire [at midnight] on June 30 of odd-numbered years. Certificates may be renewed without examination, if the certified [of] operator is in good standing, upon completion of the required training hours outlined in subsection (7) of this section and [shall be renewed automatically] upon submittal of a complete renewal [written] application and [submission of] applicable renewal fees [to be received by the cabinet before June 30 of each renewal year]. Application for certificate renewal shall be made on a form provided by the cabinet and incorporated by reference in Section 11 of this administrative regulation. If the renewal application and fee are not received by the cabinet by [prior to] June 30 [1], the certificate shall be considered lapsed and shall not be reinstated without completion of the training required in subsection (7) of this section and payment of a reinstatement fee as provided in Section 5 [6] of this administrative regulation. Expired certificates shall continue in force pending administrative processing of a renewal, if the certified operator is in good standing and has complied with the renewal requirements of this subsection by June 30 of the renewal year. Certificates continued under this paragraph shall remain fully effective and enforceable.

(b) Limited certificates shall expire on June 30 of each year. The cabinet may renew the limited certificate upon receipt of the renewal application if [each year on midnight of the last day of February and may be renewed only after] the certified operator has [cabinet has timely received the required written application and renewal fee, and certified that the holder of the certificate has substantially] complied with all requirements for proper operation of [properly operating] the facility under his supervision, and has submitted a complete renewal application and applicable renewal fees. [or her responsible charge.]

(3) Certification for a higher classification. Certified operators who desire to become certified in a higher classification shall [first] satisfactorily complete the minimum requirements of Sections 4 and 10 of this administrative regulation for the higher classification before submitting a new application [certificate is issued]. Experience earned under a limited certificate shall [does] not count toward fulfillment of the qualifications for other classifications.

(4) Certificates shall be valid only while [so long as] the holder uses reasonable care, judgment, and application of his [or her] knowledge in the performance of his [or her] duties. [No] Certificates shall not be valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.

(5) Termination of a certification. [The certificates of operators who terminate their employment at a wastewater system will be valid for four (4) years provided they are renewed as required by subsection 2 of this section, except for limited certificate holders. After four (4) years, the] Certificates shall terminate if not renewed for two (2) consecutive renewal periods [will be automatically invalidated]. Limited certificates shall terminate [become invalid] immediately after the expiration date if not renewed. If a [Operators whose] certificate terminates, an operator shall apply, pay applicable fees and pass an examination in the classification for which he is qualified to be certified [are invalidated may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of a written or oral examination shall be required by the board].

(6) Reciprocity. Certificates may be issued [at the discretion of the board] in a comparable classification, without examination, to a [any] person who holds a valid certificate in a [any] state, territory, or possession of the United States or a [any] country if [provided] the requirements for certification of operators under which the person's certificate was issued are no less stringent than the requirements for certification set forth in [do not conflict with] KRS Chapter 224[.135] and this administrative regulation [or this administrative regulation and are of a comparable standard;] and[, providing further, that] reciprocal privileges are granted to certified operators of the Commonwealth [this state].

[(7) Certificates shall be prominently displayed in the office of the operator.]

(7) [(8)] Training requirements. Certified operators shall accumulate continuing education credits approved by the cabinet or board

prior to applying for certificate renewal.

(a) Class I and II certified operators shall complete twelve (12) hours of training for renewal. Class III and Class IV certified operators shall complete twenty-four (24) [~~have accumulated twelve (12)~~] hours of training [~~per year of appropriate board-approved training~~] for each [~~certificate~~] renewal. [~~Class I and II operators shall complete six (6) hours of training per year for renewal. Such~~] Training [~~shall~~] includes, but is [~~may~~] not [~~be~~] limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. However, at least one-half (1/2) of the training required for recertification shall be in process control and operation or in the basic sciences related to these topics. Training hours accumulated [~~in any biennium~~] in excess of the minimum number required [~~requirement necessary~~] for renewal may be carried forward for a period of two (2) years from the date earned [~~to the next renewal period~~]. No training is required for holders of limited [~~or industrial~~] certificates.

(b) Certified operators who teach board-approved training courses may receive, upon approval of the board, hour-for[~~per~~]-hour credit for actual instruction time[~~, except that for courses taught more than once during a renewal period, credit will be allowed for only one (1) period of instruction~~].

(c) The criteria [~~used~~] for determining whether to approve training, other than the training provided by the cabinet, are:

1. The ability of the course to provide information that will enhance the proper operation and maintenance of wastewater treatment facilities; and

2. The ability of the instructor to properly present the [~~such~~] information.

(d) Alternate [~~Therefore, in making its determination regarding approval of~~] training courses may be considered by submittal to the division and review by the board of [~~the board will require that at least~~] the following information [~~specifics about the course be submitted~~]: the course name; the date, location, and a timed agenda for [~~the beginning and ending times of~~] the course; the credit hours being requested; a summary of the course content of sufficient detail to determine relevance and quality of the course; and the name and credentials of each instructor for the course.

(e) [~~(d)~~] The board may waive any [~~or all~~] of the requirements of paragraph (a) of this subsection for all or portions of a class of operators as identified [~~defined~~] in Section 9 [~~11~~] of this administrative regulation [~~when the board has determined, based on information it has gathered, that such action is appropriate and justified~~].

Section 7. [~~8.~~] Disciplinary Action. A certified operator shall be subject to a disciplinary action identified in this section if the cabinet, in consultation with the board according to this section, determines that [~~Revocation of Certificates. The cabinet may revoke the certificate of an operator, following a hearing before the board and upon recommendation by the board, when it is found that~~] the certified operator has practiced fraud or deception in obtaining certification or filing cabinet mandated reports; has not used [~~that~~] reasonable care or [~~,~~] judgment [~~or the application of his or her knowledge was not used~~] in the performance of [~~his or her~~] duties; has failed to apply knowledge in the performance of duties; or [~~that the operator~~] is incompetent, [~~or~~] unable or unwilling to properly perform [~~his or her~~] duties.

(1) Sanctions. The disciplinary action shall be determined by the cabinet in accordance with the review procedures in subsection (2) of this section, and may take the form of the following sanctions depending on the severity, duration, and number of the violations. The sanctions may include, but are not limited to:

(a) Probation for a specified period of time, not to exceed one (1) year;

(b) Suspension of the operator's certificate for a specified period of time, not to exceed one (1) year, during which the certificate shall be considered void;

(c) Temporary or permanent revocation of the operator's certification (temporary revocations shall not be less than one (1) year or more than four (4) years in duration); or

(d) Civil or criminal penalties against the operator.

(2) Initial review procedures. Written complaints received by the board or cabinet on a certified operator, unless duplicitous or frivolous, shall be reviewed at the next regularly scheduled board meeting. If the charges warrant further investigation, the certified operator may be advised to appear before the board to discuss the charges levied. Upon completion of the review, the board shall make a recommendation to the cabinet regarding the operator's certification status. The board may recommend that no action be taken, that the cabinet impose a sanction identified in subsection (1) of this section, or any other action.

(3) Cabinet action. The cabinet shall review the evidence presented and the board's recommendations. Upon completion of the review, the cabinet will initiate the recommended action or notify the board as to why an alternative action was taken. The certified operator and his employer shall be advised by certified mail of the action, the reasons outlined for the action, and the length of time for which the sanction shall apply. A certified operator whose certificate has been suspended or revoked shall not have primary responsibility for a wastewater system during the period that the disciplinary action remains in effect. If a certification is permanently revoked, the operator shall be ineligible for future certification as a wastewater system operator. Experience gained during a suspension or temporary or permanent revocation shall not be included toward meeting the requirements of Section 10 of this administrative regulation. An action taken by the cabinet pursuant to this section shall not preclude the cabinet from pursuing additional civil or criminal action.

(4) Sanction review and removal. During the operator's probation, suspension, or temporary revocation, the board and cabinet will monitor the operator's work activities. At the end of the sanction period, the board will recommend to the cabinet whether the sanction should be lifted or whether additional action is necessary against the certified operator.

(5) Appeal procedures. An operator who considers himself aggrieved by a disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).

Section 8. [~~9.~~] Classification of Wastewater Systems. Wastewater systems shall be classified in one (1) of five (5) classes. These classifications shall be made according to population served, type of treatment process [~~work~~], character and volume of wastes to be treated, and the use and nature of the waters receiving the system effluent. Classifications I through IV shall be based on the population served or for which the system is designed, except that a system may be classified by the cabinet and board in a group lower or higher than indicated if [~~at the discretion of the cabinet by reason of~~] the incorporation into the system of special features of design or characteristics makes the system easier or more difficult to operate than usual, or if [~~by reason of~~] conditions of flow or use of the receiving water require [~~requiring~~] an unusually low or high degree of system operation control, or if [~~for~~] combinations of these [~~such~~] conditions or circumstances exist. In addition, a limited classification is available for operators of wastewater facilities owned by [~~at~~] school systems. Classes I through IV are [~~defined~~] as follows:

(1) Class I: Systems with a design capacity of less than or equal to 50,000 [~~300,000~~] gallons per day.

(2) Class II: Systems with a design capacity more than 50,000 [~~300,000~~] gallons per day, but less than or equal to two (2) million gallons per day.

(3) Class III: Systems with a design capacity more than two (2) million gallons per day, but less than or equal to seven and one-half (7 1/2) million gallons per day.

(4) Class IV: Systems with a design capacity in excess of seven and one-half (7 1/2) million gallons per day.

Section 9. [~~10.~~] Classification of Wastewater System Operators. Five (5) classes of certified operators are hereby established and shall range from Class I through Class IV, plus limited. Each operator classification except for limited [~~is intended to~~] relates directly to the corresponding classification of wastewater system outlined in Section 8 of this administrative regulation. [~~In addition, there is hereby established an industrial classification for operators of facilities for pretreating wastewater prior to discharge into municipal sewers.~~]

Section 10. Certified [~~11.~~] Operator Qualifications: Experience, Education and Equivalencies. Applicants [~~(1) Operators~~] shall be examined by the [~~board or~~] cabinet as to education, experience, and knowledge as related to the classification of wastewater systems for which the application applies [~~examined~~]. [~~Applicants may be required further to give evidence of good moral character, dependability, initiative, interest in his [or her] work, and other pertinent characteristics in relation to operation of the class of wastewater system for which certification is being applied.~~] Applicants shall pass the required written examination unless granted a waiver to take an oral examination in accordance with Section 4(2) of this administrative regulation.

(1) Classification of wastewater treatment plant operator certificates. [~~(2)~~] Experience and educational requirements for certification of operators shall be as follows:

(a) Class I:

1. Completion of high school or general education development (GED) efficiency [~~equivalent~~]; and

2. One (1) year of acceptable operation of a [~~applicable~~] wastewater system.

(b) Class II:

1. Completion of high school or GED efficiency [~~equivalent~~]; and

2. Two (2) years of acceptable operation of a [~~applicable~~] wastewater system [~~of Class I or higher~~].

(c) Class III:

1. Completion of high school or GED efficiency [~~equivalent~~]; and

2. Three (3) years of acceptable operation of a [~~applicable~~] wastewater system with one (1) year of that experience in a [~~of~~] Class II or higher wastewater system.

(d) Class IV:

1. A baccalaureate degree in a standard curriculum in engineering, allied sciences or equivalent; and

2. At least five (5) years of acceptable operation of a [~~applicable~~] wastewater system. Three (3) years of the required experience shall be in a [~~of~~] Class III or higher wastewater system with at least two (2) years of primary responsibility for a Class III or higher system.

(e) Limited: An operator of a wastewater treatment facility for a school shall be entitled to apply for a limited certificate of competency for the particular facility operated. The certification shall only be issued if the operator has demonstrated to the cabinet that he has the knowledge and experience required to properly operate the specific wastewater facility.

(2) Substitutions [~~(3)~~] In evaluating qualifications of operators and experience or educational equivalencies, substitutions may be allowed as follows [~~the board shall be guided by the following~~]:

(a) If applicable, experience may be substituted for a portion of the educational requirements: [~~In order to establish how much experience will be accepted, the board shall determine whether the work performed required some technical knowledge of the work and whether or not responsible charge of work was included. In wastewater systems, where responsibility is divided, supervisors of important divisions may be credited with having responsible charge. Experience accumulated under an industrial certificate will be equivalent to Class I. No experience credit will be allowed for operation under a limited certificate.~~]

1. [~~(b)~~] Experience, to be acceptable, shall be the result of satisfactory accomplishment of work. [~~Evaluation may be based on reports of the cabinet or other agencies having appropriate responsibilities for supervising wastewater systems.~~]

2. [~~(c)~~] Partial credit may be given for operating experience in maintenance, laboratories or other work of wastewater systems and allied trades [~~such as plumbing~~].

3. To establish how much experience will be accepted, the board shall determine whether the work performed required some technical knowledge and if the applicant was primarily responsible for the operation of the system. In wastewater systems where responsibility is divided, supervisors of important divisions may be credited with having primary responsibility.

4.a. One (1) year of board-approved experience may be considered equivalent to one (1) year of high school. Four (4) years of board-approved experience may be considered equivalent to a high school degree or a GED, subject to the approval of the board. Operators requesting this substitution shall submit a written request to the cabinet and may be requested to appear before the board.

b. Each year of experience in wastewater operations shall be equivalent to one (1) year of college. Four (4) years of experience approved by the board shall be considered equivalent to a baccalaureate degree.

c. Experience applied to educational requirements shall not be applied to the experience requirement.

(b) If [~~(d) Where~~] applicable, education may be substituted for a portion of experience requirements as specified below:

1. One (1) year of college work (limited to [~~approved~~] curricula in environmental engineering, environmental technology or related scientific fields) may be considered as equivalent to one (1) year [~~a maximum of two (2) years~~] of experience [~~or one (1) year of experience with responsible charge~~].

2. [~~Where~~] Education [~~is~~] substituted for experience [~~it~~] shall not [~~exceed an amount which would~~] reduce the requirements of actual operating experience to less than six (6) months for Class I, [~~or~~] less than one (1) year for Class II, less than [~~or~~] two (2) years for Class III, or less than three (3) years for Class IV.

3. Education applied to the experience requirement shall not [~~cannot also~~] be applied to the education requirement.

[~~(c) Where applicable, experience may be substituted for education requirements as specified below:~~

~~1. One (1) year of experience may be considered as equivalent to a maximum of one (1) year of high school. Four (4) years of board approved experience may be considered equivalent to a high school degree.~~

~~2. Each year of responsible charge or two (2) years experience in an important phase of operation, other than responsible charge, will be considered equivalent to one (1) year of college. Four (4) years of responsible change approved by the board or eight (8) years of other board approved experience may be considered equivalent to a baccalaureate degree.~~

~~3. Experience applied to educational requirements may not also be applied to the experience requirement.~~]

(c) [~~(f)~~] Substitutions for formal education may be as follows: [~~1.~~] Training credits [~~(T.C.)~~] for board approved operator training schools, seminars and technical courses may be substituted for high school and college requirements upon approval of the board. One (1) year of college work equals thirty (30) semester hours or forty-five (45) quarter hours. Six (6) classroom hours of board approved courses [~~shall~~] equals one (1) training credit [~~T.C.~~], and forty-five (45) training credits [~~T.C.~~] equals eighteen (18) semester hours of college or one (1) year of high school. One (1) continuing education unit (CEU) shall equal ten (10) training credit hours. Training credits substituted for the education requirement shall not be used as continuing education for certificate renewal.

[~~2. An acceptable high school equivalency certificate may be used to substitute for graduation from high school.~~]

Section 11. Documents Incorporated by Reference for Wastewater System Certified Operators. The following documents are incorporated by reference and are available for public inspection and copying, subject to the copyright laws, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the Division of Water, **14** [~~18~~] Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Drinking Water or Wastewater Operator Certification Application, Kentucky Division of Water, Frankfort, Kentucky, January 1992.

(2) Application for Certificate Renewal, Kentucky Division of Water, Frankfort, Kentucky, January 1992.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: July 8, 1992
FILED WITH LRC: July 9, 1992 at 1 p.m.

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

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 **administrative** regulation provides the necessary definition.

Section 1. Definition. (1) **"Classified employee" is defined in KRS 161.011.**

(2) "Individual with a disability" means a person who has a phycial or mental impairment that substantially limits one (1) or more major life activities, has a record of an impairment or is regarded as having an impairment. [~~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.~~]

Section 2. Satisfactory Progress Requirement. Making progress toward obtaining a General Equivalency Diploma (GED) means:

(1) Enrollment in an adult education program on an appropriate instructional level;

(2) Verification by a program official of attendance at least once per month;

(3) A satisfactory progress rating on an annual report submitted to the local school superintendent; and

(4) 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.~~]

Section 3. Instructional Level, Testing, Reporting. (1) The adult education teacher shall determine the appropriate instructional level by administering a reliable, commercially prepared, standardized test designed for adult students.

(2) Standardized test shall be administered to a classified employee:

(a) Prior to an employee's enrollment in the GED program; and

(b) At least once a year after enrollment in the program.

(3) A classified employee shall be evaluated through administration of periodic testing during the enrollment period to determine whether he is making progress toward obtaining a GED. Periodic testing should be administered at intervals of approximately every seventy-five (75) hours of instruction.

(4) An employee's progress, whether satisfactory or unsatisfactory, shall be reported in writing on an annual basis to the local superintendent by the instructor.

(5) An employee who is determined not to be making progress will be governed by the provisions of KRS 161.011.

Section 4. Modification or Temporary Waiver of Program Requirements. (1) A written request may be submitted to a local school superintendent requesting that the requirements of this administrative regulation be modified or temporarily waived if:

(a) The individual employee has a disability; or

(b) A person can provide written documentation that the requirements of this administrative regulation impose an undue hardship.

(2) The local school superintendent shall provide the employee with a written determination within ten (10) days of the request for modification or temporary waiver specifying the:

(a) Modifications which shall be made in the program requirements or by the program staff or facility to accommodate an employee with a disability; and

(b) Conditions under which a temporary waiver of program requirements will be considered or granted.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: May 21, 1992
FILED WITH LRC: May 29, 1992 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(As Amended)

804 KAR 5:070. Minors.

RELATES TO: KRS 244.080, 244.085
STATUTORY AUTHORITY: KRS 241.060
NECESSITY AND FUNCTION: The named KRS Sections deal with the selling, giving away, or consumption of alcoholic beverages by minors on licensed premises. In furtherance of these statutes, this regulation sets out in detail prohibitions applicable to minors upon licensed premises. **The necessity for this administrative regulation is to establish requirements governing the presence of minors on licensed premises. The function of this administrative regulation is to establish detailed prohibitions applicable to minors entering or remaining on licensed premises.**

Section 1. **Definition.** [~~(1) For the purpose of this section:~~]

[~~(a)~~] "Restaurant" means a business which receives at least thirty-five (35) percent of its gross food and alcoholic beverage sales receipts from the sale of food. Premises that qualify for the restaurant exemption shall only be exempted during those times of the day that meals are served to customers[~~;~~

~~(b) "Bar area" means that portion of a room adjacent to the bar which is visibly separated and delineated by a physical barrier from the remainder of the room~~].

Section 2. [~~(2)~~] Except as provided in KRS 244.087 and 244.090, a licensee, his agents, servants, or employees shall not permit any person under twenty-one (21) years of age to enter or remain on any premises on which alcoholic beverages are sold by the drink or consumed on the premises, unless the usual and customary business of the establishment is as a restaurant, grocery store, drug store, hotel, motel, private club, park, fair, church, school, athletic complex, or public exhibition at which live sports, athletic events, bona fide plays, or concerts are scheduled. [~~A licensee, his agents, servants or employees shall not permit a person under twenty-one (21) years of age to enter or remain in the bar area or barroom of any establishment exempted under this section.~~]

Section **3.** [~~2.~~] Unless an establishment is exempted under the provisions of Section 1 of this regulation, every retail licensee that sells alcoholic beverages by the drink for consumption on the premises shall display at all times, in a prominent place, a printed card at least eight (8) inches by eleven (11) inches in size which shall read, in thirty (30) point or larger type, substantially as follows:

PERSONS UNDER 21 MAY NOT ENTER OR REMAIN
ON THIS PREMISES.

DON W. STEPHENS, Commissioner
ED HOLMES, Secretary
APPROVED BY AGENCY: April 22, 1992
FILED WITH LRC: July 8, 1992 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended)

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 administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative 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 administrative 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 **specify the information required to be provided** ~~[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 administrative 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 administrative 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 administrative 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 administrative 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 PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended)

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 **administrative** 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. (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.

(2) **The** [~~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.

(3) 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.

(4) A virgin standardbred stallion entering stud for the first time may be registered prior to his first breeding and **shall** [~~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 **shall** [~~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 **shall** [~~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, **the** [~~such~~] registration may be cancelled and notice **of the cancellation** [~~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. (1) If the commission **determines** [~~finds~~] that an application for registration or transfer contains false or misleading information, the commission may summon the person who executed **the** [~~said~~] application and any other person who has knowledge **of the information contained on or related to the application** [~~thereof~~].

(2) [~~Failure to respond to such summons may cause~~] The commission **may** [~~to~~] suspend or cancel the registration of horses owned by **a** [~~such~~] person **who fails to respond to a summons**.

(3) 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 **shall** [~~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 **administrative** regulations of the Kentucky Harness Racing Commission.

Section 11. Each colt, gelding or filly participating in a Kentucky sires stakes race **shall** [~~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. **A race shall** [~~All races will~~] be raced in separate colt-gelding and filly divisions.

Section 16. **Declaration fees shall** [~~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. (1) The purse **shall** [~~will~~] be distributed on the following percentage basis:

(a) [~~(1)~~] 50-25-12-8-5; five (5) starters or more;
(b) [~~(2)~~] 50-25-15-10; four (4) starters;
(c) [~~(3)~~] 60-30-10; three (3) starters;
(d) [~~(4)~~] 65-35; two (2) starters.

(2) 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. (1) 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:** [~~, a~~]

(a) Two (2) year old trotter must have been timed in 2:14 or faster;

(b) [~~a~~] Two (2) year old pacer must have been timed in 2:12 or faster;

(c) [~~a~~] Three (3) year old trotter must have been timed in 2:10 or faster; and

(d) [~~a~~] Three (3) year old pacer must have been timed in 2:08 or faster.

(2) A broken equipment break or an interference break will not be considered a break as stated in this section.

(3) 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.

(4) If the horse has a start subsequent to the eligibility certificate or photocopy being sent, the declarer **shall** [~~must~~] advise the race secretary of the commitment to race or the horse may be scratched from the race.

(5) 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 **shall** ~~[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 **shall** ~~[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 PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

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. **The function of this administrative regulation is to** ~~[This regulation will]~~ allow the department to permit the use of new parts and materials without amending specific **administrative** regulations for each new item. This **administrative** 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) A description of the part or material for which approval is sought;
(b) Available technical data; ~~[and]~~
(c) A listing of other authorities which have approved the use of the part or material; and
(d) Any other pertinent information requested by the committee.
(2)**(a)** The committee shall consider all parts or materials for which approval is sought and shall forward **its recommendations within** thirty (30) days ~~[thereafter its recommended disposition]~~ to the department.
(b) 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 **within thirty (30) days following the determination of the committee**.
(c) 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 **administrative** 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.

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

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, **Acts 1992 c. 462** [~~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 **Acts 1992 c. 462, Part I.G. 52.g** [~~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)**(a) Permit fees are required for inspections conducted by the cabinet or its representatives to determine compliance with:**

1. Administrative regulations adopted by the cabinet for salvage distributors and salvage processing plants; and

2. KRS 217.025, 217.035 and 217.037 applicable to food manufacturing plants and food storage warehouses.

(b) A fee according to the total square footage of the establishment shall be assessed as follows:

1. 0 - 5,000 square feet - $60.

2. 5,001 - 30,000 square feet - $110.

3. 30,001 - and over square feet - $210. [~~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)**(a) A fee shall be assessed for inspections of retail food stores, conducted by the cabinet or its representative to determine compliance with administrative regulations adopted by the cabinet pursuant to KRS 217.025, 217.035, 217.037 and 217.125(2) pertaining to:**

1. Adulteration;

2. Misbranding;

3. Packaging; and

4. Labeling of food products.

(b) The fee shall be assessed according to the total square footage of the establishment as follows:

1. 0 - 1,000 square feet - $20;

2. 1,001 - 10,000 square feet - $40; and

3. 10,001 - and over square feet - $70. [~~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) dollars for each vending commissary plus a fee for the total number of vending machines operated by the applicant as follows:**

(a) 1-25 machines - $80;
(b) 26-50 machines - $120;
(c) 51-100 machines - $160;
(d) 101-150 machines - $190; and
(e) 151 and over machines - $310. [~~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.

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

902 KAR 105:020. General requirements.

RELATES TO: KRS 211.870, 211.890, 211.993
STATUTORY AUTHORITY: KRS 194.050, 211.090, **Acts 1992 c. 462** [~~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~~]
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. (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.

(2) 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.

(3) Nothing contained in **this** [~~these~~] administrative regulation shall be deemed to require the certification of students enrolled in an approved course of instruction in relation to:

(a) The healing arts or allied health sciences; and

(b) 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) **An examination may not be required by the cabinet if an applicant submits:** [~~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.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

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

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

RELATES TO: KRS 224.01, 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.

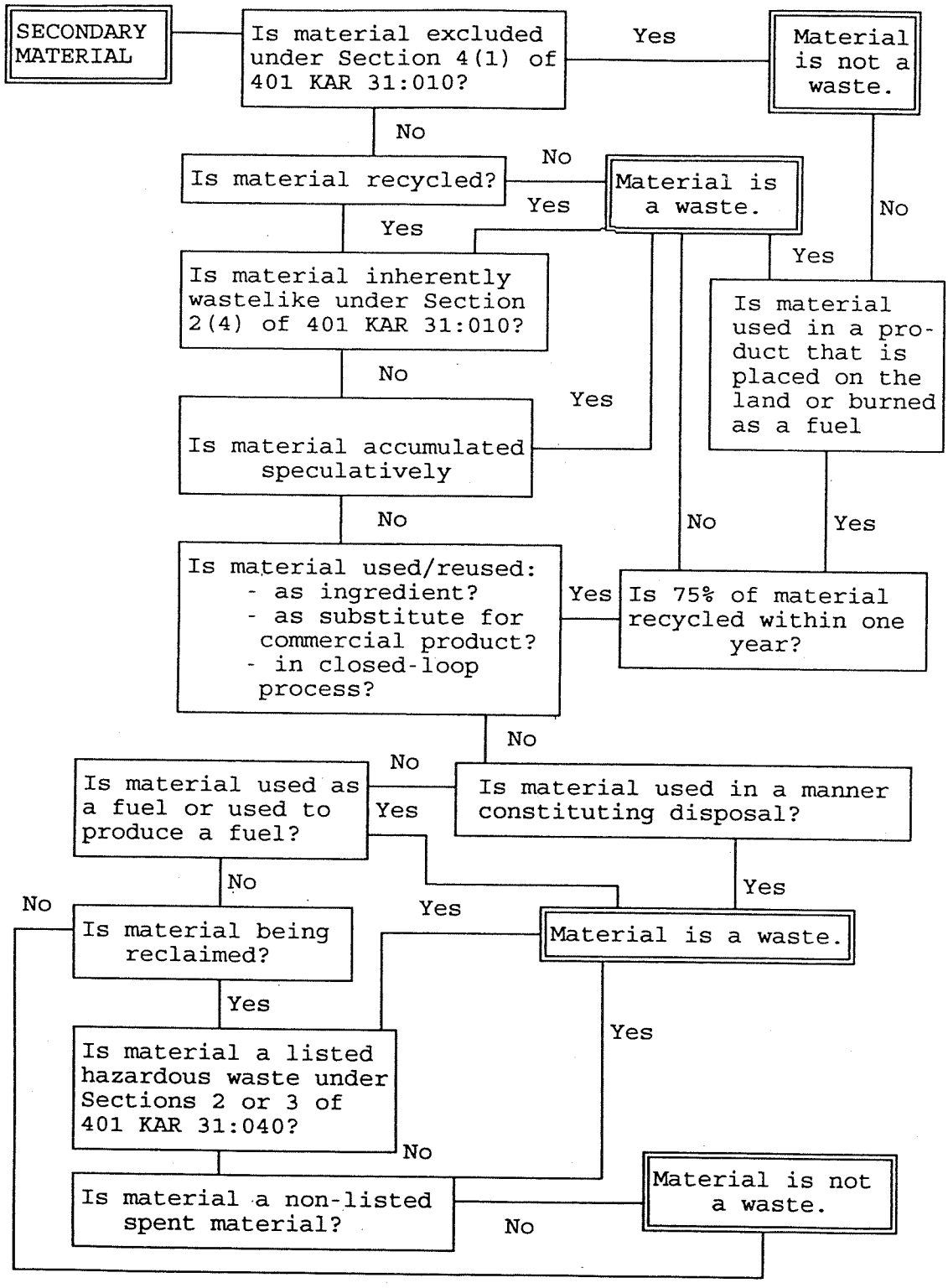
TABLE 1

	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 **Section 30:010 of RCRA and** 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; **or**

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; **and**

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; **and**

3. The sample is packaged so that it does not leak, spill, or vaporize from its packaging during shipment; **and**

4. The requirements of subparagraph a or b of this paragraph are met:

a. The transportation of each sample shipment complies with **DOT,** 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 **when the sample is collected** 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 modifications or change in specifications 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 **Section 3010 of RCRA and** 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 **study** 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 acute[~~ly~~] hazardous waste in a calendar month in quantities greater than set forth in this subsection, all quantities of that acute[~~ly~~] hazardous waste are subject to regulations applicable to generators of greater than 1,000 kilograms of nonacute[~~ly~~] 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 accumulated 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: August 13, 1992
FILED WITH LRC: August 13, 1992 at 1 p.m.

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

401 KAR 31:040. Lists of hazardous wastes.

RELATES TO: KRS 224.01, 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 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.	(I)*
F004	The following spent nonhalogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and 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,	(I,T)

	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.	
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 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.)	(T)
F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.	(H)
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	(T)

	of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	
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 washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
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	(T)

	surface impoundments at primary lead smelting facilities.	
Primary Zinc:		
K066	Sludge from treatment of process wastewater **and** [~~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-	51-43-4

	2-(methylamino)ethyl)-, (R)-	
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-hexachloro-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-hexachloro-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-Dimethylphenethylamine	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-benzodioxathiepen, 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-(methylthio)-,O-((methylamino)carbonyl)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, hexaethyl 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, tetraethyl 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-dichlorophenoxy)-, 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-	50-07-7

	methyl-, (1aS- (1aalpha, 8beta, 8aalpha, 8balpha))-	
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'-carbonimidoylbis (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-dichloroethylidene)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[~~phenol~~]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-dimethyl-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-	80-15-9

	phenylethyl-(R)	
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-tri-methyl-	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: August 13, 1992
FILED WITH LRC: August 13, 1992 at 1 p.m.

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

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	----------	---- (U036)

isomers)		
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(1,2-b) 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 $\underline{OsO_4}$ [O_2O_2] (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: August 13, 1992
FILED WITH LRC: August 13, 1992 at 1 p.m.

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

401 KAR 34:060. Groundwater protection.

RELATES TO: KRS 224.01, 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-Trichloro-phenoxypropionic acid)	0.01 mg/l

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

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

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

4. The proximity and withdrawal rates of groundwater users;

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

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

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

8. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste 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 **or** [~~of~~] more representative than that provided by the upgradient wells; **and**

(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 points. 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. **These methods** ~~[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~~

~~(c) 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(s) specified in the permit under Section 8(8) of this regulation. The method(s) shall compare data collected at the compliance point(s) 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 as [~~is~~] monitoring constituents, the owner or operator **may resample within one (1) month and repeat the 401 KAR 34:360 analysis. If the second analysis confirms the presence of new 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.

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 from land disposal under 401 KAR 37:030 (where no treatment standards have been established and no prohibition** ~~[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 standards 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 retained [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 wastes 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) [(c)] 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) **which identify wastes that are to be evaluated to determine land disposal prohibitions and treatment standards and** 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: August 13, 1992
FILED WITH LRC: August 13, 1992 at 1 p.m.

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

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. **Applicability dates set forth in this regulation are consistent with those adopted by USEPA. This regulation reflects those federal dates to assure consistency with the federal program. Enforcement of applicable provisions preceding the effective date of this regulation was the responsibility of USEPA. The cabinet assumed enforcement responsibility from USEPA upon the effective date of this regulation.**

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), **and (d)** 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 **and units** 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 (3) [~~(5)~~] of this section do not apply until:

(a) July 8, 1989, [~~November 8, 1988,~~] where the wastes are contaminated soil or debris **not** 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 **taken** [~~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, 1989,~~] 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, 1989,~~] 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(1) [~~(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: August 13, 1992
FILED WITH LRC: August 13, 1992 at 1 p.m.

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

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 **situation**; 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 **of** [~~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: August 13, 1992
FILED WITH LRC: August 13, 1992 at 1 p.m.

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

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 of a solid waste management area 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**, during the public comment period,** one is requested. **The hearing shall be held within fifteen (15) days of the close of the public comment period, with at least seven (7) days public notice.** 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 **in accordance with subsection (3)(b) and (c) of this section**; and

(5) The governing body shall respond **in writing** to **written** public comments within fifteen (15) days after the **close of the** public comment period. **The governing body shall publish a notice in a daily or weekly newspaper of general circulation in each county in the area designated by the plan that the written response to public comments is available to the public. The notice shall state where copies of the response are maintained and how it may be obtained. The governing body shall also mail the response to all comments to each individual who commented on the plan during the public comment period.**

Section 3. Submittal and Plan Review Process. (1) All plans shall be submitted **no later than the deadlines** [~~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 **of the solid waste management area approving** [~~. 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 **upon** either [~~upon~~] the initiative of the governing body **of the solid waste management area** 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 **necessary** [~~appropriate~~]. If the plan amendment is not **necessary** [~~appropriate~~], the cabinet shall inform the governing body that no amendment is required. If a plan amendment is **necessary** [~~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 **to correct a clerical error** [~~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 **ordinance,** resolution**, or regulation of** [~~by~~] the governing body approving the amendment and its submission to the cabinet;

(d) Copies of any **ordinances,** resolutions**, or regulations** 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 **ordinances, resolutions,** [~~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 **KRS 224.99-010 and 224.99-020** [~~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 **the** [~~each~~] governing body

of each solid waste management area 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" (August [~~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: August 13, 1992
FILED WITH LRC: August 13, 1992 at 1 p.m.

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

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 **established by KRS 224.43-710**.

Section 2. Financial Assistance Program. Financial assistance provided under this program may be used for **those** 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 **consists of the following** [~~shall include~~] four (4) [~~sub~~]parts [~~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 **to** conduct geotechnical studies required by KRS 224.855 for a new landfill or **for** 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) **Recipients** 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 levels of **available** financial assistance **are as follows** [~~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: August 13, 1992
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Amended After Hearing)

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. **(1)** 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.

(2) The National Association of Insurance Commissioners, which created the model regulation on which this regulation is based, has stated that its model regulation is not appropriate for a state which allows a private cause of action for unfair claims settlement practices. Accordingly, the sole purpose of this regulation is to provide guidance to the commissioner and his designees in their investigations, examinations, and administrative adjudication and appeals therefrom.

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: July 31, 1992
FILED WITH LRC: August 5, 1992 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Amended After Hearing)

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, **and** weeping or excoriating skin infections which cannot be adequately covered[~~, and a history of violent or abusive behavior~~].

RICE C. LEACH, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: August 1, 1992
FILED WITH LRC: August 3, 1992 at 2 p.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Amended After Hearing)

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, **revised August** [~~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: July 30, 1992
FILED WITH LRC: August 4, 1992 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, AUGUST 14, 1992

PUBLIC PROTECTION AND REGULATION CABINET
Board of Claims
(Proposed Amendment)

108 KAR 1:010. Board operation and claim procedure.

RELATES TO: KRS 44.070, 44.080, 44.086, 44.090
STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 44.080
NECESSITY AND FUNCTION: KRS 44.080 requires the Board of Claims to establish rules for its government and for the regulation of the method of pleading and practice before it. The purpose of this regulation is to establish rules for procedures for claims and rules for operation of the board.

Section 1. Meetings. (1) Additional meetings of the board may be called by the chairman or a majority of the board at such times and places as the call directs.

(2) Three (3) members of the board shall constitute a quorum.

(3) The board shall be considered in continuous session to enter orders.

(4) The Executive Director of the Board of Claims shall serve as secretary to the board and shall have authority to order the submission of briefs, set hearings, and issue such other orders as the board may direct.

Section 2. Filing of Claims; Response to Claims. (1) Claims shall be legibly written, typed or printed and mailed or delivered to the Board of Claims office in Frankfort, Kentucky.

(2) Each claim shall contain the name and address of the claimant, the amount he is claiming and a statement of facts sufficiently clear to show that the claimant is entitled to relief under the provisions of KRS 44.070 and to enable the defendant to investigate the claim and prepare its defense.

(3) Claims may be filed by the claimant or by an attorney or legal representative acting in the claimant's behalf.

(4) The board's secretary shall promptly furnish a copy of each claim to the head of the affected agency [~~and to the Attorney General~~].

(5) All claims under $1,000 shall be investigated by the administrative staff of the board. Within forty-five (45) days from the date receipt of claim is acknowledged to the claimant, the board shall, if the claim is for less than $500, issue Findings of Fact, and an Opinion and Order either awarding or denying the claim; if the claim is for between $500 and $1,000, the staff, upon completion of its investigation, shall report to all parties its findings as to negligence. Any party who is aggrieved by these findings may request a hearing within thirty (30) days, and if requested, such hearing shall be set by the Secretary of the board. If no hearing is requested, the board, upon expiration of the thirty (30) day period, will enter its final order in the matter.

(6) All claims over $1,000 shall be investigated by the agency concerned and, within thirty (30) days, the agency shall answer the charges in writing to the board and to the claimant.

(7) If the Attorney General wishes to enter the matter, he shall file such response as he desires with the board.

(8) If the response filed by the affected agency admits liability, the secretary shall submit the matter to the board at an early meeting.

(9) If the affected agency fails to respond to the board concerning its investigation within thirty (30) days, the secretary shall submit the matter to the board at an early meeting.

(10) If the response filed by the affected agency denies negligence in a claim whose value is $1,000 or greater, the secretary shall set a hearing before a hearing officer and shall notify the claimant and the head of the affected agency (or their attorneys) of the time and place of the hearing.

Section 3. Hearings. (1) Hearings shall be open to the public. The proceedings of hearings shall be taken by a stenographer. The hearing officer shall cause the hearing to be conducted with decorum.

(2) The proof required to support a claim shall be that required to support a claim in any court of competent jurisdiction in this Commonwealth.

(3) All testimony and proof shall be presented at the hearing before the hearing officer by all parties; however, the board, on oral motion at the hearing or on written motion thereafter, shall permit further proof during thirty (30) days following the hearing.

(4) Any claimant desiring to submit medical or other expert testimony shall be granted thirty (30) days after the hearing to do so and the defendant shall be granted forty-five (45) days thereafter to complete its proof. For good cause, these times may be extended by the board.

(5) If the claimant fails to appear at a scheduled hearing of which he has notice and fails to file with the board [~~show good cause~~] within five (5) days following the hearing a written statement that the board determines indicates good cause for his failure to appear, the board may order the claim dismissed. If the affected state agency fails to appear at the hearing, the hearing officer in his discretion may take the testimony of any witnesses present.

(6) After completion of proof and submission of the case for decision, the claimant shall have thirty (30) days to submit its brief; the defendant thirty (30) days thereafter and the claimant five (5) days for rebuttal. If the parties do not desire to submit briefs or should the board not desire that briefs be submitted, this fact should be made known at the hearing.

(7) The hearing officer shall furnish recommended [~~a~~] findings of fact, conclusions of law and order to the board, with copies to the claimant or his legal representative and the attorney for the defendant, within thirty (30) days after the record is completed. The claimant or his legal representative and the attorney for the defendant shall then have ten (10) days from the date of receipt of the recommended findings of fact, conclusions of law and order to file exceptions with the board. Failure to file exceptions on time shall constitute a waiver of the privilege to file exceptions.

Section 4. Board Decision. (1) Each claim shall be submitted to the board at an early meeting following the submission of the hearing officer's recommended findings of fact, conclusions of law and order and the exceptions, if any filed by the claimant or his legal representative and the attorney for the defendant [~~report~~].

(2) The board, or a majority of its members, shall render a decision on each claim at a board meeting.

(3) Regardless of the amount of any claim the matter shall be deemed finally adjudicated if the claim has been the subject of full board review.

(4) No testimony, oral argument, or other appearance by parties or counsel shall be permitted before the board unless the board for good cause expressly requests such testimony, oral argument, or appearance.

Section 5. Exchange of Facts by Parties to Contested Claims. All discovery procedures as outlined in the Kentucky Rules of Civil Procedure are applicable to proceedings before the board. Any party may request admissions of fact. If a party fails to admit a requested fact which is later established, that party shall be responsible for all costs necessary to establishing the fact. The parties are encouraged to stipulate the facts whenever possible.

JACK D. RAZOR, Chairman
APPROVED BY AGENCY: July 30, 1992
FILED WITH LRC: August 4, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 21, 1992, at 9 a.m. at 115 Myrtle Avenue, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 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: Sandy Godbey, Clerk, Board of Claims, 115 Myrtle Avenue, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandy Godbey

(1) Type and number of entities affected: The Attorney General's Office and all claims heard by a hearing officer.

(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: Claimants will be able to file exceptions to the hearing officer's reports.

(2) Effects on the promulgating administrative body: Will cease sending copies of all claims to Attorney General and board may have additional paperwork to review prior to making decision.

(a) Direct and indirect costs or savings: Minimal

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Amount of paperwork sent out by board will decrease but board may receive more paperwork on certain claims.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None available.

(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. All claimants are treated equally.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:044. Taking of migratory wildlife.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.300, 150.305, 150.320, 150.330, 150.340, 150.360, 150.603

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates where appropriate and add provisions governing use of steel shot.

Section 1. Seasons. (1) Doves: September 1 through September 30; October 10 [5] through November 2 [~~October 28~~]; November 28 [~~30~~] through December 3 [~~5~~].

(2) Woodcock: October 17 [~~15~~] through December 20 [~~18~~].

(3) Common snipe: September 16 through October 30 and November 26 through January 25, 1993 [~~October 15 through December 18~~].

(4) Wood duck and teal (blue-winged, green-winged and cinnamon teal): September 16 [~~18~~] through September 20 [~~22~~].

(5) Virginia and sora rails, common moorhen and purple gallinule: September 1 through November 9.

[~~Section 2. Limits.~~

~~Species~~	~~Bag Limits~~	~~Possession Limits~~
~~Doves~~	~~15~~	~~30~~
~~Woodcock~~	~~5~~	~~10~~
~~Common snipe~~	~~8~~	~~16~~
~~Wood ducks~~	~~2~~	~~4~~

~~The possession limit is double the daily bag limit.~~]

Section 2. [~~3.~~] Bag and Possession Limits. (1) Doves: bag limit fifteen (15) per day and thirty (30) in possession.

(2) Woodcock: bag limit five (5) per day and ten (10) in possession.

(3) Common snipe: bag limit eight (8) per day and sixteen (16) in possession.

(4) Virginia and sora rails: bag limit twenty-five (25) per day, singly or in aggregate and twenty-five (25) in possession.

(5) Common moorhen and purple gallinules: bag limit fifteen (15) per day singly or in aggregate and thirty (30) in possession.

(6) Wood duck and teal: bag limit four (4) per day of which not more than two (2) may be wood ducks and possession limit of eight (8) of which not more than four (4) may be wood ducks.

(7) [~~(1)~~] After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.

(8) [~~(2)~~] The above species (except doves) dressed in the field, or being prepared for transportation, shall have one (1) fully feathered wing or head attached to the bird for identification purposes.

Section 3. [~~4.~~] Shooting Hours. (1) Doves: from 11 a.m. until sunset during the period September 1 through September 30 and October 10 [5] through November 2 [~~October 28~~]; from sunrise to sunset during the period November 28 [~~30~~] through December 3 [~~5~~].

(2) Common snipe, [~~and~~] woodcock, Virginia and sora rails, purple gallinule and common moorhen: from one-half (1/2) hour before sunrise to sunset.

(3) Wood duck and teal: from one-half (1/2) hour before sunrise to sunset.

Section 4. [~~5.~~] Falconry Hunting. The wildlife species listed in this regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits apply to falconry hunting.

Section 5. [~~6.~~] Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:

(1) Ballard Wildlife Management Area, located in Ballard County.

(a) Doves: September 1 through September 30; and October 10 [5] through October 13 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.

(b) Woodcock [~~and snipe~~]: seasons closed.

(c) Common snipe: September 16 through October 13.

(d) Virginia and sora rails, purple gallinule and common moorhen: September 1 through October 13.

(e) [~~(c)~~] Wood duck and teal: Same as statewide. [~~September 18 through September 22. Areas designated by signs are closed hunting.~~]

(f) Areas designated by signs are closed to hunting.

(2) West Kentucky Wildlife Management Area, located in McCracken County.

(a) Doves: September 1 through September 30; and October 10

[5] through October 13 only.

(b) Woodcock and snipe: hunting permitted on tracts 2, 3, 6, and 7 only.

(c) All tracts designated by numbers followed by the letter "A" are closed to hunting.

(3) Central Kentucky Wildlife Management Area, located in Madison County.

(a) Doves: September 1 through September 30; and October 10 [5] through October 13 only.

(b) Woodcock [and snipe]: seasons closed.

(c) Common snipe: September 16 through October 13.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Doves: September 1 through September 30 and December 1 through December 3 [5] only.

(b) Woodcock [and snipe]: December 1 through December 20 [5] only.

(c) Common snipe: September 16 through September 25 and December 1 through January 25, 1993.

(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties.

(a) Doves: postwide from September 1 through September 25 [27] and November 28 [30] through December 3 [5]. On designated areas from September 26 [28] through September 28 [30]; October 10 [5] through November 2 [October 28].

(b) Woodcock: postwide from November 26 [28] through December 11 [13]. On designated areas only from December 12 [14] through December 20 [18].

(c) Snipe: postwide from September 16 through September 25, November 26 [28] through December 11 and January 2, 1993 through January 25, 1993 [13]. On designated areas only from December 12 [14] through December 20 [18].

(d) September wood duck and teal: September 17 [18] through 20 [22] only. Hunting permitted during these permits in designated areas only.

(6) Paintsville Lake Wildlife Management Area located in Johnson and Morgan counties and Dewey Lake Wildlife Management Area located in Floyd County.

(a) Doves: September 1 through September 30; and October 10 [5] through October 13 only.

(b) Wood duck and teal: September 16 [18] through September 20 [22].

(7) Grayson Lake Wildlife Management Area. All migratory bird hunters must check in and out daily at designated check stations.

(8) Yatesville Lake Wildlife Management Area. All migratory bird hunters must check in and out daily at designated hunter check stations.

(9) [(7)] Closed areas.

(a) The hunting of doves, woodcock, [and] common snipe, purple gallinule and common moorhen is prohibited on Camp Webb Refuge Area, Grayson Lake.

(b) Waterfowl bird hunting is prohibited on the following areas on Grayson Lake: within the no wake zone at the dam site marina, from the shores of Camp Webb and the State Park and on Deer Creek Fork of Grayson Lake. [the Camp Webb Refuge Area; the area north of Rosedale Point, Deer Creek Fork, west of Route 1496; within fifty (50) yards of the state park shoreline.]

(10) [(8)] Dove hunter guidelines on wildlife management areas. The department shall establish hunter density guidelines for dove hunting fields on department property. Hunters shall be advised by strategically located signs that these fields may exceed desired hunter densities and anyone entering the field shall do so at their own risk. [Upon entry, all hunters shall be advised that density guidelines may be exceeded and that they may be hunting at their own risk. If these densities are reached, hunters shall be so advised and instructed that they may hunt at their own risk, disperse to other fields, or wait until hunter densities subside, when other hunters may be allowed to replace those leaving on a first come, first served basis.] Any person behaving in an unsafe or uncooperative manner shall be immediately required to leave the premises.

Section 6. [7.] Waterfowl Stamp Requirements. Those hunting ducks during the experimental September duck season shall possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

Section 7. [8.] Use of Steel Shot. Only steel shot may be in possession when taking or attempting to take waterfowl statewide.

(1) Prohibition of lead shot for dove hunting. Lead shot is prohibited for the taking of doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island, [and] Kaler Bottoms and Westvaco Wildlife Management Areas.

(2) Possession of lead shot shells.

(a) Persons hunting waterfowl shall not have lead shot shells in their possession.

(b) Persons hunting doves on wildlife management areas listed in subsection (1) of this section shall not have lead shot shells in their possession.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUALLEN, Secretary

APPROVED BY AGENCY: June 12, 1992

FILED WITH LRC: August 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1992 at 9 a.m. at the Department of Fish and Wildlife Resources, Frankfort, Kentucky, in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by September 19, 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. 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: Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation. Steel shot will be required in two additional counties and half of another this year. Steel shot costs approximately $2 more per box of 25 shells than does lead shot.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($8.50 for residents) unless exempt by regulations. Waterfowl hunters would be required to possess a $15 federal migratory bird hunting and conservation stamp and a $5.25 state waterfowl stamp.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Randomly selected waterfowl hunters will be asked to report their hunting success by completing and mailing a federal waterfowl survey in a postage paid envelope.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $140,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The results of the waterfowl harvest survey will be tabulated and reported to the U.S. Fish and Wildlife Service in accordance with experimental hunting season agreement.

(3) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about $204 a season on food, lodging, transportation and equipment. This will add about $18,360,000 to the income of local businesses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: 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. Only one class of citizen, the hunter, is impacted by this regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 57, No. 133, Friday, July 10, 1992.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between September 1, 1992, and January 31, 1993, with a 65 day maximum season. Bag limits may be a maximum of 5 per day with 10 in possession. Wood duck and teal - season frameworks allow 5 days in September. Bag limits may total 4 per day with not more than 2 of these being wood ducks. Possession limit is 8 of which not more than 4 can be wood ducks. Dove - season frameworks allow either 70 or 60 days between September 1, 1992, and January 15, 1993. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season. Common snipe - season frameworks allow a 107 day season between September 1, 1992 and February 28, 1993. Bag and possession limit is 8 and 16, respectively. Virginia and sora rails - season framework between September 1, 1992 and January 20, 1993. Bag and possession limit of 25 per day, singly or in aggregate. Common moorhen and purple gallinule - season framework between September 1, 1992 and January 20, 1993. Daily bag limit of 15, singly or in aggregate. Possession limit is twice the daily bag limit.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

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: Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures.

JUSTICE CABINET
Department of Corrections
(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 administrative 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 administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised July 27 [~~June 15~~], 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, Kentucky Department of 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 (Amended 7/17/92)
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen [~~(Amended 6/15/92)~~]
2.2	Warden's Fund (Amended 7/17/92)
2.10	Surplus Property (Amended 7/17/92)
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 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 (Amended 7/17/92)
13.2 Health Maintenance Services [~~(Amended 6/15/92)~~]
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
14.2 Personal Hygiene Items (Amended 7/17/92)
14.3 Marriage of Inmates [~~(Amended 6/15/92)~~]
14-04-01 Legal Services Program
14.6 Inmate Grievance Procedures (Amended 7/17/92)
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties (Amended 7/17/92)
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 Inmate Account Restriction [~~(Amended 6/15/92)~~]
16.1 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 (Amended 7/17/92)
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 (Amended 7/17/92)
25.1 [~~-01-01~~] Gratuities (Amended 7/17/92)
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease Program (Amended 7/17/92)
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 Investiga-

tion 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: July 17, 1992
FILED WITH LRC: July 17, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 25, 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, Kentucky Department of Corrections, 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: 2,972 employees of the Department of Corrections, 9,553 inmates, 13,630 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 and because the regulation applies equally to all employees, inmates, parolees and visitors. Disparate treatment of any of these classes may produce complaints by that class and could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be violated as well as Sections 2 and 3 of the Kentucky Constitution which prohibit unequal or arbitrary treatment of persons.

JUSTICE CABINET
Department of Corrections
(Proposed Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

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 Department of Corrections, [~~Cabinet~~] the following policies and procedures, revised August 14 [~~July 15~~], 1992 are incorporated by reference and shall be referred to as Kentucky State Penitentiary Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of 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.

KSP 000000-06 Administrative Regulations
KSP 010000-04 Public Information and Media Communication
KSP 020000-15 Legal Assistance
KSP 02-01-01 Inmate Commissary Program
KSP 02-08-01 Inventory Records and Control (Added 8-14-92)
KSP 02-12-01 Inmate Personal Funds
[~~KSP 030000-01 Inventory Records and Control (Deleted 8-14-92)~~]
KSP 030000-04 Requisition and Purchase of Supplies and Equipment
KSP 040000-01 Management Information System
KSP 040000-02 Inmate Records
KSP 060000-01 Special Security Unit
KSP 060000-02 Special Management Units: Assignment, Classification Review and Release
KSP 060000-04 Protective Custody Unit
KSP 070000-20 Menu Preparation and Planning
KSP 070000-24 Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25 Food Service Inspections
KSP 070000-30 Therapeutic Diets
KSP 090000-01 Inmate Work Programs/Safety Inspections of Inmate Work Locations
KSP 09-08-01 Searches and Preservation of Evidence
KSP 100000-03 Disposition of Unauthorized Property
KSP 100000-05 Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-06 Inmate Mail and Packages
KSP 100000-08 Behavioral Counseling Record
[~~KSP 100000-09 Due Process/Disciplinary Procedures (Deleted 8-14-92)~~]
KSP 100000-14 Property Room: Clothing Storage and Inventory
KSP 100000-15 Uniform Cell Standards for Fire Safety, Sanitation and Security
KSP 100000-18 Inmate Grievance Committee Hearings
KSP 100000-20 Legal Services Program
KSP 100000-21 Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 110000-04 Preparole Progress Report
KSP 110000-06 General Guidelines of the Classification Committee
KSP 110000-07 Statutory Good Time Restoration
[~~KSP 110000-08 Award of Meritorious Good Time (Deleted 8-14-92)~~]
KSP 110000-10 Special Needs Inmates
KSP 110000-12 Unit Classification Committee - Inmate Work Assignments
KSP 110000-13 Classification Document
KSP 110000-15 Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16 Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-18 Functions of the Classification Committee
KSP 120000-07 Community Center Program
KSP 120000-08 Inmate Furloughs

KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-31	Extended Furloughs
~~[KSP 120000-32~~	~~Discharge of Inmates by Shock Probation (Deleted 8-14-92)]~~
KSP 13-01-01	Pharmacy Procedures [~~(Added 7/15/92)~~]
KSP 13-02-01	Hospital Services [~~(Added 7/15/92)~~]
KSP 13-02-02	Sick Call [~~(Added 7/15/92)~~]
KSP 13-02-03	Health Evaluations [~~(Added 7/15/92)~~]
KSP 13-02-04	Emergency Medical Procedure [~~(Added 7/15/92)~~]
KSP 13-02-05	Consultations [~~(Added 7/15/92)~~]
KSP 13-02-08	Medical Records [~~(Added 7/15/92)~~]
KSP 13-02-09	Psychiatric and Psychological Services [~~(Added 7/15/92)~~]
KSP 13-02-12	Dental Services for Special Management Units [~~(Added 7/15/92)~~]
KSP 13-02-13	Optometric Services [~~(Added 7/15/92)~~]
KSP 130000-10	Execution Plan
KSP 15-01-01	Inmate Grooming and Dress Code
KSP 15-03-01	Award of Meritorious Good Time (Added 8-14-92)
KSP 15-06-01	Due Process/Disciplinary Procedures (Added 8-14-92)
KSP 15-10-01	Discharge of Inmates by Shock Probation (Added 8-14-92)
KSP 16-01-01	Visiting Program
KSP 16-03-02	Inmate Telephone Access
KSP 17-01-01	Inmate Personal Property
KSP 19-05-01	Correctional Industries
KSP 20-04-01	Educational Programs

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: August 14, 1992
FILED WITH LRC: August 14, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 21, 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 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: 358 employees of the Kentucky State Penitentiary, 803 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.

JUSTICE CABINET
Department of Corrections
(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 administrative 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 administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised August 14 [~~June 24~~], 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, Department of Corrections, 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
NTC 10-02-01	Protective Custody Unit
NTC 10-03-01	Protective Custody
NTC 11-03-01	Food Services: General Guidelines
NTC 11-04-01	Food Service: Meals
NTC 11-04-02	Menu, Nutrition and Special Diets
NTC 11-05-02	Health Standards and Regulations for Food Service Employees
NTC 11-06-01	Inspection and Sanitation
NTC 11-07-01	Purchasing and Storage of Food Products
NTC 12-01-01	Institutional Inspection
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02	Issuance of Personal Hygiene Products

NTC 13-01-01 Emergency Medical Care Plan
NTC 13-01-02 Emergency and Specialized Health Services
NTC 13-02-01 Administration and Authority for Health Services
NTC 13-03-01 Sick Call and Pill Call
NTC 13-04-01 Utilization of Pharmaceutical Products
NTC 13-05-01 Dental Services
NTC 13-05-02 Health Maintenance Dental Services
NTC 13-05-03 Dental Radiation Levels
NTC 13-05-04 Attest Steam Incubator
NTC 13-06-01 Licensure and Training Standards
NTC 13-07-01 Provisions for Health Care Delivery
NTC 13-08-01 Medical and Dental Records
NTC 13-09-01 Special Diets
NTC 13-11-01 Inmate Health Screening and Evaluation
NTC 13-12-01 Special Health Care Programs
NTC 13-17-01 Inmates Assigned to Health Services
NTC 13-19-01 Mental Health Care Program
NTC 13-19-03 Suicide Prevention and Intervention Program
NTC 13-20-01 Infectious Disease
NTC 13-20-02 Infection Control
NTC 13-20-03 Disposal of Biohazard Waste
NTC 13-21-01 Vision Care and Optometry Services
NTC 13-22-01 Informed Consent
NTC 13-23-01 Special Needs Inmates
NTC 14-01-01 Legal Services Program
NTC 14-01-02 Receiving, Viewing, Handling and Storage of Video Tapes [~~(Revised 6/24/92)~~]
NTC 14-02-01 Inmate Grievance Procedure [~~(Revised 6/24/92)~~]
NTC 14-03-01 Inmate Rights and Responsibilities [~~(Revised 6/24/92)~~]
NTC 14-03-02 Board of Claims [~~(Revised 6/24/92)~~]
NTC 15-01-01 Restoration of Forfeited Good Time [~~(Revised 6/24/92)~~]
NTC 15-02-01 Due Process/Disciplinary Procedures [~~(Revised 6/24/92)~~]
NTC 15-02-02 Extra Duty Assignments [~~(Revised 6/24/92)~~]
NTC 15-02-03 Hearing Officer [~~(Revised 6/24/92)~~]
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail [~~(Revised 6/24/92)~~]
NTC 15-03-02 Rules and Regulations for General Population Dormitories [~~(Revised 6/24/92)~~]
NTC 15-04-01 Inmate Identification [~~(Revised 6/24/92)~~]
NTC 16-01-01 Mail Regulations [~~(Revised 6/24/92)~~]
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 [~~(Revised 6/24/92)~~]
NTC 16-05-01 Telephone Use and Control [~~(Revised 6/24/92)~~]
NTC 17-01-01 Personal Property Control (Revised 8-14-92)
NTC 17-01-02 Authorized Inmate Personal Property (Revised 8-14-92)
NTC 17-01-03 Unauthorized Inmate Property (Revised 8-14-92)
NTC 17-01-04 Disposition of Unauthorized Property (Revised 8-14-92)
NTC 17-01-05 State Issue and Required Inmate Clothing (Revised 8-14-92)
NTC 17-03-01 Assessment/Orientation (Revised 8-14-92)
NTC 18-01-01 Preparole Progress Report (Revised 8-14-92)
NTC 18-02-01 Classification (Revised 8-14-92)
NTC 18-02-02 Classification - 48 Hour Notification (Revised 8-14-92)
NTC 18-03-01 Special Notice Form (Revised 8-14-92)
NTC 18-05-01 Transfers of Inmates (Revised 8-14-92)
NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center (Revised 8-14-92)
NTC 19-01-01 Inmate Work Program
NTC 19-01-03 Temporary Leave from Job Assignment (Revised 8-14-92)
NTC 19-02-01 Correctional Industries (Revised 8-14-92)
NTC 19-02-02 Guidelines for Correctional Industries (Revised 8-14-92)
NTC 20-01-01 Academic School Program
NTC 20-02-01 Vocational School
NTC 20-02-02 Live Work Projects in Vocational School Classes (Revised 8-14-92)
NTC 21-01-01 Library Services (Revised 8-14-92)
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: August 14, 1992
FILED WITH LRC: August 14, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 21, 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, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 275 employees of the Northpoint Training Center, 894 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.

JUSTICE CABINET
Department of Corrections
(Proposed Amendment)

501 KAR 6:140. Bell County Forestry Camp.

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 Department of Corrections [~~Cabinet~~] the following policies and procedures, revised August 14, 1992 [~~September 13, 1991~~] are incorporated by reference and shall be referred to as Bell County Forestry Camp Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of 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.

BCFC 01-02-01 Organization and Assignment of Responsibility
BCFC 01-04-02 Extraordinary Occurrence Procedure
BCFC 01-05-01 Procedures Office: Duties and Responsibilities
BCFC 01-08-01 Public Information and Inmate Access to News Media
BCFC 01-09-01 Staff Participation in Professional Organization and Conferences; Provision for Leave and Reimbursement for Expenses
BCFC 01-11-01 Institutional Duty Officer's Responsibilities
BCFC 02-01-02 Fiscal Management: Accounting Procedures
BCFC 02-01-03 Fiscal Management: Agency Funds
BCFC 02-01-04 Fiscal Management: Insurance
BCFC 02-01-05 Fiscal Management: Budget
BCFC 02-01-06 Fiscal Management: Audit
BCFC 02-02-01 Inmate Accounts
BCFC 02-02-02 Inmate Control of Personal Funds
BCFC 02-02-03 Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
BCFC 02-03-01 Purchase Orders
BCFC 02-04-01 Processing of Invoices
BCFC 02-05-01 BCFC Materials Receiving Procedure
BCFC 02-06-01 Property Inventory
BCFC 04-01-01 Employee Training and Development
BCFC 05-01-01 Information System
BCFC 06-01-01 Offender Records
BCFC 06-02-01 Storage of Expunged Records
BCFC 06-03-01 Court Trips
BCFC 06-03-02 Receipt of Order of Appearance
BCFC 08-02-01 Fire Prevention
BCFC 08-03-01 Fire Procedures
BCFC 08-03-02 Fire Extinguishers and Their Use
BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances
BCFC 08-09-02 OSHA Hazard Communication Program
BCFC 09-06-01 Search Policy/Disposition of Contraband
BCFC 09-14-01 Bell County Forestry Camp - Restricted Area
BCFC 10-01-01 Special Management Inmates
BCFC 11-01-01 Food Services: General Guidelines
BCFC 11-02-01 Food Service: Security
BCFC 11-03-01 Dining Room Guidelines
BCFC 11-04-01 Food Service: Meals
BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets
BCFC 11-05-02 Health Requirements of Food Handlers
BCFC 11-06-01 Food Service: Inspection and Sanitation
BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products
BCFC 11-08-01 Staff/Visitor Meals
BCFC 12-01-01 Sanitation, Living Conditions Standards, and Clothing Issues
BCFC 12-01-02 Bed Areas, Assignments/Conditions Standards
BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry
BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule
BCFC 12-03-02 Barbershop Services and Equipment Control
BCFC 12-04-01 Institutional Inspections
BCFC 12-05-01 Fire Safety and Use of Noncombustible Receptacles
BCFC 12-06-01 Pest Control
BCFC 13-01-01 Organization of Health Services
BCFC 13-02-01 Health Maintenance Services: Sick Call and Pill Call
BCFC 13-03-01 Dental Policy/Sick Call
BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations
BCFC 13-05-01 Licensure and Training Standards
BCFC 13-06-01 Suicide Prevention and Intervention Program
BCFC 13-06-02 First Aid/CPR Training Program
BCFC 13-06-03 Emergency Medical/Dental Care Services
BCFC 13-07-01 Health Records
BCFC 13-08-01 Special Diets
BCFC 13-09-01 Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death
BCFC 13-10-01 Health Education/Special Health Programs
BCFC 13-11-01 Informed Consent
BCFC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC
BCFC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)
BCFC 13-13-01 Identification of Special Needs Inmates
BCFC 13-14-01 Use of Pharmaceutical Products
BCFC 13-15-01 Medical Restraints
BCFC 13-16-01 Specialized Health Services
BCFC 13-17-01 Vision Care/Optometry Services
BCFC 13-18-01 Infection Control (Added 8-14-92)
BCFC 14-01-01 Inmate Rights and Responsibilities
BCFC 14-02-01 Legal Services Program
BCFC 14-03-01 Inmate Grievance Procedure
BCFC 14-04-01 Inmate Participation in Authorized Research
BCFC 15-01-01 Due Process/Disciplinary Procedures
BCFC 16-01-01 Inmate Visiting
BCFC 16-02-01 Telephone Communications
BCFC 16-03-01 Mail Regulations
BCFC 16-03-02 Inmate Packages [~~(Revised 9/13/91)~~]
BCFC 17-01-01 Assessment/Orientation Procedure
BCFC 17-02-01 Inmate Reception Process
[~~BCFC 17-03-01 Inmate Personal Property and Property Control (Deleted 8-14-92)~~]
BCFC 17-04-01 Unauthorized Items
BCFC 17-05-01 Inmate Canteen
BCFC 18-01-01 Institutional Classification Committee
BCFC 18-02-01 Classification Document
BCFC 18-03-01 Classification Process
BCFC 18-03-02 Classification Program Planning
BCFC 18-03-03 Population Category Status
BCFC 18-04-01 Instructions for Six Month Review
BCFC 18-05-01 Transfers to Other Minimum Security Institutions
BCFC 19-01-01 Job and Vocational Program Assignments
BCFC 19-02-01 Government Service Details
BCFC 20-01-01 Academic/Vocational School
BCFC 20-01-02 Testing and Verification Procedure
BCFC 20-02-01 Educational Program Planning
BCFC 20-03-01 Academic and Vocational Curriculum
BCFC 20-04-01 Educational Personnel Practices
BCFC 21-01-01 Library Services
BCFC 22-01-01 Recreation and Inmate Activities
BCFC 22-02-01 Inmate Clubs and Organizations
BCFC 22-02-02 Conducting Inmate Organizational Meetings and Programs
BCFC 22-03-01 Privilege Trips [~~(Revised 9/13/91)~~]
BCFC 23-01-01 Religious Service
BCFC 23-02-01 Visitors for Religious Programs
BCFC 23-03-01 Marriage of Inmates
BCFC 24-01-01 Social Services and Counseling Program

BCFC 24-01-02 Casework Services
BCFC 25-01-01 Release Preparation Program Description
BCFC 25-02-01 Temporary Release/Community Center Release
BCFC 25-02-02 Furloughs
BCFC 25-03-01 Preparole Progress Report
BCFC 25-03-02 Parole Eligibility Dates
BCFC 25-04-01 Inmate Discharge Procedure
BCFC 26-01-01 Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: August 14, 1992
FILED WITH LRC: August 14, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 21, 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, 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: 42 employees of the Bell County Forestry Camp and 200 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 50:010. Definitions relating to 602 KAR Chapter 50.

RELATES TO: KRS 183.861 to 183.990, 14 CFR 91.119
STATUTORY AUTHORITY: KRS 183.861
NECESSITY AND FUNCTION: To define [~~certain~~] terms used in the administrative regulations of the Kentucky Airport Zoning Commission.

Section 1. Administrative Terms. (1) "Administrator" means the Administrator of the Kentucky Airport Zoning Commission or any individual to whom he has delegated his authority in the matter concerned.
(2) "Commission" means the Kentucky Airport Zoning Commission created pursuant to KRS 183.861 to 183.990.
(3) "FAA" means the Federal Aviation Administration.
(4) [~~(3)~~] "Local zoning body" means an independent, joint or regional planning commission or any local government which is a member of a planning unit created pursuant to KRS Chapter 100.

Section 2. Aeronautical and Zoning Terms. (1) "Aeronautical study" means a review or analysis of the effect of the proposed construction or alteration of a structure upon the operation of an airport and the safe and efficient utilization of the navigable airspace.
(2) "Aircraft" means a heavier than air fixed-wing aircraft or rotocraft that depends principally on its engine for flight through the air.
(3) [~~(1)~~] "Airport" [~~as used in these regulations,~~] means any area of land or water used in maneuvering for landing and taking off of aircraft operated or constructed by any person, an airport board or other governmental agency located within the Commonwealth which is available for public use and is designed for the landing and taking off of aircraft, and any appurtenant areas used, or intended for use, for airport building facilities, or rights of way, and all airport buildings and facilities located thereon; including, but not limited to, runways, taxiways, aircraft ramps, terminal and cargo buildings, gates, hangars, shops, service buildings, automobile parking, motels, restaurants, retail and wholesale stores, banks, automobile service facilities and garages, and entrance and service roads used or useful in connection with or as a part of the airport.
(4) "Airport land use permit" means the approval by order of the commission of a request by a publicly-owned airport to change a use or activity within an airport to one which is otherwise prohibited by the administrative regulation of the commission.
(5) "Airport master plan", "airport layout plan" or "airport map" means the basic plan for the layout of an existing or proposed publicly-owned airport that shows at a minimum:
(a) The present boundaries of the airport and of the off-site area that the owner of a publicly-owned airport owns or controls for airport purposes, and of the proposed additions to the airport boundaries;
(b) The location and nature of existing and proposed airport facilities (such as runways, taxiways, aprons, terminal buildings, hangars, and roads) and of their proposed modification and extensions; and
(c) The location of existing and proposed nonaviation areas, and of their existing improvements.
(6) "Airport reference point" means that point on an airport which is used to geographically locate the airport.
(7) "Alter a structure" means to increase or decrease the height of a structure or change the visibility of a structure by painting, marking or lighting the structure in a manner different from the painting, marking, and lighting standards set forth in the administrative regulations of the commission.
(8) "Approach surface" means an imaginary surface at an airport longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.
(a) The inner edge of the approach surface shall be the same width as the primary surface and shall extend uniformly to a width of:
1. 1,250 feet for that end of a utility runway with only visual approaches;
2. 1,500 feet for that end of a runway other than a utility runway with only visual approaches;
3. 2,000 feet for that end of a utility runway with a nonprecision instrument approach;
4. 3,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths (3/4) of a statute mile;
5. 4,000 feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths (3/4) statute mile; and
6. 16,000 feet for precision instrument runways.
(b) The approach surface shall extend for a horizontal distance of:
1. 5,000 feet at a slope of twenty (20) to one (1) for all utility and

visual runways;

2. 10,000 feet at a slope of thirty-four (34) to one (1) for all nonprecision instrument runways other than utility; and

3. 10,000 feet at a slope of fifty (50) to one (1) with an additional 40,000 feet at a slope of forty (40) to one (1) for all precision instrument runways.

(c) The outer width of an approach surface to an end of a runway shall be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

(9) "Conical surface" means an imaginary surface at an airport extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of 4,000 feet.

(10) "En route obstacle clearance area" means that airspace needed for an airway, a feeder route, or a Federal Aviation Administration approved off-airway route for the Kentucky airports described in the "U.S. Terminal Procedures, Southeast Volume 1 of 3".

(11) "Established airport elevation" means the highest point on an airport's existing or planned runway expressed in feet above mean sea level.

(12) "Horizontal surface" means an imaginary horizontal plane at an airport 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc shall be:

(a) 5,000 feet for all runways designated as utility or visual; or

(b) 10,000 feet for all other runways.

(c) The radius of the arc specified for each end of a runway shall have the same arithmetical value. That value shall be the highest determined for either end of the runway. If a 5,000-foot arc is encompassed by tangents connecting two (2) adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(13) "Navigable airspace" means air space at and above the minimum safe altitudes of flight and the air space necessary for normal landing or taking off of aircraft. Except where necessary for takeoff and landing, the minimum safe altitudes as defined in 14 CFR 91.119 are:

(a) Over any congested area of a city, town or settlement, or over any open air assembly of persons, an altitude of 1000 feet above the highest obstacle within a horizontal radius of the aircraft;

(b) Over other than congested areas, an altitude of 500 feet above the surface except over open water or sparsely populated areas; or

(c) Over open water or sparsely populated areas, an altitude of 500 feet above any person, vessel, vehicle or structure.

(14) "Permit" means the written authorization to alter or construct a structure issued in accordance with the findings and directions of the commission pursuant to its administrative regulations.

(15) "Person" means any individual, firm, partnership, corporation, company, association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

(16) "Primary surface" means an imaginary surface longitudinally centered on a runway. If the runway has a specially prepared hard surface, the primary surface shall extend 200 feet beyond each end of that runway. If the runway has no specially prepared hard surface, or planned hard surface, the primary surface shall end at each end of that runway. The elevation of any point on the primary surface shall be the same as the elevation of the nearest point on the runway centerline. The width of a primary surface shall be the width prescribed below for the most precise approach existing or planned for either end of that runway:

(a) 250 feet for a utility runway having only visual approaches;

(b) 500 feet for a utility runway having nonprecision instrument approaches; or

(c) For other than a utility runway the width shall be:

1. 500 feet for a visual runway having only visual approaches;

2. 500 feet for a nonprecision instrument runway having visibility minimums greater than three-fourths (3/4) statute mile; or

3. 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths (3/4) of a statute mile, and for a precision instrument runway.

~~[(2) "Jurisdictional surface" means that surface extending from the periphery of the runway airport reference points as established on the zoning map and extending outward and upward therefrom at a slope and horizontal distance as defined in these regulations.]~~

(17) [~~(3)~~] "Publicly-owned [~~use~~] airport" means an airport that is open to the general public without prior request to use the airport and which is owned by a public agency, governmental body, airport board, or quasi-governmental body.

(18) "Publicly-owned airport imaginary surfaces" means the air space around an airport necessary for the safe landing and taking off of aircraft. The size of each imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach existing or planned for that runway end. The types of imaginary surfaces are defined in this section.

(19) [~~(4)~~] "Runway" means the surface of an airport used for landing and taking off of aircraft as depicted on the airport zoning map, airport master plan or [~~, and~~] Federal Aviation Administration (FAA) form 7480-1, Notice of Landing Area Proposal. The[~~re are four~~] types of runways and their approaches for airport zoning purposes are:

(a) "Nonprecision instrument runway" means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned, and for which no precision approach facilities are planned, or indicated on an FAA planning document.

(b) "Precision instrument runway" means a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), microwave landing system (MLS), or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA approved airport layout plan or any other FAA planning document.

~~[(c) "Utility runway" means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less.]~~

(c) [~~(d)~~] "Visual runway" means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an FAA approved airport layout plan, or by any planning document submitted to the FAA by competent authority.

(d) "Utility runway" means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less.

(e) "Other than utility runway" means a runway that is constructed for and intended to be used by aircraft with a maximum gross weight both above and below 12,500 pounds. The aircraft may be propeller-driven, turbo-propelled, or jet-propelled.

(20) "Terminal obstacle clearance area" means that airspace needed for the initial, intermediate, final and missed approach segments of an instrument approach procedure and the circling approach in instrument departure areas for the Kentucky airports described in the "U.S. Terminal Procedures, Southeast Volume 1 of 3".

~~[(5) "Navigable airspace" means air space above the minimum safe altitudes of flight prescribed by the regulations of the Federal Aviation Administration FAR Part 91.79 consistent therewith, and includes the air space necessary for normal landing or taking off of aircraft.~~

~~(6) Public airport imaginary surfaces. The size of each such imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach existing or planned for that runway end.~~

~~(a) Horizontal surface - a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:~~

~~1. 5,000 feet for all runways designated as utility or visual;~~

~~2. 10,000 feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000 foot arc is encompassed by tangents connecting two (2) adjacent 10,000 foot arcs, the 5,000 foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.~~

~~(b) Conical surface - a surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of 4,000 feet.~~

~~(c) Primary surface - a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of a primary surface shall be the width prescribed below for the most precise approach existing or planned for either end of that runway:~~

~~1. 250 feet for a utility runway having only visual approaches.~~

~~2. 500 feet for a utility runway having nonprecision instrument approaches.~~

~~3. For other than a utility runway the width shall be:~~

~~a. 500 feet for a visual runway having only visual approaches.~~

~~b. 500 feet for a nonprecision instrument runway having visibility minimums greater than three fourths (3/4) statute mile.~~

~~c. 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three fourths (3/4) of a statute mile, and for a precision instrument runway.~~

~~(d) Approach surface - a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.~~

~~1. The inner edge of the approach surface is the same width as the primary surface and it extends uniformly to a width of:~~

~~a. 1,250 feet for that end of a utility runway with only visual approaches;~~

~~b. 1,500 feet for that end of a runway other than a utility runway with only visual approaches;~~

~~c. 2,000 feet for that end of a utility runway with a nonprecision instrument approach;~~

~~d. 3,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three fourths (3/4) of a statute mile;~~

~~e. 4,000 feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three fourths (3/4) statute mile; and~~

~~f. 16,000 feet for precision instrument runways.~~

~~2. The approach surface extends for a horizontal distance of:~~

~~a. 5,000 feet at a slope of twenty (20) to one (1) for all utility and visual runways;~~

~~b. 10,000 feet at a slope of thirty four (34) to one (1) for all nonprecision instrument runways other than utility; and~~

~~c. 10,000 feet at a slope of fifty (50) to one (1) with an additional 40,000 feet at a slope of forty (40) to one (1) for all precision instrument runways.~~

~~3. The outer width of an approach surface to an end of a runway will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.]~~

(21) [~~(e)~~] "Transitional surface" means the imaginary surface at an airport which [~~these surfaces~~] extends outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of seven (7) to one (1) from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

~~[(7) "Aircraft" means a heavier than air fixed wing aircraft or rotocraft that depends principally on its engine(s) for flight through the air.~~

~~(8) "Airport reference point" means that point on an airport which is used to geographically locate the airport.~~

~~(9) "Terminal obstacle clearance area" means that airspace needed for the initial, intermediate, final and missed approach segments of an instrument approach procedure and the circling approach in instrument departure areas for an airport as described in the U.S. Standard Terminal Instrument Procedures.~~

~~(10) "Enroute obstacle clearance area" means that airspace needed for an airway, a feeder route, or a Federal Aviation Administration approved off airway route as prescribed in the U.S. Standard Terminal Instrument Procedures.]~~

Section 3. The publication of the Federal Aviation Administration "U.S. Terminal Procedures, Southeast Volume 1 of 3" published June 25, 1992 is incorporated by reference as a part of this administrative regulation. A copy of the U.S. Terminal Procedures, Southeast Volume 1 of 3" is on file with the administrator and may be viewed or photocopied at his office on weekdays between 8 a.m. and 4:30 p.m. eastern time. His address is Office of Aeronautics, Kentucky Airport Zoning Commission, 421 Ann Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4480. [~~General Definitions. (1) "Person" means any individual, firm, partnership, corporation, company, association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.~~

~~(2) "Structure" means any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks, and overhead transmission lines, and objects of natural growth whether temporary or permanent.~~

~~(3) "Alter a structure" means to increase or decrease the height of a structure or change the visibility of a structure by painting, marking or lighting the structure in a manner different from the painting, marking, and lighting standards set forth in the regulations of the commission.~~

~~Section 4. Airport Master Plan. As used in the regulations of the commission, an approved "Airport Master Plan," "airport layout plan" or "airport map" means the basic plan for the layout of a public airport that shows as a minimum:~~

~~(1) The present boundaries of the airport and of the off site area that the owner of a public airport owns or controls for airport purposes, and of the proposed additions to the airport boundaries;~~

~~(2) The location and nature of existing and proposed airport facilities (such as runways, taxiways, aprons, terminal buildings, hangars, and roads) and of their proposed modification and extensions; and,~~

~~(3) The location of existing and proposed nonaviation areas, and of their existing improvements.~~

~~Section 5. Definitions Relating to Permits. (1) "Permit" means the written authorization to alter or construct a structure issued in accordance with the findings and directions of the commission pursuant to its regulations.~~

~~(2) "Airport land use permit" means the approval by order of the commission of a request by a public airport to change a use or activity within an airport to one which is otherwise prohibited by the regulations of the commission.~~

~~(3) "Variance permit" means a permit as defined above.~~

~~Section 6. "Aeronautical study" means a review or analysis of the effect of the proposed construction or alteration of a structure upon the operation of air navigation facilities and the safe and efficient~~

~~utilization of the navigable airspace.~~]

BOB G. BODNER, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: July 27, 1992
FILED WITH LRC: August 13, 1992 at 11 a.m.
PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on September 23, 1992 at 10 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by September 18, 1992, so notify this agency. 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 the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by September 18, 1992. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until September 18, 1992. Send written notification of intent to attend the public comment 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: Sandra G. Pullen
(1) Type and number of entities affected: All persons in the state who wish to construct a structure which is 200 feet or more above ground level; all aircraft operators in the state; and all aircraft passengers in the state.
(a) Direct and indirect costs or savings to those affected: None as a result of this administrative regulation.
1. First year:
2. Continuing cost or savings:
3. Additional factors increasing or decreasing costs: (note any effects upon competition):
(b) Reporting and paperwork requirements: None as a result of this administrative regulation.
(2) Effects on the promulgating administrative body: None as a result of this administrative regulation.
(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 or paperwork requirements: None as a result of this administrative regulation.
(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of placing all needed definitions in each of the administrative regulations of ~~the~~ Kentucky Airport Zoning Commission was rejected because of the highly technical nature of the administrative regulations. It was felt that the other regulations would be overly long and complex.
(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: The Kentucky Supreme Court has determined that the Kentucky Airport Zoning Commission's authority does not extend to privately-owned public-use airports. Therefore, all references to those facilities had to be removed.
Tiering: Was tiering applied? No. There is no need for tiering of definitions.

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 50:020. Kentucky airport zoning administrator.

RELATES TO: KRS 183.861 to 183.990
STATUTORY AUTHORITY: KRS 183.861
NECESSITY AND FUNCTION: To create the position of the administrator of the Kentucky Airport Zoning Commission and to define his duties and authority so [~~such~~] that the Office of the Kentucky Airport Zoning Commission may be kept open continuously for the transaction of business and to expedite the business of the commission for the convenience of the public.

Section 1. There shall be appointed upon order of the commission, an individual who shall be the administrator of the commission. The individual shall be a state merit system employee subject to all of the provisions of KRS Chapter 18A and the administrative regulations promulgated pursuant to that chapter.

Section 2. It shall be the duty of the administrator to maintain a public file in the [~~offices of the~~] Kentucky Transportation Cabinet, Office of Aeronautics showing airport zoning maps of each publicly-owned [~~use~~] airport within the state and the area around the [~~such~~] airport over which the commission [~~it~~] has jurisdiction for zoning purposes and to maintain a public file showing any administrative regulations adopted by the commission pertaining to land uses.

Section 3. The administrator shall have the authority and power, subject to the review of the commission, to:
(1) Reject, approve and disapprove applications for permits, as set forth in the administrative regulations of the commission;
(2) Conduct investigations of [a] violation of the administrative regulations of the commission;
(3) Conduct aeronautical studies of applications for permits;
(4) Direct the preparation of all documents, papers, and evidence necessary to enforcement of the statutes and administrative regulations of the commission pursuant to KRS 183.861, 183.873 and 183.990;
(5) Cause notices to be given of all hearings of the commission that are required by statute or administrative regulation; and
(6) Perform all duties and functions that may [~~hereinafter~~] be delegated to the administrator either by the administrative regulations of the commission or its orders.

BOB G. BODNER, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: July 27, 1992
FILED WITH LRC: August 13, 1992 at 11 a.m.
PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on September 23, 1992 at 10 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by September 18, 1992, so notify this agency. 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 the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by September 18, 1992. This request does not have to be in writing. If

you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until September 18, 1992. Send written notification of intent to attend the public comment 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: Sandra G. Pullen

(1) Type and number of entities affected: All persons in the state who wish to construct a structure which is 200 feet or more above ground level and the members of the Kentucky Airport Zoning Commission.

(a) Direct and indirect costs or savings to those affected: None as a result of this administrative regulation.

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: None as a result of this administrative regulation.

(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 or paperwork requirements: The zoning administrator will no longer be required to prepare airport zoning maps for the privately-owned, public-use airports.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not amending the administrative regulation was rejected for consistency with changes being made to the other administrative regulations of the Kentucky Airport Zoning Commission.

(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: The Kentucky Supreme Court has determined that the Kentucky Airport Zoning Commission's authority does not extend to privately-owned public-use airports. Therefore, all references to those facilities had to be removed.

Tiering: Was tiering applied? No. There is no need for tiering of the job requirements and duties of one position.

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 50:030. Jurisdiction of the Kentucky Airport Zoning Commission.

RELATES TO: KRS 183.861, 183.865, 183.867, 183.870

STATUTORY AUTHORITY: KRS 183.861

NECESSITY AND FUNCTION: To define the areas over which the Kentucky Airport Zoning Commission has [assumes] jurisdiction for the purpose of zoning in accordance with KRS Chapter 183. To specify when the owner or person who has control over a structure which encroaches on the jurisdiction of the Kentucky Airport Zoning Commission shall apply for a permit. [the statutes.]

Section 1. The commission has [assumes] zoning jurisdiction over that airspace over and around the publicly-owned [use] airports within the Commonwealth which lies above the imaginary surface that extends outward and upward at one (1) of the following slopes:

(1) 100 to one (1) for a horizontal distance of 20,000 feet from the nearest point of the nearest runway of each publicly-owned [use] airport with at least one (1) runway 3,200 feet or more in length; or [.]

(2) Fifty (50) to one (1) for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of each publicly-owned [use] airport with its longest runway less than 3,200 feet in actual length.

Section 2. The commission has [assumes] zoning jurisdiction over the use of land and structures within publicly-owned [use] airports within the state.

[Section 3. The commission assumes jurisdiction over the structures and use of land around airports notwithstanding the provisions of KRS Chapters 100 and 147.]

Section 3. [4.] The commission has [assumes] jurisdiction from the ground upward within the limits of the primary and approach surfaces of each publicly-owned airport as depicted on Airport Zoning Maps approved by the Kentucky Airport Zoning Commission.

Section 4. [5.] The commission has [assumes] jurisdiction over the airspace of the Commonwealth that exceeds 200 feet in height above ground level.

Section 5. The owner or person who has control over a structure which penetrates or will penetrate the airspace over which the commission has jurisdiction shall apply for a permit from the commission in accordance with 602 KAR 50:090. [or fifty (50) feet in height above the surface of open water of the Ohio River, Mississippi River, Kentucky Lake, Lake Barkley, Lake Cumberland, Barren River Lake, Nolin Lake Reservoir, Rough River Lake, Dale Hollow Reservoir (Ky.), Green River Lake, and Taylorsville Lake.

[Section 6. The administrator shall prepare a single map indicating airport zoning jurisdiction of all privately owned airports available for public use across the Commonwealth. Said map shall be revised and updated once a year. The map shall list each privately owned public use airport with its primary runway classification established in accordance with 602 KAR 50:010, Section 2(4).]

BOB G. BODNER, Executive Director
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: July 27, 1992

FILED WITH LRC: August 13, 1992 at 11 a.m.

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Cabinet, 1001 State Office Building, 501 High Street, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency contact: Sandra G. Pullen

(1) Type and number of entities affected: All persons in the state who wish to construct a structure which is 200 feet or more above ground level and owners of privately-owned, public-use airports.

(a) Direct and indirect costs or savings to those affected: None as a result of this administrative regulation.

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: None as a result of this administrative regulation.

(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 or paperwork requirements: The Kentucky Airport Zoning Commission will no longer have any jurisdiction around privately-owned, public-use airports.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not amending the administrative regulation was rejected for consistency with changes being made to the other administrative regulations of the Kentucky Airport Zoning Commission.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: This administrative regulation references 602 KAR 50:090 and the application which must be submitted under its provisions. There is no conflict, only cross-referencing between administrative regulations.

(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 Kentucky Supreme Court has determined that the Kentucky Airport Zoning Commission's authority does not extend to privately-owned public-use airports. Therefore, all references to those facilities had to be removed.

Tiering: Was tiering applied? Yes. The Zoning Commission's jurisdiction begins on the ground at an airport. The further away from the airport one goes, the greater the elevation at which the Zoning Administration has authority.

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 50:050. Airport zoning map.

RELATES TO: KRS 183.867

STATUTORY AUTHORITY: KRS 183.861, 183.867(3)

NECESSITY AND FUNCTION: To outline the procedure for the adoption of the airport zoning regulations related to existing and planned publicly-owned airports under the jurisdiction of the commission, and to provide for the procedures for revising airport zoning maps.

Section 1. Every owner of an existing or planned publicly-owned [~~use~~] airport in the state shall file with the administrator of the Kentucky Airport Zoning Commission a map showing the airport and the area surrounding the airport used for approach and landing purposes or the owner shall file an airport master plan.

Section 2. If an owner of a publicly-owned [~~use~~] airport fails to file a map as provided under Section 1 of this administrative regulation, [~~then~~] the administrator shall cause an appropriate map to be prepared showing the airport and the area surrounding the airport used for approach and landing purposes.

Section 3. The administrator shall [~~thereafter~~] designate the area of jurisdiction of the commission as set forth in 602 KAR 50:030 and the publicly-owned airport imaginary surfaces as set forth in Section 2 of 602 KAR 50:010 for each publicly-owned airport [~~(6)~~], on the [~~such~~] map or airport master plan, prepared or filed under Sections 1 and 2 of this regulation.

Section 4. [~~Thereafter~~] The airport zoning map prepared pursuant to Section 3 of this administrative regulation shall be submitted to the commission for its adoption by order of the commission. If the airport zoning map is adopted by order of the commission, the date of its adoption shall be noted on the airport zoning map, and the original shall be kept in the office of the administrator pursuant to KRS 183.867(3) and the administrative regulations of the commission.

Section 5. (1) Every publicly-owned [~~use~~] airport owner for which an airport zoning map has been adopted by the commission shall inform the administrator of any changes in the existing or proposed boundaries, runways, or [~~and~~] taxiways either by filing a revised airport zoning map or furnishing the administrator with information sufficient to cause a revised map to be prepared.

(2) The administrator shall [~~thereafter~~] designate the area of jurisdiction and airport imaginary surfaces on the [~~such~~] revised map prepared or filed under subsection (1) of this section.

(3) The revised map prepared under this section shall constitute the airport zoning map for the publicly-owned [~~use~~] airport upon its adoption by order of the commission and shall supersede any airport zoning map previously [~~heretofore~~] adopted by the commission.

Section 6. The administrator shall notify any local zoning body, whose jurisdiction is limited by the zoning jurisdiction of the commission, by sending to the local zoning bodies a copy of the airport zoning map adopted by order of the commission.

Section 7. The local zoning bodies may retain jurisdiction of zoning in these [~~such~~] areas as to all other matters; however, the local zoning bodies shall not adopt any ordinances or regulations that conflict with the jurisdiction of the commission in [~~such~~] areas as it pertains to the safe and proper use of the airport involved.

Section 8. Every airport zoning map [~~heretofore~~] adopted by the commission shall remain in full force and effect until revised pursuant to the administrative regulations of the commission.

BOB G. BODNER, Executive Director
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: July 27, 1992

FILED WITH LRC: August 13, 1992 at 11 a.m.

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written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until September 18, 1992. Send written notification of intent to attend the public comment 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: Sandra G. Pullen

(1) Type and number of entities affected: All owners of airports within Kentucky.

(a) Direct and indirect costs or savings to those affected: None as a result of this administrative regulation.

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: Owners of privately-owned public use airports will no longer be required to file an airport map with the Kentucky Airport Zoning Commission.

(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 or paperwork requirements: The Kentucky Airport Zoning Commission will no longer have any jurisdiction around privately-owned, public-use airports.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not amending the administrative regulation was rejected for consistency with changes being made to the other administrative regulations of the Kentucky Airport Zoning Commission.

(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: The Kentucky Supreme Court has determined that the Kentucky Airport Zoning Commission's authority does not extend to privately-owned public-use airports. Therefore, all references to those facilities had to be removed.

Tiering: Was tiering applied? No. All of the airport zoning maps should be prepared using the same criteria.

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 50:060. Construction within jurisdictional airspace.

RELATES TO: KRS 183.861 to 183.890

STATUTORY AUTHORITY: KRS 183.861

NECESSITY AND FUNCTION: To regulate the construction and alteration of structures in the [~~zoned~~] airspace of the state over which the commission has jurisdiction in order to prevent [~~present~~] an obstruction to the safety of air navigation.

Section 1. Except as provided in 602 KAR 50:090, no person shall construct or alter any structure which penetrates the airspace of the state over which the commission has jurisdiction as set forth in 602 KAR 50:030 [~~constitutes an obstruction as defined by the regulations of the commission~~], unless the person who intends to construct or alter the [~~such a~~] structure obtains a permit from the commission in accordance with the procedures set forth in the administrative regulations of the commission.

Section 2. The commission shall consider the provisions of 14 CFR Part 77, the aeronautical study performed by the administrator and any aeronautical study performed by the FAA as well as the factors set forth in KRS 183.868 and 183.870 in approving or disapproving an application for a permit submitted in accordance with the requirements of [~~under~~] Section 1 of this administrative regulation.

Section 3. Any change or transfer in the care, custody, control or ownership of a structure previously permitted by the commission shall require the original owner to notify the commission in writing of the name and address of the new owner on a form prescribed by the commission, however, the new owner shall comply with all conditions and requirements of the originally issued permit for the transferred structure unless properly amended by the commission.

Section 4. Power lines existing prior to January 4, 1984 [~~the effective date of this regulation~~] for which no permit has been issued may continue in their present configuration [~~so long as said lines are not subsequently determined to be a hazard to air navigation by the Kentucky Airport Zoning commission~~]. However, any person proposing to alter or reconstruct any wire, transmission, distribution or other power line subsequent to September 1, 1983 that exceeds 200 feet above the ground level shall [~~be required to~~] obtain all necessary permits from the commission and comply with all applicable marking and lighting requirements in accordance with the administrative [~~rules and~~] regulation of the commission.

BOB G. BODNER, Executive Director

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: July 27, 1992

FILED WITH LRC: August 13, 1992 at 11 a.m.

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REGULATORY IMPACT ANALYSIS

Agency contact: Sandra G. Pullen

(1) Type and number of entities affected: All persons in the state who wish to construct a structure which is 200 feet or more above ground level; the operators of all aircraft within Kentucky; and the passengers on all aircraft within Kentucky.

(a) Direct and indirect costs or savings to those affected: None as a result of the changes to this administrative regulation.

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs: (note any

effects upon competition):

(b) Reporting and paperwork requirements: None as a result of this administrative regulation.

(2) Effects on the promulgating administrative body: None as a result of the changes to this administrative regulation.

(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 or paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not amending the administrative regulation was rejected for consistency with changes being made to the other administrative regulations of the Kentucky Airport Zoning Commission. In addition, in order for a person to know that he had to submit an application for a zoning permit, he would have to review the federal regulations as well as the other airport zoning commission administrative regulations. With this change the Zoning Commission makes it clear that any structure which is 200 feet or more above ground level must have a permit. While that is not a change in the way things are to be done, it is significantly easier for the person responsible for the structure to find.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: This administrative regulation references 602 KAR 50:030 and the jurisdiction of the Kentucky Airport Zoning Commission. There is no conflict, only cross-referencing between administrative regulations.

(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. When not close to a publicly-owned and public-use airport, a person erecting or altering a structure only has to have a permit if it is 200 feet above ground level or greater.

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 50:070. Standards for determining obstructions.

RELATES TO: KRS 183.868, 14 CFR Part 77

STATUTORY AUTHORITY: KRS 183.861, 183.868

NECESSITY AND FUNCTION: To establish standards for determining obstructions to air navigation. [~~These standards apply to the use of navigable air space by aircraft and to existing and planned air navigation facilities, such as an air navigation aid, existing or planned airports on file with the Kentucky Transportation Cabinet, Federal Airways, Instrument Approach or Departure Procedures or approved off-airway routes.~~]

Section 1. Standards for Determining Obstructions. A permanent or temporary object shall [~~would~~] be an obstruction to air navigation if it is of greater height than any of the following heights or penetrates any of the following surfaces:

(1) A height of more than 500 feet above ground level at the site of the object.

(2) A height that is more than 200 feet above ground level or above the established airport elevation, whichever is higher, within three (3) nautical miles of the established reference point of a publicly-owned [~~an~~] airport, which has at least one (1) [~~with its longest~~] runway of more than 3,200 feet in actual length. Beyond three (3) nautical miles, [~~and~~] that height increases in the proportion of 100 feet for each additional nautical mile of distance from the airport reference point up to a maximum of 500 feet.

(3) A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, which would result in the vertical distance between any point on the permanent or temporary structure or object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.

(4) A height within an en route obstacle clearance area, including turn and termination areas, of a federal airway or approved off-airway route, that would increase the minimum obstacle clearance altitude.

(5) The surface of a takeoff and landing area of an airport or any imaginary surface established under 602 KAR 50:010, Section 2 [~~6~~].

Section 2. (1) The Kentucky Airport Zoning Commission adopts 14 CFR [~~Federal Aviation Regulations~~] Part 77, Objects Affecting Navigable Airspace, as effective on September 25, 1989 [~~Title 14, CFR as part of its Administrative Regulations for reference~~].

(2) 14 CFR Part 77 governs the determination of an obstruction to safe air navigation in any instance not specified in this administrative regulation.

BOB G. BODNER, Executive Director

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: July 27, 1992

FILED WITH LRC: August 13, 1992 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on September 23, 1992 at 10 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by September 18, 1992, so notify this agency. 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 the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by September 18, 1992. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until September 18, 1992. Send written notification of intent to attend the public comment 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: Sandra G. Pullen

(1) Type and number of entities affected: All persons in the state who wish to construct a structure which is 200 feet or more above ground level; the operators of all aircraft within Kentucky; and the passengers on all aircraft within Kentucky.

(a) Direct and indirect costs or savings to those affected: None as a result of the changes to this administrative regulation.

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: None as a result of the changes to this administrative regulation.

(2) Effects on the promulgating administrative body: None as a result of the changes to this administrative regulation.

(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 or paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not amending the administrative regulation was rejected for consistency with changes being made to the other administrative regulations of the Kentucky Airport Zoning Commission and to bring the administrative regulation into compliance with KRS Chapter 13A.

(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? Yes. When not close to a publicly-owned and public-use airport en route clearance area, a structure does not become an obstruction to the safety of air navigation until it is 500 feet above ground level.

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 50:090. Permit application procedure.

RELATES TO: KRS 183.869, 183.870, 183.871

STATUTORY AUTHORITY: KRS 183.861

NECESSITY AND FUNCTION: This regulation outlines the [~~rules governing~~] procedure that a person shall [~~must~~] follow in order to obtain a permit or tentative approval to erect or alter a structure, and [~~to~~] defines the authority of the Administrator of the Kentucky Airport Zoning Commission to reject or approve applications for permits and provide for the [~~rules of practice for the~~] processing of an application for a permit.

Section 1. (1) Every person who is required by the administrative regulations of this commission to obtain a permit to construct or alter a structure shall send a signed and completed [~~two (2) executed copies of the~~] Form TC [~~7D~~] 56-50, Application for Permit to Alter or Construct a Structure, revised effective May, 1989, to the Administrator of the Kentucky Airport Zoning Commission, Office of Aeronautics, Frankfort, Kentucky 40622.

(2) The form required by subsection (1) of this section is incorporated by reference as a part of this administrative regulation. Copies may be obtained from the administrator. His address is Office of Aeronautics, 421 Ann Street, Frankfort, Kentucky 40622. His telephone number is (502) 564-4480. The business hours of the Office of Aeronautics are 8 a.m. to 4:30 p.m. eastern time, on those days which state government routinely functions.

(3) [~~(2)~~] The application shall [~~must~~] be submitted at least ninety (90) [~~thirty (30)~~] days prior to the date the proposed construction or alteration is scheduled to begin.

Section 2. (1) Upon receipt of the application, the administrator shall review the application to determine if all [~~whether all information that is~~] required information has been submitted.

(2) If the application is incomplete, the administrator shall reject the application and return the application to the person submitting the application [~~along~~] with a statement of the additional information that is required by the commission for a complete application.

Section 3. (1) If the application is complete, [~~then~~] the administrator shall conduct an aeronautical study for the purpose of determining whether to recommend to the commission that a permit be issued.

(2)(a) The administrator may approve an application for a permit to alter or construct a structure that is not by 602 KAR 50:070 an obstruction to air navigation and which will not adversely affect the safety of air navigation or when he has determined that the structure would be shielded by existing structures of a permanent and substantial character, or by natural terrain or topographic features of equal or greater height [~~and would be located in a congested area of a city or an unincorporated area where~~] it is evident that the proposed structure so shielded will not adversely affect the safety of air navigation.

(b) [~~In instances where time is of the essence with respect to the issuance of a permit~~] The preliminary recommendation of the administrator for approval or disapproval may be furnished to the applicant prior to consideration of the application by the commission. However, the commencement of any construction or erection of the structure prior to final consideration by the commission and the issuance of a permit shall be at the sole risk of the applicant. The commission, its members and its administrator shall not be responsible or liable in any manner for any work performed prior to the issuance of a permit.

(c) The administrator may approve an application for a temporary structure that will be in existence for such a short duration that it will no longer occupy the same airspace at the time a formal application can be considered by the commission. This [~~Such~~] approval may be granted only if it is evident that the proposed temporary structure will not adversely affect the safety of air navigation.

(d) [~~In instances where time is of the essence~~] The commission may grant tentative approval of an application even though the time for filing objections to the application has not expired. This [~~Such~~] tentative approval may be granted if [~~when~~] it appears to the commission that the proposed structure will not adversely affect the safety of air navigation, and, if no objections were to be received, a permit would be issued by the commission. However, the commencement of any construction or erection of the proposed structure prior to the final consideration by the commission and the issuance of a permit shall be at the sole risk of the applicant. The commission, its members and its administrator shall not be responsible or liable in any manner for any work performed prior to the issuance of a permit.

(e) If [~~In any instance where~~] approval for a temporary structure or tentative approval of a permanent structure is being sought, the applicant shall furnish to the administrator affidavits or sworn statements detailing the conditions and reasons [~~needed~~] for the extraordinary measures being requested or provide any other information requested by the commission or its administrator.

(f) The commission may [~~reserves the right to~~] reject any recommendation of the administrator or withdraw any tentative approval previously granted after final consideration of the application. Any reliance placed upon any recommendation of the administrator or any tentative approval of the commission shall be at the applicant's own risk.

(3) [~~Otherwise,~~] The administrator shall submit the application, the results of his aeronautical study and [~~along with~~] his recommendation for commission action [~~approval or disapproval~~] to the commission at its next meeting.

(4) At least twenty (20) days prior to the commission meeting at which the application is to be considered [~~Prior to the submission of the application to the commission~~], the administrator shall circulate a copy of the application and the conclusions of his aeronautical study to any interested parties including, but not limited to, local airport boards, municipal and county governments' officials, airport owners and operators.

(5) Any interested parties shall be permitted to file with the commission written objections to or remarks about the approval of the applications. The [~~Said~~] objections or remarks shall be filed with the commission no later than the date for filing established in the circulated copy of the application. However, the date by which the objections or remarks shall be received by the administrator shall provide all interested parties with at least eighteen (18) days from the date the administrator mailed the notice by first class mail [~~at least ten (10) days prior to the date of the meeting of the commission~~].

(6) The application normally shall [~~will~~] be considered at the first [~~next~~] meeting of the commission after the expiration of the established period in which an interested party could file an objection to or remarks about the application. [~~and~~] A copy of the commission's decision shall be mailed to the applicant and any other interested parties who filed an objection to or remarks about the application.

Section 3. 602 KAR 50:080, Permit application content, is hereby repealed.

BOB G. BODNER, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: July 27, 1992
FILED WITH LRC: August 13, 1992 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on September 23, 1992 at 10 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by September 18, 1992, so notify this agency. 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 the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by September 18, 1992. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until September 18, 1992. Send written notification of intent to attend the public comment 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: Sandra G. Pullen

(1) Type and number of entities affected: All persons in the state who wish to construct a structure which is 200 feet or more above ground level; the operators of all aircraft within Kentucky; and the passengers on all aircraft within Kentucky.

(a) Direct and indirect costs or savings to those affected: None as a result of the changes to this administrative regulation.

1. First year:
2. Continuing cost or savings:
3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: The applicant will have to submit his completed application at least 90 days before construction begins instead of the 60 days previously required.

(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 or paperwork requirements: Because of the longer review period allowed by the proposed change to the administrative regulation, the Kentucky Airport Zoning Commission will be able to give more time to those interested parties reviewing the application.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not amending the administrative regulation was rejected for consistency with changes being made to the other administrative regulations of the Kentucky Airport Zoning Commission and to bring the administrative regulation into compliance with KRS Chapter 13A. The change in the preapplication period was necessary because by the time comments of interested parties are received, the existing administrative regulation frequently already required the Kentucky Airport Zoning Commission to have acted.

(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? Yes. When an application is received on a structure which has no adverse impact on air navigation, the zoning administrator can approve the application prior to the meeting of the full commission - expediting the application process.

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 50:100. Standards for marking or lighting structures [~~Marking and lighting obstruction standards~~].

RELATES TO: KRS 183.861 to 183.990
STATUTORY AUTHORITY: KRS 183.861
NECESSITY AND FUNCTION: To describe the standards for the marking or lighting of structures which penetrate the airspace under the jurisdiction of the Kentucky Airport Zoning Commission. [~~and lighting of obstructions as official policy of the Kentucky Airport Zoning Commission in order to provide the most effective means of indicating the presence of obstructions to pilots, in accordance with the commission's responsibility to promote the safety of air commerce.~~]

Section 1. (1) The Advisory Circular No. AC 70/7460-1H [~~70/7460-1G~~], Obstruction Marking and Lighting, issued by the Federal Aviation Administration as amended on November 26, 1991, is hereby adopted and incorporated by reference, except as otherwise provided in the administrative regulations of the commission. The Advisory Circular shall govern the marking and lighting of structures which penetrate the jurisdictional airspace of the commission or which are determined by the commission to be an obstruction to safe air navigation.

(2) The above-mentioned material has been published by the Federal Aviation Administration and a copy may be obtained from the Administrator, Kentucky Airport Zoning Commission, 421 Ann Street, Frankfort, Kentucky 40622. The telephone number of the commission is (502) 564-4480. The business hours of the commission are 8 a.m. to 4:30 p.m. eastern time on those days which state government routinely functions.

Section 2. Every person who is issued a permit to alter or construct a structure shall [~~is required to~~] mark or [~~and~~] light the structure in accordance with the applicable standards incorporated by reference [~~described~~] in Section 1 of this administrative regulation, unless the commission determines that the absence of the [~~such~~] marking or [~~and~~] lighting will not impair the safety of air navigation.

[~~Section 3. The determination that the absence of marking and lighting of a structure will not impair the safety of air navigation shall not be made by the commission unless the applicant for a permit to alter or construct a structure requests such a determination at the time of filing of an application. Otherwise, the marking and lighting standards described in Section 1 of this regulation shall be mandatory.~~]

Section 3. [~~4.~~] Any structure that exceeds 200 feet above ground level shall [~~is to~~] be obstruction marked or [~~and~~] lighted in accordance with the advisory circular incorporated by reference [~~listed~~] under Section 1 of this administrative regulation, unless the commission determines the absence of the [~~such~~] marking [~~and/~~]or lighting will not impair the safety of air navigation.

Section 4. [~~5.~~] Any holder of a commission [~~variance~~] permit that requires obstruction marking and lighting, as a condition for the approval of the application, may request a change in the obstruction marking or [~~and~~] lighting requirements in order to maintain or improve the existing obstruction marking or [~~and~~] lighting system based upon

technological advances. The [Said] request shall be in writing and approved by the commission prior to any changes or alterations being made to the previously approved obstruction marking or [and] lighting system.

Section 5. If [6. In the event that] an existing, permitted and standing facility is abandoned, the permit holder shall continue to maintain obstruction marking or [and] lighting which was [(if] required by the commission[)] unless the facility is [otherwise] physically removed.

Section 6. During the construction or alteration of a structure, once any portion of the structure exceeds 200 feet above ground level, it shall be obstruction marked and lighted in accordance with the Advisory Circular incorporated by reference under Section 1 of this administrative regulation, unless the commission determines the absence of this marking or lighting will not impair the safety of air navigation and so states when the permit is issued.

BOB G. BODNER, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: July 27, 1992
FILED WITH LRC: August 13, 1992 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on September 23, 1992 at 10 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by September 18, 1992, so notify this agency. 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 the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by September 18, 1992. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until September 18, 1992. Send written notification of intent to attend the public comment 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: Sandra G. Pullen

(1) Type and number of entities affected: All persons in the state who wish to construct a structure which is 200 feet or more above ground level; the operators of all aircraft within Kentucky; and the passengers on all aircraft within Kentucky.

(a) Direct and indirect costs or savings to those affected: In rare instances, a structure which exceeds 200 feet above ground level will have to be marked and lighted in phases as it is being constructed.

1. First year:

2. Continuing cost 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 as a result of the changes to this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting or paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not amending the administrative regulation was rejected for consistency with changes being made to the other administrative regulations of the Kentucky Airport Zoning Commission and to bring the administrative regulation into compliance with KRS Chapter 13A. In addition, the Federal Aviation Administration had revised the standards for marking and lighting which is incorporated by reference in this administrative regulation.

(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? Yes. The requirements for marking and lighting of the structures varies with the height and location of the structure as well as its proximity to an airport.

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 50:110. [Alteration constructions,] Valid permit period for alteration or construction of a structure.

RELATES TO: KRS 183.861 to 183.990
STATUTORY AUTHORITY: KRS 183.861
NECESSITY AND FUNCTION: The commission finds it is necessary for the public interest that construction or alteration of a structure be [should] commenced and completed within a reasonable period after the issuance of a permit; therefore, the function of this administrative regulation is to limit the period in which to commence and complete construction.

Section 1. [A permit to construct or alter a structure issued by the commission or administrator shall be valid for a period of eighteen (18) months from its date of issuance.] If the [said] construction or alteration of a structure is not completed [commenced] within [said] eighteen (18) months from the date of issuance of the permit [period], [said] permit shall be void and no work shall be performed without the issuance of a new permit. The commission may grant a shorter or longer period of time to complete the construction or alteration of a structure when it issues a permit.

Section 2. All holders of an approved commission [KAZC] permit shall [will be required to] complete and return a construction or [/] alteration project status report as soon as the structure reaches its greatest height. This report may [can] be filed with the administrator any time during the eighteen (18) months allowed for completion of the construction or alteration of the structure [valid permit period].

Section 3. All commission permit holders shall send written notification to the Airport Zoning Commission administrator within thirty (30) days after the removal of a tall structure that was issued a [variance] permit from the commission. If [In the event] a commission permit holder [should] sells or transfers his facility, the existing commission permit shall transfer to the new owner provided the requirements of 602 KAR 50:060, Section 3, are met.

Section 4. The Kentucky Airport Zoning Administrator, upon written application and the showing of just cause, may extend the time allowed for completion of the construction or alteration of a structure for a period not to exceed an additional eighteen (18) months.

BOB G. BODNER, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: July 27, 1992
FILED WITH LRC: August 13, 1992 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on September 23, 1992 at 10 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by September 18, 1992, so notify this agency. 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 the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by September 18, 1992. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until September 18, 1992. Send written notification of intent to attend the public comment 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: Sandra G. Pullen

(1) Type and number of entities affected: All persons in the state who wish to construct a structure which is 200 feet or more above ground level; the operators of all aircraft within Kentucky; and the passengers on all aircraft within Kentucky.

(a) Direct and indirect costs or savings to those affected: In rare instances, the permit holder for a structure which cannot be completed within the 18-month validity period of the permit will have a way to extend the permit period without having to go through the application process again.

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: If the permit holder wants an extension on the permit validity period, he will have to apply to the Kentucky Airport Zoning Commission.

(2) Effects on the promulgating administrative body: None as a result of the changes to this administrative regulation.

(a) Direct and indirect costs or savings: None as a result of the changes to this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting or paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not amending the administrative regulation was rejected for consistency with changes being made to the other administrative regulations of the Kentucky Airport Zoning Commission and to bring the administrative regulation into compliance with KRS Chapter 13A. In addition, the ability to extend the permit validity period will benefit both the commission and permit holder.

(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? Yes. When necessary because of building requirements, the permit validity period can be adjusted.

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 50:120. Hearing procedures.

RELATES TO: KRS 183.871

STATUTORY AUTHORITY: KRS 183.861

NECESSITY AND FUNCTION: To provide for general procedures for the conduct of all hearings on any petition to the commission.

Section 1. Request for a hearing shall be accomplished as follows:

(1) With the exception of those actions taken under 602 KAR 50:115, any person aggrieved by any action taken by the commission with respect to any application for a permit, request for adoption of airport zoning map or any orders or rulings issued pursuant to the commission's administrative regulations may petition the commission in writing for a hearing.

(2) The petition, which may be in the form of a letter, shall identify the action taken by the commission for which a hearing is sought and it shall state specifically the grounds for the request in addition to a statement of the relief desired.

(3) The [~~Any such~~] petition shall be filed within thirty (30) days of [~~the date the commission formalized its action by the signing of the appropriate document whether by its administrator or its chairman and~~] the mailing of the document formalizing the commission's action to appropriate parties. The document may be executed by either the administrator or the chairman of the commission.

(4) Once a petition for a hearing is received, the administrator shall notify all other interested parties of the receipt of the petition for a hearing. Other interested parties may include but shall not be limited to [~~which may include~~] the applicant, local zoning body, local air board, airport owner and other identifiable person or persons who exhibit an interest in the commission's decision.

(5) The administrator shall within thirty (30) days of the receipt of the petition establish a time and place for the hearing to be conducted and shall notify all interested parties of the time and place of the hearing.

(6) Hearings shall be scheduled to be held within sixty (60) days of the receipt of the petition unless there are exceptional circumstances which would create an undue hardship upon one (1) or more of the parties. Notice of the hearing shall be given by mailing a copy of the order establishing the hearing at least twenty (20) days prior to the date set for the hearing.

(7) If the commission deems it in the best interest of the public whether or not requested by the parties, it may require that the hearing [~~specified herein~~] be conducted prior to taking any action on the application, permit, zoning map, etc. Any action rendered by the commission as a result of a hearing conducted under this subsection shall constitute a final agency action from which an appeal may be taken.

Section 2. The procedures that follow shall be observed during the hearing process:

(1) The hearing shall be conducted in a formal manner [~~matter~~].

(2) A transcript or stenographic record of the hearing shall be taken. The reporter shall furnish an original and one (1) copy of the transcript to the commission. Unless otherwise agreed, the cost of transcribing the evidence and of furnishing an original and one (1) copy to the commission shall be borne by the petitioner.

(3) Opportunity shall be given to the petitioner, the applicant and all other interested persons to produce witnesses, present evidence or raise other points of issue.

(4) The burden of proof concerning any action to be taken by the commission as a result of the hearing shall be upon the petitioner.

(5) All parties may be represented by counsel.

(6) The chairman of the commission or his designated representative shall preside at the hearing and shall rule on any objection or question that arises. A majority of the commission may overrule or modify any ruling of the chairman.

(7) The administrator of [er] the commission shall open the hearing by presenting the petition for the hearing, documents representing the action taken by the commission that prompted the petition for a hearing and conclusions resulting from any aeronautical study conducted.

(8) Unless there are exceptional conditions that would warrant otherwise, the petitioner may make an opening statement outlining its position and any other party who desires the same relief shall next be given the opportunity to present an opening statement. Then the adverse party may make an opening statement outlining its position, followed by any other parties seeking the same relief.

(9) After all opening statements, the petitioner shall present its evidence and witnesses in support of its claim followed by other parties seeking similar action by the commission. Following the conclusion of the evidence presented by the petitioner and all other parties similarly aligned, the adverse parties shall [are to] be afforded the opportunity to present their evidence and witnesses.

(10) Each party shall have the right to cross-examine any witness offered by any other party.

(11) Formal rules of evidence used by the courts shall apply.

(12) The parties may by stipulation enter into the record any agreed facts, and it is desirable that the facts agreed upon be entered by stipulation whenever practical.

(13) Witnesses shall not be permitted to give opinion evidence unless they have first been qualified to show their special familiarity and knowledge with the desired subject.

(14) At the conclusion of the presentation of all evidence, the parties may offer closing statements to the commission. The order of presentation shall be in reverse of the opening statements unless determined otherwise by the chairman of the commission.

(15) The commission may require the filing of briefs in which the time of filing, length of briefs and replies, shall be stated at the conclusion of the hearing.

(16) Subsequent to the closing statements, the commission shall consider all relevant, competent, and material evidence and make the necessary findings of facts and conclusions which shall constitute a final decision of the commission. The findings and conclusions of the commission shall be signed by the chairman and a copy sent to each party that appeared at the hearing.

Section 3. Appeals from any final decision or order of the commission may thereafter be made to the Franklin County Circuit Court in accordance with the procedures set forth in KRS 183.620.

BOB G. BODNER, Executive Director
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: July 27, 1992
FILED WITH LRC: August 13, 1992 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on September 23, 1992 at 10 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by September 18, 1992, so notify this agency. 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 the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by September 18, 1992. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until September 18, 1992. Send written notification of intent to attend the public comment 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: Sandra G. Pullen

(1) Type and number of entities affected: All persons in the state who wish to construct a structure which is 200 feet or more above ground level; the operators of all aircraft within Kentucky; and the passengers on all aircraft within Kentucky.

(a) Direct and indirect costs or savings to those affected: None as a result of the changes to this administrative regulation.

1. First year:
2. Continuing cost or savings:
3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: The person who wishes to request a hearing will have 30 days after the commission's formal document is mailed.

(2) Effects on the promulgating administrative body: None as a result of the changes to this administrative regulation.

(a) Direct and indirect costs or savings: None as a result of the changes to this administrative regulation.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting or paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not amending the administrative regulation was rejected for consistency with changes being made to the other administrative regulations of the Kentucky Airport Zoning Commission and to bring the administrative regulation into compliance with KRS Chapter 13A. In addition, the 30-day period in which the hearing request is to be made was tied down more. There had been some confusion about the exact time.

(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. The hearing process must be uniform and closely aligned to the other administrative hearing processes throughout state government.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims
(Proposed Amendment)

803 KAR 25:011. Procedure for adjustments of claims.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.260

NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such rules and regulations as it considers necessary to carry on its own work and the work of the administrative law judges and for carrying out the provisions of KRS Chapter 342. The function of this proposed administrative regulation is to regulate practice and procedure before the administrative law judges and the Workers' Compensation Board.

Section 1. Definitions. (1) "Board" means the Workers' Compensation Board created pursuant to KRS 342.215(1).

(2) "Commissioner" means the individual employed by the board pursuant to KRS 342.230(2).

(3) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(4) "Employer" means and includes individuals, partnerships, voluntary associations and corporations.

(5) "An employer who has not secured payment of compensation" means any employer who employs covered employees as defined by KRS 342.640 but has not complied with KRS 342.340.

(6) "Date of filing" means the date a pleading, motion, or other document is received by the board at its office in Frankfort, Kentucky.

Section 2. Parties. (1) The parties to any application for adjustment of claim filed with the board pursuant to KRS 342.270 shall be designated as "plaintiff" and "defendant." The party filing the original application in such proceedings shall be designated as the "plaintiff" and the adverse party (parties) as "defendant" ("defendants").

(2) All parties shall join as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction or occurrence, is alleged to exist. If any such person should refuse to join as a plaintiff, he shall then be joined as a defendant, and the fact of his refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to any relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. The administrative law judge to whom the matter is assigned may order upon a proper showing that any additional party be joined when the administrative law judge deems the presence of the party necessary or that any party be dismissed when the administrative law judge deems the presence of the party unnecessary.

(b) The special fund shall be joined as a defendant in accord with the provisions of KRS 342.120.

(c) Additional parties may be joined upon motion made as soon as practicable after legal grounds for joinder are known. The administrative law judge may, in his discretion, overrule any motion for joinder which is untimely made. Upon joinder of an additional party, a copy of the file shall be served on the party joined as ordered by the administrative law judge. Upon order of the administrative law judge, the commissioner shall provide notice of the joinder to the party joined.

Section 3. Pleadings. (1) Any application for adjustment of claim for compensation, answer, or other pleading shall be typewritten, and the printed forms prescribed by the board shall be used whenever applicable. All forms shall be furnished by the commissioner to any person who requests them, without charge.

(2) The original application for adjustment of claim shall be fully completed and filed in triplicate with the commissioner. The original and sufficient copies for serving all named parties and the administrative law judge shall be furnished. The commissioner shall serve the application upon all named parties other than the plaintiff by first class mail. The commissioner shall return unfiled to the plaintiff or his attorney any application which is not fully completed or which does not have attached all forms required to be filed with the application. If the application is resubmitted in proper form within twenty (20) days of the date it was returned by the commissioner, the filing date shall relate back to the date the application was first received by the commissioner. Otherwise, the second date of receipt shall be the filing date.

(3) All pleadings filed with the commissioner subsequent to the original application shall include the certificate of the party or attorney who filed the pleading stating the date and manner of service of a copy of the pleading upon the other parties. Service of these pleadings shall be made in one of the ways provided by Rule 5.02, Kentucky Rules of Civil Procedure. Copies of all pleadings filed after the application has been assigned to an administrative law judge and the parties have received notice of the assignment shall also be served upon the administrative law judge at his office address, and the certificate of service shall so show. Service of all pleadings and transcripts of proof by deposition upon the administrative law judge and the commissioner is required.

Section 4. Motions. (1) Every application for an order of the administrative law judge shall be by typewritten motion, served and filed in the manner prescribed by Section 3(3) of this regulation. The party filing a motion shall tender with the motion a proposed order granting the relief requested by the motion.

(2) When a motion is filed, the party may file with it a short memorandum supporting the motion, and the opposing party may file a short memorandum in reply. No further memoranda in support of a motion may be filed.

(3) Every motion, the grounds of which depend upon the existence of facts not appearing in evidence at the time of the filing of the motion, shall be supported by affidavits evidencing such facts, which shall be served and filed with the motion. Contrary affidavits may likewise be served and filed by the opposing party.

(4) Every motion, the grounds of which depend upon the existence of one (1) or more facts which the movant contends are shown in evidence or are admitted by the pleading of the adverse party, shall contain a reference to the hearing transcript, deposition transcript, or medical report containing the evidence and to the page where it is to be found, or to the pleading containing the admission.

(5) A motion may be considered by an administrative law judge ten (10) days after the date of filing of the motion. A response to a motion will be considered if filed prior to the tenth day after the date of filing of the motion.

(6) Every motion for the allowance of an attorney's fee shall be served upon the adverse party and also upon the attorney's client and the fact of such service certified as provided in Section 3(3) of this regulation. Every motion for the allowance of an attorney's fee shall set forth the amount of money requested and the percentage of the award represented by the fee. Every motion shall be accompanied by an affidavit of the attorney setting forth in detail the services rendered and the amount of time expended. Every motion shall also be accompanied by a completed Form 109 signed by the attorney and his client, and notarized, as required by KRS 342.320(3). Every motion for allowance of an attorney's fee shall be submitted within thirty (30) days following finality of the last appealable order of the administrative law judge.

Section 5. Application for Adjustment of an Injury Claim. (1) The original application for adjustment of injury claim (Form 101) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) One (1) medical report describing the injury which is the basis of the claim; and

(d) A signed waiver and consent to release relevant medical information in compliance with KRS 342.020(4) (Form 106).

The medical report required to be filed under paragraph (c) of this subsection may consist of the notes of a treating physician and other materials provided by the physician so long as the notes and materials are legible. Medical reports presented in this form and not on Form 107 shall not be considered as the direct testimony of a physician through a medical report pursuant to KRS 342.033, except that the administrative law judge may, in his discretion, permit the introduction of a medical report not submitted on Form 107 or Form 108 if the report contains substantially all of the information required by the forms.

(2) A defendant may file an answer to the plaintiff's application for adjustment of an injury claim (Form 101) within twenty (20) days after the date of service upon him of the application, but no such answer is required. If none is filed, all of the allegations of the application will be deemed to be denied. If, however, an answer other than a special answer under subsection (3) of this section is filed, only those allegations which are specifically denied by the answer shall be deemed to be in disagreement.

(3) If any defendant in an application for adjustment of injury claim relies upon an affirmative special defense, he shall plead the defense in a special answer filed within twenty (20) days after the date of issuance of the scheduling order by the Department of Workers' Claims, or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken.

(4) Upon the issuance of a scheduling order by the Department

of Workers' Claims, all parties may begin discovery and proof. All parties may take discovery and proof before or within sixty (60) days from the date of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; thereafter, the plaintiffs may take rebuttal discovery and proof for an additional fifteen (15) days.

All parties shall be furnished with copies of all medical reports and vocational evaluation reports within thirty (30) days of the examination or evaluation by the party requesting the examination or evaluation.

(5) Within thirty (30) days after an application for adjustment of an injury claim is filed, the commissioner shall assign the case to an administrative law judge and schedule the time and place for the prehearing conference. The prehearing conference shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the prehearing conference. All parties shall be notified of the assignment and schedule by the commissioner.

Section 6. Application for Adjustment of an Occupational Disease Claim. (1) The original application for adjustment of an occupational disease claim (Form 102) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) A signed waiver and consent to release of relevant medical information (Form 106);

(d) Two (2) written medical reports supporting the claim (Form 108) in compliance with KRS 342.316(2)(b)1.

(2) Within sixty (60) days after the date of service upon him of an application for adjustment of an occupational disease claim (Form 102), unless for good cause shown the administrative law judge has granted an extension of time, each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3, or eligibility of the plaintiff for benefits shall be deemed to be conceded.

(3) If any defendant in an application for adjustment of an occupational disease claim relies upon an affirmative special defense, he shall plead the defense in a special answer filed within sixty (60) days after the date of service upon him of the application or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If the affirmative special defense is not so pled, it is waived. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken. Failure of the plaintiff to file and pursue in good faith a claim under the federal Coal Mine Health and Safety Act as required by KRS 342.800 when pneumoconiosis or silicosis benefits are sought shall not be an affirmative special defense when retraining incentive benefits are sought.

(4) Upon being served with an application for adjustment of an occupational disease claim pursuant to KRS 342.316(2)(6)1a or KRS 342.732 (Form 102), a defendant may have the plaintiff examined by medical experts and evaluated by vocational experts, at the defendant's expense. All parties shall be furnished with copies of all medical reports and vocational evaluations within thirty (30) days of the date of the examination or evaluation and within the sixty (60) day discovery time. During this sixty (60) day discovery time, the defendants may depose the plaintiff for discovery purposes. If at the end of the sixty (60) day discovery time the commissioner has received one (1) or more notices of election to resist an application, the commissioner shall assign the case to an administrative law judge, shall schedule the time and place for the prehearing conference, and at the same time issue a schedule for the taking of discovery and of proof by deposition prior to the prehearing conference. All parties shall be notified of this assignment and schedule by the commissioner. The schedule for taking discovery and proof by deposition shall provide that all parties may take discovery and proof for sixty (60) days from the date of filing of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; following the defendants' discovery and proof time, the plaintiffs may take discovery and proof for an additional fifteen (15) days. The prehearing conference shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the prehearing conference.

(5) When an application for adjustment of an occupational disease claim (Form 102) is filed and one (1) or more of the medical reports filed with the application pursuant to KRS 342.316 contains the findings of more than one (1) physician, the findings of one (1) physician concerning the x-ray examination, one (1) physician concerning the spirometric testing, and one (1) physician concerning the comprehensive clinical examination shall together constitute one (1) "written medical report", and cross-examination by deposition may be taken of all the three (3) physicians contributing to any "written medical report" and be introduced as the "direct testimony" of one (1) physician for the purposes of KRS 342.033. Up to three (3) "written medical reports" may be introduced by any party to an occupational disease claim or application for retraining incentive benefits without prior consent from the administrative law judge, as required by KRS 342.033.

Section 7. Application for Retraining Incentive Benefits. (1) The original application for retraining incentive benefits (Form 103) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) A signed waiver and consent to release of relevant medical information (Form 106) in compliance with KRS 342.020(4);

(d) Two (2) x-ray reports complying with KRS 342.316.

(2) Within sixty (60) days after the date of service upon him of an application for retraining incentive benefits (Form 103), each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3 or eligibility of the plaintiff for benefits shall be deemed to be conceded.

(3) If any defendant in an application for retraining incentive benefits date of service upon him of the application or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If the affirmative special defense is not so pled, it is waived. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken. Failure of the plaintiff to file and pursue in good faith a claim under the federal Coal Mine Health and Safety Act as required by KRS 342.800 when pneumoconiosis or silicosis benefits are sought shall not be an affirmative special defense when rehabilitation incentive benefits are sought.

(4) If at the end of the sixty (60) day discovery time the commissioner has received one (1) or more notices of election to resist the application, the commissioner shall assign the case to an administrative law judge, shall schedule the time and place for the hearing, and at the same time shall issue a schedule for the taking of proof. During this proof-taking time, direct testimony may be taken from the physicians who conducted the examination, and proof may be taken by deposition concerning any special defenses pleaded by the employer at the time of filing of the notice of election to resist. All parties shall be notified of this assignment and schedule by the commissioner. The schedule for taking discovery and proof by deposition shall provide that all parties may take discovery and proof for sixty (60) days from the date of filing of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; following the defendants' discovery and proof time, the plaintiff may take discovery and proof for an additional fifteen (15) days. The hearing shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the hearing.

Section 8. Prehearing Conference. (1) The purposes of the prehearing conference are to expedite the processing of contested cases and to avoid whenever possible the need for a formal hearing. The conference is an informal procedure, presided over by the

administrative law judge. No transcript of the proceedings of the conference shall be made. At the conference, every effort shall be made by all parties to dispose of controversies whenever possible, to narrow and define issues, and to facilitate prompt settlement of the claim. The parties shall exchange lists of known witnesses fifteen (15) days before the prehearing conference and final additions, if any, to the respective witness lists shall be made at least seven (7) days before the prehearing conference. The witness list shall give the name of each proposed witness together with a summary of the prior testimony or anticipated testimony of the witness. For medical witnesses, this summary shall include at a minimum a description of the diagnosis made by the witness and the physical findings and diagnostic studies upon which the diagnosis is based, as well as the functional impairment rating assessed by the witness and any work-related restrictions imposed.

(2) Within sixty (60) days after the date of the commissioner's scheduling order, the defendant employer shall file with the administrative law judge, with copies to opposing parties, the plaintiff's payroll records with the defendant employer for each of the fifty-two (52) weeks preceding the date of the alleged injury or the date of the alleged last exposure in accordance with the provisions of KRS 342.140 unless good cause is shown for the failure to file the payroll records or the parties, by joint stipulation, agree upon the employee's average weekly wage. Such payroll records or stipulation shall constitute evidence in the case.

(3) At the prehearing conference, the administrative law judge may limit witnesses for good cause shown.

(4) The plaintiff and his representative, the defendant employer/insurer or its representative, and the representatives of all other parties shall attend the prehearing conference. The representative of any party must have authority to resolve disputed issues and settle the claim at the conference. The administrative law judge may upon motion waive the requirement that the plaintiff shall attend the conference but only for good cause shown in the motion and with a showing that the plaintiff's representative will attend the conference with full authority to settle the claim.

(5) The representative of a party may seek rescheduling or postponement of a prehearing conference by motion filed at least fifteen (15) days prior to the schedule date of the conference, stating the reason for the request. A motion to postpone or reschedule shall be sustained only upon good cause shown at the discretion of the administrative law judge.

(6) If all parties agree upon a settlement prior to the prehearing conference, the settlement agreement shall be filed for the approval of the administrative law judge. If the agreement is approved by the administrative law judge, the prehearing conference shall be cancelled and notice of the cancellation served on all parties.

(7) If at the conclusion of the conference the parties have not reached agreement on all the issues, the administrative law judge shall prepare a stipulated summary of all contested and uncontested issues, which shall be signed by representatives of the parties and by the administrative law judge. This stipulation shall be filed, and only the contested issues shall be the subject of further proceedings before the administrative law judge.

(8) In the sole discretion of the administrative law judge upon motion of a party with good cause shown, the administrative law judge may order that additional discovery or proof by deposition be taken on a contested issue between the prehearing conference and the hearing. Taking of this proof shall not automatically be a valid reason for continuing the date for the hearing.

(9) If the claim is not settled, the administrative law judge shall schedule a date for the hearing on the claim at the prehearing conference. The date for the hearing shall be within sixty (60) days from the date of the prehearing conference. Representatives of the parties shall come to the prehearing conference prepared to schedule a hearing during the conference. The hearing date will not be changed except for good cause shown on motion of the representative requesting the change.

(10) If the parties agree upon a settlement at or after the prehearing conference but before the hearing, the settlement agreement (Form 110) shall be filed for the approval of the administrative law judge. The administrative law judge shall approve or disapprove the settlement agreement within ten (10) days of filing. If the agreement is approved by the administrative law judge, the hearing shall be cancelled and notice of the cancellation served on all parties.

Section 9. Interlocutory Relief. (1) The plaintiff may seek three (3) forms of interlocutory relief while his claim is in the process of consideration for adjustment.

(a) If the plaintiff is totally disabled, he may seek to have income benefits paid pursuant to KRS 342.730 while the claim is pending.

(b) He may seek to have medical and hospital bills paid pursuant to KRS 342.020 while the claim is pending.

(c) He may seek provision of rehabilitation services pursuant to KRS 342.710 while the claim is pending. The defendants may also request rehabilitation services for the plaintiff while the claim is pending.

(2) The plaintiff may seek one (1) or more forms of interlocutory relief by completing the appropriate section of the application for adjustment of claim. The plaintiff or defendants may seek interlocutory relief by motion if the need for interlocutory relief arises after the application is filed.

(3) If the plaintiff seeks interlocutory relief in his application for adjustment of claim or by motion at least twenty (20) days prior to the prehearing conference or if there is agreement of all parties, the request for interlocutory relief may be considered at or before the prehearing conference. If the motion is filed within twenty (20) days of the prehearing conference or after the prehearing conference but before the hearing, it may be considered at or before the hearing.

(4) One (1) or more of the forms of interlocutory relief described in Section 9(1) of this regulation may be granted by the administrative law judge if the plaintiff shows by means of affidavits, his own deposition, or other evidence of record that he is eligible for the interlocutory remedies being sought under KRS Chapter 342 and that if he does not receive the interlocutory relief sought he will suffer immediate and irreparable injury, loss, or damage pending a final decision on the application. A defendant may be granted the right to provide rehabilitation services to the plaintiff while the claim is pending upon a showing that the plaintiff will benefit from the services and have a better chance of returning to work as a result.

(5) When the plaintiff seeks interlocutory relief, the defendant shall file his response, if any, and supporting affidavits, as appropriate, within twenty (20) days from the date of the issuance of the scheduling order by the Department of Workers' Claims, or within twenty (20) days of the filing of any subsequent motion.

(6) When the plaintiff seeks interlocutory relief, the administrative law judge shall review all pleadings, affidavits, and other evidence in the record and at the prehearing conference or hearing may, in his discretion, hear oral arguments in support of each party's position. The administrative law judge shall render his decision, file it in the record, and serve it on all parties.

(7) When the administrative law judge awards to the plaintiff interlocutory relief in the form of income benefits while he is totally disabled, the application shall be placed in abeyance, unless the plaintiff shows that he will be irreparably harmed thereby. While the application is in abeyance, the parties shall submit in writing to the administrative law judge a report on the plaintiff's continued total disability every sixty (60) days. If, in the administrative law judge's discretion, new evidence shows that the plaintiff is no longer totally disabled, the administrative law judge may revoke the interlocutory payment of income benefits based on total disability and remove the claim from abeyance.

(8) No interlocutory relief may be sought or granted when the claim is an application for retraining incentive benefits.

(9) When the administrative law judge awards to the plaintiff interlocutory relief in the form of income benefits while he is totally disabled, an attorney's fee in the amounts authorized by KRS 342.320 but in no case to exceed twenty (20) percent of the weekly income benefit awarded may be ordered by the administrative law judge upon motion of the attorney. The administrative law judge may award the fee on a sixty (60) day basis, renewable for additional sixty

(60) day periods if the interlocutory benefit is renewed pursuant to Section 9(7) of this regulation. All provisions of KRS 342.320 and Section 4(6) of this regulation must be complied with. The fee awarded shall be deducted in equal amounts from the weekly income benefits awarded and paid directly to the attorney awarded the fee at the beginning of each sixty (60) day period.

Section 10. Hearings. (1) If the parties have not arrived at a settlement prior to the scheduled hearing date, a hearing shall be held to complete proof on all contested issues set forth in the stipulated summary filed pursuant to Section 7(8) of this regulation.

(2) The administrative law judge to whom the case has been assigned shall conduct the hearing. No proof shall be taken following the hearing.

(3) The plaintiff shall appear at the hearing and shall present his testimony concerning the contested issues still before the administrative law judge, even if the plaintiff's testimony has previously been taken by deposition. Defendants may cross-examine. Other proof may be taken at the hearing only if it has not previously been taken by deposition.

(4) If the plaintiff fails to appear at the hearing of his claim and no good cause is shown for his failure to appear, the administrative law judge may dismiss the case for want of prosecution. If good cause is shown, the case may be continued until the plaintiff is able to appear.

(5) When a defendant or his representative fails to appear at the hearing, the hearing may proceed as scheduled.

(6)(a) At the conclusion of the hearing, the administrative law judge may take the application under submission immediately or request briefs from the parties to be filed according to a schedule announced by the administrative law judge at the hearing. Upon filing of the last brief scheduled or passage of the due date for that brief, the case shall stand submitted. Briefs filed with the administrative law judges shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages in length. Permission to increase the length of a brief shall be sought by motion. Cause must be shown for the increase. The administrative law judge may announce his decision at the conclusion of the hearing and subsequently file his written opinion, serving it on the parties when filed, or the administrative law judge may defer his decision until he files the written opinion. In either case, a decision shall be rendered no later than ninety (90) days following the hearing, and the time for filing a petition for reconsideration shall not begin to run until the date of filing of the written opinion.

(b) A persistent or continuous failure to comply with paragraph (a) of this subsection may be considered by the board as cause for removal of the administrative law judge pursuant to KRS 342.230.

Section 11. Petitions for Reconsideration. (1) Within fourteen (14) days from the date the written opinion announcing an order, award, or decision is filed, any party may file a petition for reconsideration of the award, order, or decision. The petition shall clearly identify the error "patently appearing upon the face" of the award, order, or decision which the petitioner seeks to have corrected and set forth arguments and authorities supporting the correction sought.

(2) Any party may file a response to the petition within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall by order overrule or sustain the petition for reconsideration within ten (10) days after the date the responses are due.

(4) If the administrative law judge finds that the petition is frivolous, he may assess costs and attorney fees against the petitioner or his attorney.

(5) The filing of a timely petition for reconsideration shall suspend the finality of any order, decision, or award until the ruling is made thereon. Any notice of appeal filed prior to filing of a petition for reconsideration shall be held in abeyance until a ruling is made on the petition.

Section 12. Appeals to the Workers' Compensation Board. (1) Within thirty (30) days after the date of filing of a written opinion, order or decision finally adjudicating a case, a party aggrieved by the opinion, order, or decision may appeal the opinion, order, or decision to the Workers' Compensation Board. Opinions, orders, or decisions of administrative law judges and of the (old) Workers' Compensation Board established pursuant to KRS 342.215(5) shall be appealed in this manner. A final adjudication as used in this section shall be determined according to the provisions of Civil Rule 54.02(1) and (2).

(2) The appeal shall be initiated by the filing of a notice of appeal. The notice of appeal shall style the appealing party first as the "petitioner" and all other parties against whom the appeal is being taken as the "respondents." The Workers' Compensation Board case number shall be retained in the petition and in all other pleadings related to the appeal to the board. The administrative law judge who rendered the opinion, order or decision appealed from or the (old) Workers' Compensation Board shall be named as a "respondent." If appropriate, the Director of the Special Fund shall be named as a "respondent" pursuant to KRS 342.316(10)(b).

(3) Any party other than the petitioner in the appeal may file a cross-appeal. All cross-appeals shall be filed by notice of cross-appeal within ten (10) days after notice of appeal is served. If a cross-appeal is filed, the style of the appealed and cross-appealed case shall designate the parties as appropriate (i.e., petitioner-cross-respondent). The Workers' Compensation Board number shall remain the same.

(4) The notice of appeal or cross-appeal, and enough copies for service on all respondents, shall be filed with the commissioner. The commissioner shall cause all respondents to be served by first class mail with a copy of the notice of appeal or cross-appeal. All subsequent pleadings shall be served on the respondents as provided in Section 3(3) of this regulation.

(5) When a notice of appeal is filed, the record in the case shall be transferred to the Workers' Compensation Board in its entirety, unpaginated. All references to specific evidence in the record shall be by the title of the evidence referenced and the page number at which the specific entry occurs (i.e., Deposition of Dr. A. B., p. 17.)

(6) If a ground for the appeal is fraud or misconduct pursuant to KRS 342.285(2), the board shall immediately schedule a hearing on that issue before the board. All testimony concerning the issue shall be transcribed and placed in the record, and notice of filing of the transcript shall be given to all parties by the commissioner. All subsequent time in such a case shall be calculated from the date the transcript is filed instead of the date of filing of the notice of appeal.

(7)(a) The petitioner's brief shall be filed with the board within thirty (30) days of filing of the notice of appeal. The organization and contents of the petitioner's brief shall be as provided in Rule 76.12(4)(c) of the Kentucky Rules of Civil Procedure except that no index shall be required and the only appendix shall be a copy of the decision appealed from, including the decision of the administrative law judge, all petitions for reconsideration of the opinion, all rulings on petitions for reconsideration, and copies of all cited cases from federal courts and foreign jurisdictions.

(b) The failure of the petitioner to file petitioner's brief within the time provided by paragraph (a) of this subsection may be grounds for one (1) or more of the following penalties absent a showing of good cause:

1. A dismissal of the appeal after failure to respond to a show cause order served upon the attorney and client;

2. The striking of the petitioner's brief;

3. The imposition of a fine on petitioner's counsel of not more than $500.

(8)(a) The respondent's brief shall be filed with the board within thirty (30) days of the date the petitioner's brief was filed or due. The organization and contents of the respondent's brief shall be as provided in Rule 76.12(4)(d) of the Kentucky Rules of Civil Procedure, except that no index shall be required and the only appendix shall be a copy of any response filed to a petition for reconsideration and copies of all cited cases from federal courts and foreign jurisdictions. If a respondent is also a cross-petitioner, a combined brief shall be filed addressing issues raised by the petitioner's brief and by the cross-appeal.

(b) The failure of the respondent to file respondent's brief within the time provided by paragraph (a) of this subsection may be grounds for one (1) or more of the following penalties absent a showing of

good cause:

1. The reversal of the opinion and award if the petitioner's brief and the record reasonably appear to sustain such action;

2. The striking of the respondent's brief;

3. The imposition of a fine on respondent's counsel of not more than $500.

(9) The petitioner's reply brief may be filed within fifteen (15) days after the date on which the last respondent's brief was filed or due, whichever is earlier. The organization and contents of the petitioner's reply brief shall be as provided in Rule 76.12(4)(e) of the Kentucky Rules of Civil Procedure, except that no appendix, index, or contents page shall be required. If the petitioner is also a cross-respondent, a combined brief shall be filed addressing issues raised by the response and issues raised by the cross-petitioner's brief.

(10) If a cross-appeal has been filed, the cross-petitioner's reply brief may be filed within fifteen (15) days after the date on which the last cross-respondent's brief was filed or due, whichever is earlier. The organization and contents of the cross-petitioner's reply brief shall be as provided in Rule 76.12(4)(e) of the Kentucky Rules of Civil Procedure, except that no appendix, index, or contents page shall be required.

(11) The petitioner's brief and the respondent's brief shall be limited to fifteen (15) pages each in overall length. Reply briefs shall be limited to five (5) pages in overall length. Combined briefs shall be limited to twenty (20) pages each in overall length. The requirements of this rule with respect to a "statement of points and authorities" shall not apply to any brief of five (5) pages or less. Permission to increase the length of a brief shall be sought by motion. Cause must be shown for the increase. All pleadings shall be typewritten and conform to the requirements set forth in Rule 7.02(4) of the Kentucky Rules of Civil Procedure. Pleadings shall be filed without covers, but the style of the case, including the board number and the title of the pleading, shall appear on the first page of the pleading.

(12) When all briefs have been filed or the due date is past on the last brief due, any party may by motion move for submission of the appeal to the board for decision. Upon issuance of the board's order, the case shall stand submitted.

(13) Within thirty (30) days of the filing of the board's order of submission, the board shall enter its decision affirming, modifying, or setting aside the decision, order, or award appealed from, or, in its discretion, remand the claim to the administrative law judge for further proceedings in conformity with the direction of the board. There shall be no motion for reconsideration.

(14) The decision of the board may be appealed to the Kentucky Court of Appeals as provided in Rule 76.25, Kentucky Rules of Civil Procedure.

(15) Every application for an order of the board shall be by typewritten motion, served and filed in the manner prescribed by Section 3(3) of this regulation.

(16) When a motion is filed, the party may file with it a short memorandum supporting the motion, and the opposing party may file a short memorandum in reply. No further memoranda in support of a motion may be filed.

(17) All motions filed with the board subsequent to the original notice of appeal shall include the certificate of the party or attorney who filed the motion stating the date and manner of service of a copy of the motion upon the other parties. Service of these motions shall be made in one of the ways provided in Rule 5.02, Kentucky Rules of Civil Procedure.

(18) The opposing party may file a response, accompanied by a certificate of service, within ten (10) days after the date the motion was filed with the board.

(19) Except for motions that call for final disposition of an appeal before the board, any member of the board designated by the chairman may dispose of any motion; and any intermediate order of a procedural nature pending final disposition of a proceeding pending before the board may be issued on the signature of any member of the board.

Section 13. Medical Reports. (1) As provided in KRS 342.033, any party may introduce direct testimony (proof) from a physician through a written medical report, subject to the limitations of KRS 342.033, Section 5(3) of this regulation, and the scheduling order issued by the commissioner pursuant to Section 5 of this regulation.

(2) Any written medical report sought to be introduced as evidence shall be submitted on a Form 107 (injury) or Form 108 (occupational disease) whichever is appropriate, except that the administrative law judge may, in his discretion, permit the introduction of a medical report not submitted on Form 107 or Form 108 if the report contains substantially all of the information required by the forms.

(3) Any written medical report sought to be introduced as evidence shall be signed by the physician making the report, bearing an original signature. A reproduced medical report which is not originally signed is not admissible as evidence unless accompanied by an originally signed affidavit from the physician or the submitting attorney verifying the contents of the report.

(4) Any written medical report sought to be introduced into evidence shall include within the body of the report or as an attachment a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician assigned a medical qualifications index number, this section may be complied with by a statement of the physician's medical qualifications index number on the record in lieu of attaching a statement of the physician's qualifications.

(5) Any narrative in a written medical report on a Form 107 or Form 108 sought to be introduced into evidence shall be typewritten. Any written medical report or any attachment to a written medical report, such as spirometric tracings, shall be clearly legible in the original and on the copies served on other parties.

(6) The written medical reports required by KRS 342.316(2)(b)1a shall be filed with the application for adjustment of an occupational disease claim as required by that section but shall not be considered evidence unless a motion for that purpose is made.

(7) Any party may file, with notice to the other parties, the testimony of three (3) physicians, taken either by deposition or medical report, which shall be admitted into evidence without further order. If any party objects to the admissibility of the evidence, the administrative law judge shall then rule on its admissibility.

(8) All other written medical reports shall be introduced by motion for admission. The written medical report shall be attached to the motion. The party seeking admission of the report may also file a memorandum in support of the motion. The administrative law judge shall rule on the motion for admission within fifteen (15) days of the filing of the motion.

(9) Any objection to the filing of a written medical report shall be filed within ten (10) days of the filing of the report or the motion for admission. Grounds for the objection shall be stated with particularity. The objecting party may file a memorandum in support of his objection.

(10) If a written medical report is admitted as direct testimony, any adverse party may depose the physician making the written report as cross-examination concerning it, and the deposition shall be filed as proof without a motion.

Section 14. Continuances, Extensions, and Motions to Hold in Abeyance. (1) Continuances of hearings and prehearing conferences may be granted by the administrative law judge upon motion supported by affidavits stating facts making a proper showing of good cause for a continuance. A motion for a continuance must be filed no later than twenty (20) days prior to the conference or hearing unless there is a showing of emergency or circumstances beyond the control of the requesting party which prohibited timely filing of the motion. The opposing parties may have ten (10) days from the filing date of the motion to respond with a brief memorandum with affidavits in support of their position.

(2) Extensions of time for the taking of discovery or proof by deposition shall not be granted except upon showing of circumstances preventing the party moving for an extension from timely taking discovery or proof by deposition. The motion for extension of time must be filed no later than five (5) days before the deadline

sought to be extended. The motion for extension of time and supporting affidavits must clearly set forth the following:

(a) A showing of timely and diligent efforts by counsel to take the discovery or proof by deposition in question must be detailed.

(b) The facts which prevent taking of the needed discovery or proof by deposition must be detailed.

(c) The date of availability of the evidence needed and the probability of its production must be detailed.

(d) Where possible, supporting documentation giving rise to the need for the extension should be filed with the motion.

(3) In the absence of unusual circumstances, only one (1) thirty (30) day extension shall be granted to each side for completion of discovery or proof by deposition.

(4) The granting of an extension of time for completion of discovery or proof shall enlarge the time to all plaintiffs if the extension is granted to a plaintiff or to all defendants should an extension be granted to a defendant.

(5) The provisions of this section shall apply to motions requesting that a claim be held in abeyance pending settlement or for any other reason.

Section 15. Stipulation of Facts and Judicial Notice. (1) Stipulation of facts which are not in issue is mandatory, and the refusal without good cause to stipulate facts which are not in issue, within the sound discretion of the administrative law judge, may result in assessment of costs against the party who without good cause has refused to stipulate to routine matters not in issue. The assertion of the fact that a party has not had sufficient time or opportunity to ascertain the facts will not be necessarily considered "good cause" within the meaning of this regulation.

(2) Every party to a stipulation shall be considered bound to the same. For good cause shown, however, any party may be relieved of a stipulation he has made provided that the motion for relief is filed at least ten (10) days prior to the date of the hearing. Upon granting relief from a stipulation, the administrative law judge shall grant a continuation of the hearing and shall schedule additional discovery or proof time for the opposing party or parties to complete their discovery or proof so as to prevent prejudice or surprise.

(3) At the prehearing conference, the administrative law judge shall ask the appropriate questions in order to determine the reasons for an inability or unwillingness to stipulate. The plaintiff and the defendants have the joint responsibility of resolving jurisdictional issues and preaward payment of compensation and explaining why these cannot be stipulated.

(4) The administrative law judge will take judicial notice that the Act is mandatory except for those employers exempted by KRS 342.650 and those employees rejecting the Act pursuant to KRS 342.395 and 342.400.

(5) Upon the filing of a claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. Should the employer or any other person against whom a claim is filed not have insurance coverage or qualify as a self-insurer, the commissioner within thirty (30) days after the filing of the claim shall certify to the file that the defendant or any other person against whom a claim has been filed has failed to secure payment of compensation as required by KRS Chapter 342 and shall notify the administrative law judge and all parties by service of a copy of the certification of no coverage.

Section 16. Evidence: Rules Applicable. (1) The same rules of evidence that apply in judicial proceedings and that are governed by the common law and the statutes in effect in this Commonwealth apply in all hearings and depositions taken to be used in cases before the administrative law judges.

(2) An exception to the above rule applies in medical reports submitted by and depositions taken of evaluating physicians who are nontreating physicians. In those instances, the nontreating physician is permitted to use the case history related to him by the patient and the subjective symptomatology related to him by the patient in arriving at and formulating his opinion as to causation and disability.

Section 17. Discovery and Depositions. (1) The parties may obtain discovery and take depositions in accordance with the provisions of Rules 26 to 37, inclusive, of the Kentucky Rules of Civil Procedure, except for Rules 27, 33, and 36 which are not adopted by the board and which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given and provided the notice of deposition contains the following information:

(a) That the deposition is being taken by telephone;

(b) The address and telephone number from which the telephone call will be placed to the witness;

(c) The address where the witness will be giving the deposition and the number of the telephone on which the witness will receive the deposition call; and

(d) That all opposing parties may appear to participate at the deposition either at the place from which the deposition is being given by the witness or at the place the telephone call is placed to the witness.

(3) After a party has served notice of its intention to take a deposition by telephone, any opposing party may participate in the deposition for cross-examination by conference call from places other than where the deposition is given by the witness or where the call is placed to the witness but must contribute its proportionate cost of the conference telephone call.

(4) The commissioner shall establish a medical qualifications index, and an index number will be assigned to a physician upon the filing by the physician of his qualifications. Any physician who has been assigned an index number may testify to the assigned number at deposition in lieu of stating his qualifications. Previously filed medical qualifications may be revised or updated by submitting such revision to the commissioner. Nothing in this rule shall preclude any party from inquiring further into the qualifications of the physician at the deposition.

Section 18. Appearances. (1) Only attorneys-at-law duly licensed in Kentucky may appear or practice before the administrative law judges or the board, except that any natural person who is a party to any proceeding may represent himself only but shall not, either directly or indirectly, represent or appear in behalf of any legal entity other than himself, except as provided in subsection (2) of this section.

(2) If no prior application for adjustment of claim has beenfiled in any dispute involving KRS 342.020 or 342.035, any provider of medical services, employer, insurance carrier, self-insured, self-insured group, self-insured group administrator, insurance adjuster, or surety for employer may contest the same without representation by an attorney through the appearance of a person who is an officer of or regularly employed in a managerial capacity by a corporation or partnership which is involved in the dispute.

(3) Any party who elects to represent himself without the aid of counsel shall be held accountable in the same manner, and to the same degree, as qualified counsel.

(4) Every pleading shall be signed by the person filing the pleading together with his full address and telephone number(s).

Section 19. Withdrawal of Records. (1) No paper or other portion of any original record of the board shall be withdrawn except on order of the administrative law judge.

(2) All physical exhibits, including x-rays, will be disposed of sixty (60) days after the case is finally closed, unless the filing party makes arrangements to claim the exhibit prior to that time. If the unclaimed exhibit has no money value, it will be destroyed; if the unclaimed exhibit has a value of more than $100, it will be sold as surplus property; the unclaimed exhibit will be donated to an appropriate state agency if it has a value of less than $100; if the unclaimed exhibit has historic or museum value, it will be sent to the state archives.

Section 20. Routine Records Admission. Any party may file in the record of a case any routine hospital, armed forces and Social Security records. These shall be made part of the record and considered for their statistical content only, and any opinion contained therein shall be stricken and not considered. A party, however, may depose the proper agent in the manner provided in these regulations in order to have these records admitted as to any opinion contained therein.

Section 21. Frivolous Filings. All provisions of Rule 11 and Rule 73.02(4), Kentucky Rules of Civil Procedure, are incorporated into this regulation by reference.

Section 22. Retraining Incentive Benefits. If an applicant for retraining incentive benefits is working in the coal industry at the time his application is filed, the insurance company responsible is the one insuring the applicant's employer on the date of the filing. Otherwise, the insurance company responsible is the one insuring the applicant's employer on the date of his last exposure.

Section 23. Forms. (1) Forms 101, 102, 103 (rev. 1/8/92), 104, 105, 106, 107 (rev. 1/8/92), 108 (rev. 1/8/92), 109, 110-I (rev. 3/4/92), 110-O (rev. 3/4/92), and 110-R (rev. 3/4/92) [~~, and 112~~] are hereby adopted by reference.

(2) Incorporation by reference. One (1) copy of Forms 101, 102, 103 (rev. 1/8/92), 104, 105, 106, 107 (rev. 1/8/92), 108 (rev. 1/8/92), 109, 110-I (rev. 3/4/92), 110-O (rev. 3/4/92), and 110-R (rev. 3/4/92) [~~, and 112~~] is filed herewith and incorporated by reference.

(3) Information available.

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - Fourth Floor-The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

3. Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

5. Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

Section 24. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the uninsured employers' fund of compensation which has been awarded a claimant in the case where the defendant-employer, or any other party liable for the payment thereof, has not secured payment of compensation as provided for by KRS Chapter 342 shall be made only after the claimant, or any other party in interest, has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the defendant-employer, or any other person liable for payment of the action, judgment has been rendered thereon, and there has been default in payment of the judgment by the defendant-employer, or any other party liable for payment thereof, except the uninsured employers' fund.

(2) When the procedure provided in subsection (1) of this section has been complied with, the claimant may file a motion with the administrative law judge, together with proof of compliance with the requirement of subsection (1) of this section, requesting that the administrative law judge order payment from the uninsured employers' fund in accordance with KRS 342.760. Upon satisfactory proof of such compliance, the administrative law judge shall enter an order directing payment of compensation or any portion thereof from the uninsured employers' fund.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for payment thereof, who has failed to secure payment of compensation as provided for by KRS Chapter 342, the compromise and settlement of a claim or award approved by the board pursuant to KRS 342.265, or the payment of its proportionate share of a claim or award by the special fund.

(4) Compliance with subsection (1) of this section shall not be required and the compensation awarded shall be deemed uncollectible from the defendant-employer upon a showing that the defendant-employer has filed a petition in bankruptcy in the United States Bankruptcy Court under either Chapter 7 or Chapter 11 of the Federal Bankruptcy Code.

Section 25. Use of American Medical Association Guidelines in Coal Workers' Pneumoconiosis Cases. (1) The predicted normal values of FVC and FEV_1, which are identical in both the 1984 and 1988 editions of the American Medical Association Guidelines, are given in graph form with ages and heights given in even years and even centimeters. The guidelines are silent as to the determination of the proper predicted values when the plaintiff's age is in an odd year or his height is in odd centimeters.

(2) If the plaintiff's age at the time of the exam is an odd year, the next highest even year shall be used.

(3) The plaintiff's height, as measured in his stocking feet, shall be rounded out to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

[~~Section 26. Resolution of Medical Fee Disputes. (1) Any employee, provider of medical services, employer, insurance carrier, self-insured, self insured group, self insured group administrator, or surety for employer, whether a natural person, partnership, or corporation, may seek, by request (Form 112), resolution of a dispute regarding the payment or nonpayment of medical expenses before an application for adjustment of claim is filed.~~

~~(2) The movant shall file with his request affidavits setting forth facts sufficient to show that the movant is entitled to the relief sought. The opposing party may file, within twenty (20) days after notice of the request a response, if any, along with affidavits setting forth facts sufficient to show that the movant is not entitled to the relief sought.~~

~~(3) An administrative law judge shall review all pleadings, affidavits, or other evidence in the record and render a decision which shall be filed of record and served on all parties to the dispute. The administrative law judge shall not be precluded from taking any other action deemed necessary to resolve the dispute, including an order directing the parties to file a formal application for adjustment of claim.~~

~~(4) If the administrative law judge determines that such proceedings have been brought, caused to be brought, prosecuted, or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the party who has so brought, caused to be brought, prosecuted, or defended the proceedings without reasonable ground as provided by KRS 342.310.~~

~~(5) Any party aggrieved by the decision of the administrative law judge may appeal to the Workers' Compensation Board by following the procedures set out in Section 12 of this regulation.~~]

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: August 14, 1992

FILED WITH LRC: August 14, 1992 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m. on September 21, 1992. Individuals interested in attending this hearing shall notify this agency in writing by September 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 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, Perimeter Park West, 1270 Louisville

Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Valerie L. Salven

(1) Type and number of entities affected: Employers, employees, insurers, and providers of medical services involved in workers' compensation medical fee disputes. It is estimated that 700 of these disputes are filed in a year.

(a) Direct and indirect costs or savings to those affected:

1. First year: None. Section 26, Resolution of Medical Fee Disputes, and Form 112 have been deleted from this regulation so that a separate regulation on the topic of medical fee disputes may be promulgated in compliance with KRS 13A.221.

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

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: Amendments to Section 26 were planned, but KRS 13A.221 indicates that a separate regulation on the subject of medical fee disputes should be promulgated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Section 26 and Form 112 have been deleted from this regulation for revision and promulgation in a separate regulation in compliance with KRS 13A.221.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 13A.120, 198B.040 (10), 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 relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it as well as identify and publish the manufacturer's standard specification number of the material accepted in those installations. This amendment was approved by the Plumbing Code Committee and the Board of Housing to add new standards for polyethylene plastic pipe for cold water only and hot or cold water applications. [~~Amendment to the "Application Chart" in Section 2 of this regulation is necessary in order to move "lawn sprinklers" from a low hazard section to a high hazard area due to the chemicals used in lawn care. This amendment was approved by the Plumbing Code Committee on November 6, 1991 and the Board of Housing on January 23, 1992.~~]

Section 1. Definition of Terms. (1) "ASSE" means American Society of Sanitary Engineers and copies of standards identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(2) "ASTM" means American Society for Testing Materials and copies of standards identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(3) "Critical level (CL)" means the level to which the vacuum breaker may be submerged before backflow will occur. If the [~~Where~~] CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the department and other governing authorities. Toxic materials shall be kept out of the potable water system.

(a) The pipe [~~Piping~~] conveying[~~,~~] and the [~~all~~] surfaces in contact with potable water shall be constructed of nontoxic materials.

(b) Chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the [~~such~~] systems.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a [~~any~~] material which will affect either the taste, odor, color, or potability of the water supply when the tank is placed in, or returned to, service. All interior tank coatings shall be from the list approved by the authority having jurisdiction.

(2) Potable water only shall be accessible to plumbing fixtures that supply water for drinking, bathing, culinary use or the processing of medicinal, pharmaceutical or food products.

(3) The potable water supply system shall be designed, installed, and maintained [~~in such manner as~~] to prevent contamination from nonpotable liquids, solids, or gases being introduced into the potable water supply through cross connections or [~~any~~] other piping connections to the system.

(4) Cross connections shall be prohibited except [~~when and where,~~] as approved by the authority having jurisdiction, and suitable protective devices shall be [~~are~~] installed.

(5) Cross connections between a private water supply and a public water supply shall not be made.

(6) If [~~When~~] cross connection control devices are properly installed, they create a closed water system. A properly sized thermal expansion tank shall be installed in the cold water supply located [~~as~~] near the water heater [~~as possible~~].

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow includes both back pressure and back siphonage.

(a) Air gap. Provides the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be twice the effective opening of a potable water outlet, unless the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, in which case the minimum required air gap shall be three (3) times the effective opening of the outlet. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES

Fixture	Minimum Air Gap	
	When not affected by near wall (inches)	When affected by near wall (inches)
Lavatories and other fixtures with effective opening not greater		

than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3
Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps when spaced from inside edge of spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap when spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more [~~such~~] vertical walls or ribs has not been determined. In this [~~such~~] case, the air gap shall be measured from the top of the wall.

(b) Reduced pressure principle back pressure backflow preventer. Reduced pressure principle back pressure backflow preventers provide the best mechanical protection against backflow available, and may be considered equivalent to an air gap in most situations.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions only. These devices are manufactured assemblies consisting of two (2) independently acting check valves and including shutoff valves at each end, and petcocks and test gauges for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions only.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions only. If [~~When~~] applicable, all atmospheric type vacuum breakers shall be installed after the last cutoff valve on the water line. These devices may operate under normal atmospheric pressure when the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS
FOR ATMOSPHERIC TYPE VACUUM BREAKERS

Fixture or Equipment	Method of Installation
Aspirators, ejectors, and and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
	On models without built-in vacuum breakers:
Dental units	On models without built-in vacuum breakers: CL at least 6 in. above flood level rim of bowl.
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

NOTE 1. Critical level (CL) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. If the [~~Where~~] CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(f) Barometric loop: applicable only to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. Backflow and back siphonage preventers shall be in an accessible location, preferable in the same room as the fixture or connection they protect. Devices may be installed in utility or service spaces. Devices and air gaps shall not be subject to flooding or freezing.

(h) Inspection of devices. Periodic inspections shall be made of all backflow and back siphonage preventers to determine if [~~whether~~] they are in proper working condition. Reduced pressure principle back pressure backflow preventers shall be tested on at least an annual basis. Records shall be kept on all [~~such~~] inspections.

(i) Approval of devices. Before any device for the prevention of backflow or back siphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the plumbing official. Devices installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

(j) Protection of potable water system. [~~All~~] Potable water openings, outlets, and connections, except those serving residential units, shall be protected against backflow in accordance with [~~one (1) of the following~~] paragraphs, (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at any given outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by toxic substances or disease-causing organisms.

2. Moderate hazard. Potential for contamination by nontoxic but objectionable substances.

3. Minor hazard. Potential for contamination by generally nontoxic, nonobjectionable substances, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. An opening or outlet [~~All openings and outlets~~] shall be protected by an air gap between the opening and floor level rim whenever possible. The acceptable protection for various types of outlets or connections shall be as

shown in the following table:

APPLICATION CHART

TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE STANDARDS
Reduced Pressure Principle Backflow Preventer For high hazard cross connections.	Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks.	All cross connections subject to backpressure or back siphonage where there is a high potential health hazard from contamination. Continuous pressure.	Main Supply Lines Commercial Boilers Cooling Towers Hospital Equipment Processing Tanks Laboratory Equipment Waste Digesters Car Wash Sewage Treatment Lawn Sprinklers	A.S.S.E. No. 1013 A.W.W.A. C506 FCCCHR of USC CSA B.64.4 Sizes 3/4 " - 10"
(A) Double Check Valve Assembly For low hazard cross connections.	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure where there is a low potential health hazard or nuisance. Continuous pressure.	Main Supply Lines Food Cookers Tanks and Vats Commercial Pools N O	A.S.S.E. No. 1015 A.W.W.A. C506 FCCCHR of USC CSA B.64.5 Sizes 3/4" - 10"
(B) Dual Check Valve Backflow Preventer For low hazard applications.	Two independent check valves. Checks are removable for testing	Cross connections where there is a low potential health hazard and moderate flow requirements.	Post ground hydrants. N T O X I C	A.S.S.E. No. 1024 Sizes 3/4" & 1"
(A) Backflow Preventer with Intermediate Atmospheric Vent For moderate hazard cross connections in small pipe sizes.	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage where there is a moderate health hazard. Continuous pressure.	Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential	A.S.S.E. No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"
		Pump outlet to prevent backflow to carbon dioxide gas and carbonated water into the water supply system to beverage machines.	Postmix Carbonated Beverage Machine	Special Approvals
(B) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker In small pipe sizes for moderate to low hazard.	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage where there is a moderate to low health hazard.	Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks	A.S.S.E. No. 1035 (N-LF9)
(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process Tanks Dishwashers Soap Dispensers Washing Machines	A.S.S.E. No. 1001 ANSI.A112.1.1 CSA B.64.1.1 FCCCHR of USC Sizes 1/4" - 3"
(B) Antisiphon Pressure Breakers For moderate to high hazard cross	Spring loaded single float and disc with independent 1st check.	This valve is designed for installation in a continuous pressure pota-	Laboratory Equipment Cooling Towers Comm. Laundry Mach. Swimming Pools	A.S.S.E. No. 1020 CSA B.64.1.2 FCCCHR of USC Sizes 1/2" - 2"

connections.	Supplied with shutoff valves and ball type test cocks.	ble water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers	
(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose Bibs Service Sinks Hydrants	A.S.S.E. No. 1011 CSA B.64.2 Size 3/4" Hose

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

	Degree of Hazard			Acceptable Protection				
					Backflow		Back siphonage	
Type of Connection	Severe	Moderate	Minor	Air Gap	Reduced Pressure Device	Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1. Toxic substance	X			X	X			
2. Nontoxic subst.		X		X	X	X		
B. Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C. Gravity due to obvious site conditions subject to:								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic subst.		X		X	X	X		
II. Water outlets and connections not subject to back pressure:								
A. Connection to sewer or sewage pump	X			X				
B. Outlet to receptacles containing toxic substances	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances		X		X	X	X	X	X
D. Outlet into domestic water tanks			X	Each case treated separately				
E. Flush valve toilets	X			X	X		X	X
F. Flush valve urinals		X		X	X		X	X
G. Outlets with hose attachments subject to contamination from:								
1. Toxic substances	X			X	X		X	X
2. Nontoxic subst.		X		X	X	X	X	X
H. Outlets to recirculating cooling tower:								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		

Section 3. Water Required. (1) A [~~Every~~] building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to A [~~any~~] building shall not be [~~not~~] less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures in the building [~~on all floors at all times~~].

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they may [~~can~~] be placed in the same trench if [~~provided~~]:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.

(2) Piping which has been used for [~~any other~~] purposes other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing water closets and urinals, if the [~~provided such~~] water is [~~shall be~~] piped in an independent system.

(a) If [~~When~~] a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. An [~~Each~~] outlet on the nonpotable water distribution system [~~which might be~~] used for drinking or domestic purposes shall be permanently posted: DANGER - UNSAFE WATER. The [~~Each~~] branches, fittings or valves shall be identified by the word - "NONPOTABLE WATER" either by signs or brass tags that shall be [~~are~~] permanently affixed to the pipe, fittings, valves, etc. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.

(4) Any backflow device or cross-connection control device shall be approved by the department.

(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A [~~No~~] private water supply shall not be interconnected with any public water supply.

(7) Water used for cooling of equipment or in other processes shall not be returned to the potable water system. The [~~Such~~] water shall be discharged into a drainage system through an air gap, or may be used for nonpotable purposes on written approval of the plumbing official.

Section 6. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. A [~~Every~~] water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. If [~~When~~] a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the [~~such~~] valves shall be set above the fixture [~~in a manner so as~~] to prevent the [~~any~~] possibility of polluting the potable water supply by back siphonage. These [~~All such~~] fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that shall prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 7. Connections to Boilers. Potable water connections to boiler feed water systems in which boiler conditioning chemicals are introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where [~~such~~] chemicals are introduced. Boilers shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent [~~any~~] contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. No two and one-half (2 1/2) inch fixture branches are supplied from any one-half (1/2) inch pipe. (EXCEPTION: A combination of two (2) of the following fixtures may be connected utilizing the one-half (1/2) inch branch: a flush tank water closet, a lavatory or drinking fountain.)

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to a [~~any~~] fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and [~~in every instance~~] shall be brought to the floor or wall adjacent to the fixture. A [~~No~~] concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In [~~all~~] building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices such as air chambers or approved mechanical shock absorbers shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If [~~Where~~] mechanical shock absorbers are installed, they shall be in an accessible place.

(b) If [~~Where~~] mechanical devices are used, the manufactures specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing produced and labeled as [~~conforming to~~] ASTM B-586-73, fusion welded copper tubing produced and labeled as

[~~conforming to~~] ASTM B-447-72 and ASTM B-251, DWV welded brass tubing produced and labeled as [~~conforming to~~] ASTM B-587-73, seamless stainless steel tubing, Grade H produced and labeled as [~~conforming to~~] ASTM A-268-68, filament-wound reinforced thermosetting resin pipe produced and labeled as [~~conforming to~~] ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold). Polyethylene (PE) plastic pipe produced and labeled as [~~conforming to~~] ASTM D-2239-69, cross-linked polyethylene (PEX), produced and labeled as ASTM F-876 for cold water only and ASTM F-877 for hot or cold water applications, copper tubing size PE produced and labeled as [~~conforming to~~] ASTM D-2737 for water service only if installed with compression couplings, Poly(vinyl chloride) (PVC) plastic pipe produced and labeled as [~~conforming to~~] ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe produced and labeled as [~~conforming to~~] ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 produced and labeled as [~~conforming to~~] ASTM D-2241-84, polybutylene (PB) plastic pipe produced and labeled as [~~conforming to~~] ASTM-D-3309-85b with brass, copper or celcon fittings, Quicktite connection using a celcon asetal copolymer, polybutylene cone and stainless steel ring, plastic pipe and fittings shall bear the NSF seal of approval. (EXCEPTION: Polybutylene pipe utilizing insert fittings of brass, copper or celcon shall use only copper clamping rings.) Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall be produced and labeled as [~~conform to~~] ASTM-D-3309-85b, and polybutylene plastic pipe produced and labeled as [~~conforming to~~] ASTM 2662 for cold water applications only. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn. If [~~When~~] Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor, it shall be wrapped with an approved material to [~~that will~~] permit expansion or contraction. [~~In no instance shall~~] Polyethylene, PVC or CPVC shall not be used below ground under a [~~any~~] house or building (refer also to 815 KAR 20:060 and 815 KAR 20:073).

Section 11. Temperature and Pressure Control Devices for Shower Installations. Temperature and pressure control devices shall be installed on all shower installations and shall [~~that will~~] maintain an even temperature and pressure and shall provide nonscald protection. These [~~Such~~] devices shall be installed on all installations other than in homes or apartment complexes.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation is prohibited for a potable water supply shutoff valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) A [~~Each~~] family unit in a two (2) family or multifamily dwelling shall have the [~~each family~~] unit controlled by an arrangement of shutoff valves which will permit the [~~each~~] unit to be shutoff without interfering with the cold water supply to [~~any~~] other family units or portions of the building.

(4) In [~~all~~] buildings other than dwellings, shutoff valves shall be installed to [~~which~~] permit the water supply to the [~~each piece of~~] equipment to be isolated without interference with the supply to other equipment.

(5) A [~~Each~~] fixture or group of bath fixtures shall be valved and [~~each~~] lawn sprinkler openings shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or a [~~in lieu each~~] group of fixtures shall be valved.

(6) A group of fixtures or a fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a [~~each~~] hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and only serving this equipment.

Section 13. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. If [~~When~~] a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; if [~~when~~] a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. The relief device may also discharge through an air gap to a sump basin, service sink, open receptacle or [~~any~~] other point of discharge in which equivalent safety shall be [~~is~~] provided as approved by the Division of Plumbing. Relief devices shall be installed on a pneumatic water system (see Section 17).

Section 15. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. The [~~Such~~] approval shall be obtained prior to [~~before an~~] installation [~~is made~~].

Section 16. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" if [~~provided~~] the following conditions are met:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent; [~~equal,~~] and [~~that~~]

(2) The heat exchanger is pretested by the manufacturer to 450 PSI; and [~~that~~]

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and [~~that~~]

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater. Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided. The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and in no instance shall it be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. Tanks and vats with potable water supply below the rim shall be subject to the following requirements:

(1) Where a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less

than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES
FOR WATER SUPPLY TANKS

Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. If [~~When~~] a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch Type M copper in its piping and its run shall not exceed 140 feet between the water heater and the heating unit (relates to 815 KAR 20:070).

Section 20. Fire Protection Systems. Fire protection systems using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the administrative regulations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the State Plumbing Code [~~other sections of this code~~].

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent [~~equal~~] with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shutoff valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and-waste cock.

Section 22. Conservation of Water (refer to 815 KAR 20:070).

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: August 13, 1992
FILED WITH LRC: August 13, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 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 September 17, 1991, (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: Master and journeymen plumbers.
(a) Direct and indirect costs or savings to those affected: No costs or savings involved by implementation of this amendment.
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 created by amendment.
(2) Effects on the promulgating administrative body: None beyond requirements of updating State Plumbing Code with approved amendments to regulation.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by amending regulation.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering not applicable. The standard applies to all polyethylene plastic pipe for water systems.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:130. House sewers and storm water piping; methods of installation.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 13A.120, 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 identifies [~~relates to outlining~~] the materials that may be used in the construction of house sewers, storm water piping as well as the methods of installation. This amendment was approved by the Plumbing Code Committee and the Board of Housing to allow smaller homes, particularly those built for Habitat, to use a four (4) inch combination storm and sanitary sewer which is adequate. [~~This amendment is~~

~~necessary to bring the regulation into compliance with KRS Chapter 13A and to recognize a new standard for pipe which is designed for use in house sewers.~~]

Section 1. Independent System. The drainage and plumbing system of [~~each~~] new building and of new work installed in an existing building shall be separate [~~from,~~] and independent [~~of, that~~] of [~~any~~] other buildings except as outlined in this regulation. A [~~Every~~] building shall have an independent connection with either a public or private sewer or sewer system.

Section 2. Exception. If [~~Where~~] a building stands in the rear of other [~~another~~] buildings or on an interior lot and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard or driveway, the sewer from the front building may be extended to the rear building and it shall be considered as one (1) sewer. This exception shall not apply to corner lots if [~~where~~] a sewer connection is available from the street or alley or to a new or existing building which abuts a street or alley.

Section 3. Connection with Private Sewage Disposal System. If [~~When~~] a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4. Excavations. [~~All~~] Excavations made for the installation of a house sewer shall be open trench work, and the trenches shall be kept open until the piping has been inspected, tested and approved.

Section 5. Depth of Sewer at the Property Line. (1) If [~~Where~~] possible, the sewer at the property line shall be at a sufficient depth to properly serve a [~~any~~] plumbing connection [~~that shall be~~] installed in the basement of a [~~any~~] building.

(2) House sewers shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot. [~~All~~] Sewers shall have at least an eighteen (18) inch cover. Sewer piping installed under property subject to vehicular traffic (e.g., driveways, parking lots and similar locations shall have at least a three (3) foot [~~feet~~] cover unless constructed of cast iron piping. If [~~When~~] less than a three (3) foot cover is available, sewer piping shall be encased in a minimum of six (6) inches of concrete on all sides and the top. Sewers shall be backfilled by hand and tamped six (6) inches above the piping, or filled with six (6) inches grillage above the piping. All joints in cast iron and vitrified clay pipe shall be made in conformance with the State Plumbing Code [~~a manner to conform to other sections of this code~~].

Section 6. New House Sewer Connections. House sewers installed where a private sewerage system has been discarded may connect to the house drain, if the existing plumbing system meets the State Plumbing Code [~~this code or a previous one~~].

Section 7. Materials for House Sewers. House sewers or combined sewers, beginning two (2) feet outside the foundation wall of a building, shall be made of either extra heavy cast iron pipe, service weight cast iron, aluminum, vitrified clay, concrete, PVC or ABS plastic pipe schedules 40 and 80 and cellular core PVC produced and labeled as [~~conforming to~~] ASTM F-891, cellular core ABS produced and labeled as [~~conforming to~~] ASTM 628, truss pipe and extra heavy SDR 35 pipe and Type PS-46, Poly(Vinyl Chloride) (PVC) in sizes four (4) inches through fifteen (15) inches produced and labeled as [~~conforming to~~] ASTM F 789-82 or [~~and~~] PVC ribbed pipe produced and labeled as [~~conforming to~~] ASTM 795.

Section 8. Material for Storm Sewers Inside Buildings. Material for storm sewers inside of buildings to a point two (2) feet outside a building in sizes eight (8) inches and smaller shall be cast iron pipe, aluminum or Schedule 40 ABS or PVC DWV pipe. Storm sewers in sizes of ten (10) inches and larger shall be either cast iron, aluminum, vitrified clay or concrete conforming to appropriate commercial standards with approved joints.

Section 9. Change of Direction. Change in direction of a sewer shall be made with long curves, one-eighth (1/8) bends or Y's.

Section 10. Size of House Sewers and Horizontal Branches. The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain. House sewers receiving branches shall be sized in the same manner as house drains (see 815 KAR 20:090).

Section 11. Size of Storm Systems. The required sizes of storm sewers shall be determined on the basis of the total drained areas in horizontal projection in accordance with the following table. A [~~No~~] storm sewer shall not be laid parallel to or within two (2) feet of a [~~any~~] bearing wall. The storm sewer shall be laid at a sufficient depth to protect it from freezing.

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3		1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	6,300
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. If [~~When~~] a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area and the total fixture units, adding the product to the drained area and applying the sum of the preceding table for storm water sewers. A [~~No~~] combined house drain or house sewer shall not be less than four (4) [~~five (5)~~] inches in diameter, and a [~~no~~] combined house drain or house sewer shall not be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM

Number of fixture units on sanitary system

Drained roof area in square feet	Up to 6	7 to 18	19 to 36	37 to 60	61 to 96	97 to 144	145 to 216	217 to 324
Up to 120	180	105	60	45	30	22	18	15
121 to 240	160	98	57	43	29	21	17.6	14.7
241 to 480	120	75	50	39	27	20	16.9	14.3
481 to 720	75	62	42	35	24	18	15.4	13.2
721 to 1,080	54	42	33	29	20	15	13.6	12.1
1,081 to 1,620	30	18	16	15	12	11.5	11.1	10.4
1,621 to 2,430	15	12	11	10.5	9.1	8.8	8.6	8.3
2,431 to 3,645	7.5	7.2	7.0	6.9	6.6	6.5	6.4	6.3
3,646 to 5,460	2.0	2.4	3.0	3.3	4.1	4.2	4.3	4.4
5,461 to 8,190	0	2.0	2.1	2.2	2.3	2.4	2.5	2.6
8,191 to 12,285	0	0	2.0	2.1	2.1	2.2	2.3	2.3
12,286 to 18,420	0	0	0	2.1	2.1	2.1	2.2	2.2
18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2
27,631 to 40,945	0	0	0	0	0	2.0	2.1	2.2
40,946 to 61,520	0	0	0	0	0	0	2.0	2.1
Over 61,520	0	0	0	0	0	0	0	2.0

Number of fixture units on sanitary system

Drained roof area in square feet	325 to 486	487 to 732	733 to 1,098	1,099 to 1,644	1,645 to 2,466	2,467 to 3,702	3,703 to 5,556	Over 5,556
Up to 120	12	10.2	9.2	8.4	8.2	8.0	7.9	7.8
121 to 240	11.8	9.9	9.1	8.3	8.1	8.0	7.9	7.8
241 to 480	11.5	9.7	8.8	8.2	8.0	7.9	7.8	7.7
481 to 720	10.8	9.2	8.6	8.1	7.9	7.9	7.8	7.7
721 to 1,080	10.1	8.7	8.3	8.0	7.8	7.8	7.7	7.6
1,081 to 1,620	9.8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621 to 2,430	8.0	7.9	7.8	7.7	7.6	7.5	7.4	7.4
2,431 to 3,645	6.2	6.3	6.4	6.4	6.8	7.0	7.1	7.2
3,646 to 5,460	4.5	4.7	5.0	5.1	6.1	6.4	6.9	6.9
5,461 to 8,190	2.8	3.2	3.7	4.6	5.0	5.6	6.2	6.4
8,191 to 12,285	2.4	2.5	2.6	2.7	3.5	4.5	5.2	5.6
12,286 to 18,420	2.3	2.3	2.4	2.4	2.6	3.2	4.2	4.7
18,421 to 27,630	2.2	2.3	2.3	2.3	2.4	2.5	2.8	3.1
27,631 to 40,945	2.2	2.2	2.2	2.2	2.2	2.2	2.3	2.4
40,946 to 61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

Section 13. House Sewer in Undisturbed or Filled Ground. House sewers laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand or other approved grillage. House sewers laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other support that shall be approved by the department. Supports in filled ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock. House sewers constructed of flexible thermoplastic sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top and sides of the piping.

Section 14. Storm Sewers in Undisturbed or Filled Ground. Storm sewers laid in undisturbed ground shall not require grillage. Storm sewers laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that shall be approved by the department. Supports in filled ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level (Public). In public buildings in which the whole or part of the building drain and plumbing system lies below the level of the main sewer, sewage and waste shall be lifted by an approved artificial means and discharged into the house sewer.

Section 16. Drainage Below Sewer Level (Residential). In homes where the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump. The sump pit shall be constructed of either poured or precast concrete, approved fiberglass or polyethylene material with a tight fitting cover. The sump pit shall be provided with a two (2) inch vent which may also act as a waste and vent for a laundry tray. The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade. The sump pit [~~well~~] shall be provided with a tight-fitting concrete cover. On the outside of the building this waste piping shall connect into a four (4) inch by two (2) inch sanitary tee which shall connect into a four (4) inch P trap and then into the sanitary sewer. The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade and shall be provided with a ventilated cap.

Section 17. Sumps and Receiving Tanks. All subsoil drains shall discharge into an air tight sump or receiving tank [~~se~~] located [~~as~~] to receive the sewage by gravity. The sewage shall be lifted and discharged into the house sewer by a pump, ejector or any equally efficient method. The sumps shall automatically discharge.

Section 18. Ejectors, Vented. [~~All~~] Ejectors shall be vented with a three (3) inch vent. Fixtures or appliances connected to an ejector shall be vented in accordance with other sections of this regulation.

Section 19. Ejector Power: Motors, Compressors, Etc. [~~All~~] Motors, air compressors and air tanks shall be located where they are open for inspection and repair at all times. The air tanks shall be proportioned [~~se as~~] to furnish sufficient air at suitable pressure to the ejector to completely empty the sump or storage tank with the compressor not operating. The end pressure in the tank shall [~~be~~] not be less than two (2) pounds for each foot of height through which sewage is raised.

Section 20. Ejectors for Subsoil Drainage. If [~~When~~] subsoil catch basins are installed below the sewer level, an approved automatic ejectors shall be used. The ejector or any device raising subsoil water shall discharge into a properly trapped fixture or into a storm-water drain.

Section 21. Drainage of Yards, Areas and Roofs. [~~All~~] Roofs, paved areas, courts, and courtyards shall be drained into a storm water system or a combined sewerage system, but shall not be drained into sewers intended for sewage only. If [~~When~~] drains are connected to a combined sewerage system, they shall be trapped. If roof leaders, conductors, or gutter openings are located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required. Traps shall be set below the frost line or on the inside of the building. If [~~Where~~] there is no storm or combined sewer available, the line may discharge into a drainage area unless prohibited by the local health department or sewer district. If [~~When~~] the drains are not connected to a combined sewer, a trap shall not be required.

Section 22. Size of Rain Water Leader. An inside leader shall not be less size than the following:

Area of Roof (In Square Feet)	Leader, Diameter (Inches)
Up to 90	1 1/2
91 to 270	2
271 to 810	3
811 to 1,800	3 1/2
1,801 to 3,600	4
3,601 to 5,500	5
5,501 to 9,600	6

Section 23. Inside Conductors or Roof Leaders. If [~~When~~] conductors and roof leaders are placed within the walls of a [~~any~~] building, or in an interior court or ventilating pipe shaft, they shall be constructed of cast iron pipe, galvanized wrought iron, galvanized steel, copper, aluminum, schedule 40 ABS/PVC DMV pipe or reinforced thermosetting resin pipe produced and labeled as [~~conforming to~~] ASTM D-2996 (red and silver thread). The vertical distance of PVC or ABS conductors shall not exceed forty-five (45) feet from the base to [~~through~~] the penetration [~~terminus~~] through the roof. Provisions shall be made for the expansion and contraction of plastic pipe.

Section 24. Outside Conductors. If [~~When~~] outside sheet metal conductors or downspouts are connected to a house drain, they shall be connected by means of a cast iron pipe extending vertically at least one (1) foot above the grade line. Along public driveways, without side walks, they shall be placed in niches in the walls, protected by wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve (12) inches above the grade.

Section 25. Defective Conductor Pipes. If [~~When~~] an existing sheet metal conductor pipe within the walls of a [~~any~~] building becomes defective, the conductor shall be replaced by one which conforms to this regulation.

Section 26. Vent Connections with Conductors Prohibited. A conductor pipe shall not be used as a soil, waste or vent pipe. A [; ~~nor shall any~~] soil, waste, or vent pipe shall not be used as a conductor.

Section 27. Overflow Pipes. Overflow pipes from cisterns, supply tanks, expansion tanks, or drip pans shall connect only indirectly with any house sewer, house drain, soil or waste pipe.

Section 28. Subsoil Drains, Below Sewer Level. Subsoil drains shall discharge into a sump or receiving tank and [~~, it~~] shall be automatically lifted and discharged into the storm drainage system or upon the ground outside the building [~~that~~] it serves.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: August 13, 1992
FILED WITH LRC: August 13, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 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 September 17, 1991, (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: All licensed master and journeymen plumbers.
(a) Direct and indirect costs or savings to those affected: No costs or savings involved by implementation of this amendment.
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 created by this amendment.
(2) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to regulation.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by this amendment.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by the Plumbing Code Committee and the Board of Housing.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Special provision for special small housing situations.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 30:010. LP Gas license; financial responsibility required.

RELATES TO: KRS 234.120
STATUTORY AUTHORITY: KRS 234.120(4)
NECESSITY AND FUNCTION: KRS 234.120 requires the Commissioner to promulgate reasonable regulations requiring proof of financial responsibility. This regulation is made to assure persons injured by LP Gas dealers have some assets against which to recoup some of their loss. This amendment is necessary to specify the type of financial responsibility proof required for licensure. [~~This amendment is necessary to satisfy the technical requirements of KRS Chapter 13A and to increase the liability insurance amounts to a more responsible level.~~]

Section 1. Proof of Financial Responsibility, Amount. (1) Prior to the issuance or renewal of a license to engage in the LP gas business as required by KRS 234.120, the applicant shall submit a certificate of insurance from an insurance company authorized to do business in Kentucky certifying that the applicant has a valid general liability insurance policy for the payment of damages in personal injury and property damage in the minimum amount of $100,000, per person and $500,000 per incident for licenses set forth in KRS 234.120(1)(a) through (d) and for business license set forth in KRS 234.120(1)(e) through (k) in the minimum amount of $1,000,000. [~~Subject to the exceptions provided in KRS 234.120(2), no person shall obtain a license to engage in any of the businesses set out below without having shown proof of ability to respond in damages for personal injury and property damages in the minimum amount of $100,000:~~

~~(a) Selling, to the ultimate consumer or user, of liquefied petroleum gas, of liquefied petroleum gas containers, or of liquefied petroleum gas regulating equipment for use with liquefied petroleum gas;~~

~~(b) Assembling, repairing, installing or connecting of liquefied petroleum gas containers, or regulating equipment, or liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment, or the filling of Interstate Commerce Commission (I.C.C.) liquefied petroleum gas containers of less than 100 pounds capacity;~~

~~(c) Selling or delivering liquefied petroleum gas in prefilled containers (this does not authorize the filling of containers or delivery by tank truck);~~

~~(d) The selling of liquefied petroleum gas for use in motor vehicles, as a motor fuel, from storage containers, dispensing devices, and pertinent equipment;~~

~~(e) Engaging in all the businesses set out in paragraphs (a), (b), (c), and (d) of this subsection, and having not more than 500 customers (this license shall be in lieu of the four (4) individual licenses required by paragraphs (a), (b), (c), and (d) of this subsection).~~]

(2) Failure to maintain the required insurance shall void the license. [~~Subject to the exceptions provided in KRS 234.120(2), no person shall obtain a license to any of the businesses set out below without having shown proof of ability to respond in damages for personal injury and property damages in the minimum amount of $100,000:~~

~~(a) Engaging in all the businesses set out in paragraphs (a), (b), (c), and (d) of this subsection, and having more than 500 customers (this license shall be in lieu of all other licenses);~~

~~(b) Storing, for resale, of liquefied petroleum gas in other than I.C.C. containers, except qualifications under subsection (1)(b) or (d)~~

~~of this section;~~

~~(c) Transporting of liquefied petroleum gas, by tank truck, over the highways of this state;~~

~~(d) Delivering of liquefied petroleum gas to any person, by tank truck, or the delivering, to any person other than the ultimate consumer, in containers, except where the delivering is incidental to the carrying on of a business licensed under paragraph (a) of this subsection;~~

~~(e) The filling of liquefied petroleum gas containers of 100 pound capacity or more;~~

~~(f) Engaging in all or any combination of the businesses set out in subsection (1)(a) through (e) of this section and paragraphs (a) through (e) of this subsection (this license shall be in lieu of all individual licenses required herein).~~]

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: August 12, 1992
FILED WITH LRC: August 13, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 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 September 17, 1991, (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: Indirect cost only as cost of doing business necessitates insurance for public protection.

(a) Direct and indirect costs or savings to those affected:

1. First year: Current cost of general liability coverage; average cost varies depending on company providing coverage.

2. Continuing costs or savings: Most insurance policies are provided on an annual basis so continuing cost would be a constant.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Insurance cost are relative and should not cause any ill effects on competition with companies licensed or permitted through the Kentucky Department of Insurance.

(b) Reporting and paperwork requirements: No additional paperwork required.

(2) Effects on the promulgating administrative body: The amendments herein provided result in indirect savings only to occasional problem of how to show financial responsibility if no insurance.

(a) Direct and indirect costs or savings:

1. First year: No direct cost or indirect cost to administrative body.

2. Continuing costs or savings: No continuing cost to administrative body.

3. Additional factors increasing or decreasing costs: No additional factors either increasing or decreasing cost.

(b) Reporting and paperwork requirements: No additional paperwork - certificate provided by license.

(3) Assessment of anticipated effect on state and local revenues: State or local government will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Providing proof of financial responsibility is an uncertain method when financial statements are provided by licensee. The regulation provides for no third party or independent response to the department. There is no real method to determine authenticity of financial statements provided to this office.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict exists if the regulation is amended.

(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: Due to the liability associated with the use of this produce (LP gas) and it's application to many facilities, including places of assembly, including but not limited to schools and churches, in the event of an accident caused by some failure of mechanism or failure due to workmanship, the liability cost could be catastrophic.

TIERING: Was tiering applied? No. The potential hazard from a simple incident from operating as an LP gas dealer requires every dealer to carry a minimum.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 2:150. Human immunodeficiency virus education, initial professional licensure.

RELATES TO: KRS 211.180, 214.020, 214.615
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 214.615 provides that [~~as of July 1, 1991,~~] the Cabinet for Human Resources shall require that an educational course approved by the cabinet on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS be completed by prospective licensees under KRS Chapters 311, 312, 313, 314, 315, 320, 327, 333, 335.

Section 1. Definitions. [~~(1)~~] "Initial licensure" means the granting of a professional license under the respective KRS chapter for any person who has never been previously licensed in the Commonwealth, for any person holding an inactive license, or for any person who wishes to reinstate a lapsed license.

[~~(2) "National accrediting body" means a council or commission which examines specific academic curricula of professional schools and certifies that these curricula are adequate for the granting of a specific professional degree or certificate.~~]

Section 2. The educational course approved by the cabinet for initial licensure shall be either of the following:

(1) Any one of those prelicensure curricula or courses found on the official listing of the AIDS education program, CHR, which is designated as appropriate for licensed professionals. The official listing is hereby incorporated by reference and may be obtained from the AIDS Education Program, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4 p.m. on Monday through Friday excluding legal holidays. Courses on the list shall be marked either as appropriate for all licensed professionals or designated as appropriate only for one (1) or more professions. Requests for inclusion on the official listing may be made by any interested party by submitting, to the AIDS education program, material including the title, style, (correspondence, in-person, video or other) and brief description of the course. A course-description brochure will suffice to meet this requirement; or

(2) Any HIV education program, [~~or~~] course, class, seminar given by a provider that has [~~having~~] received approval of a national [~~accrediting body or a national~~] professional [~~accrediting~~] organization which regularly approves continuing education. [~~accredits programs and courses.~~]

Section 3. All courses shall include:

(1) Basic medical and epidemiologic information about HIV and the diseases and conditions it can cause;

(2) Information regarding the methods of transmission of HIV,

methods of prevention of HIV infection, and currently recognized methods of medical treatment for HIV infection;

(3) Basic instructions for management of HIV infection both in the health care workplace and in other commonly encountered working environments. These instructions shall be consistent with federal occupational safety and health standards;

(4) A brief review of the moral, ethical, and legal issues surrounding HIV infection;

(5) Instruction regarding appropriate attitudes and behaviors toward those persons infected or possibly infected with HIV;

(6) Instruction regarding the need for comprehensive human services for those with HIV infection.

Section 4. The minimum length of the course for each profession shall be set by its individual licensure board.

Section 5. Any course approved by the cabinet shall have been updated within no more than two (2) years of the date that it is taken by the licensee to ensure that the course material reflects contemporary scientific findings concerning HIV infection. Printed or audio visual material shall bear the production date (month and year). The month and year of production shall appear on a handout or syllabus for courses to be given in person.

Section 6. [~~(1)(a) The cabinet shall conduct a survey of the curriculum of all prelicensure programs in Kentucky that are affected by KRS 214.615 to determine compliance with the provisions of this regulation.~~

~~(b) The survey shall be completed by July 1, 1991.~~

~~(c) The cabinet shall notify each licensure board whether its prelicensure programs comply with the provisions of this regulation.~~]

(1) [~~(2)~~](a) Upon application, an applicant for licensure, who has graduated from a prelicensure program outside Kentucky, shall submit information to the cabinet regarding the curriculum of the program as it relates to the human immunodeficiency virus and acquired immunodeficiency syndrome.

(b) Within ten (10) working days of receipt of the information, the cabinet shall certify to the applicant and the appropriate licensing board whether the curriculum complies with the provisions of this regulation.

(c) In lieu of submitting curriculum information under paragraph (a) of this subsection, an applicant may complete a course approved pursuant to Section 2 [~~1~~] of this regulation.

(2) [~~(3)~~] Licensure boards shall notify applicants of the requirements of subsection (1) [~~(2)~~] of this section.

Section 7. If CHR suspects a deficiency in the conduct of an approved course which is not being satisfactorily addressed by one (1) or more licensure boards, or if a licensure board so requests, CHR may inspect that course and may remove the course from the approved list if it does not meet the quality standards of this regulation.

Section 8. Each applicant shall certify to the boards at the time of licensure either:

(1) The completion of an approved course, on a form created and distributed by CHR; or

(2) Reasonable cause for having not fulfilled the requirements of Section 2 [~~1~~] of this regulation, on an affidavit created and distributed by the cabinet. An affidavit of reasonable cause shall be valid for no more than six (6) months and shall be accepted from a given individual only once. A licensing board may issue a license to an individual who has submitted an affidavit of reasonable cause. If the individual does not certify fulfillment of the requirements of Section 2 [~~1~~] of this regulation within six (6) months from the date of the affidavit, the licensing board shall take appropriate disciplinary action.

(3) If an applicant has graduated from a professional school whose AIDS education curriculum is approved under Section 6 [~~1~~](1) [~~or (2)~~] of this regulation within two (2) years (five (5) years for a physician, if he has been in a residency program throughout the interim), he shall be deemed to have met the requirement of this subsection without submitting a form.

Section 9. Each licensure board shall submit to CHR by December 31 of each year, [~~beginning in 1991,~~] a report stating the total number of persons applying for licensure in the past twelve (12) months; and of those, the number meeting the AIDS education requirement, the number having submitted an affidavit of reasonable cause, and the number of disciplinary actions taken for failure to meet the requirements of Section 2 [~~1~~] of this regulation at the expiration of the six (6) month period.

RICE C. LEACH, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: July 15, 1992
FILED WITH LRC: July 16, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 22, 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 September 17, 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: Boards of licensure for 11 health professions.

(a) Direct and indirect costs or savings to those affected: No cost or savings will accrue due to this action.

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: Does not effect reporting requirement of original regulation.

(2) Effects on the promulgating administrative body: Does not change cabinet responsibility.

(a) Direct and indirect costs or savings: The staff time to prepare amendment and promulgating 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:

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication of KRS, KAR or 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:

TIERING: Was tiering applied? No. This action does not change effect on licensure board or licensees.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:025. Payments for nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396, a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

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 nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. For purpose of Sections 2 through 6 of this administrative regulation, the following definitions shall prevail unless the specific context dictates otherwise:

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which except for ventilator therapy services and brain injury unit services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Physical, occupational and speech therapy.

(b) Laboratory procedures.

(c) X-ray.

(d) Oxygen and other related oxygen supplies.

(e) Respiratory therapy (excluding the routine administration of oxygen).

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only).

(g) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(3) "Nursing facility (NFs)" means a facility certified to the Medicaid program by the state survey agency as meeting all nursing facility requirements, and in at least thirty-five (35) percent of the facility's Medicaid participating beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare program. The phrase "nursing facility" also includes a nursing facility with waiver unless the context specifies otherwise.

(4) "Nursing facilities with waiver (NFs/W)" means facilities certified to the Medicaid program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(5) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(6) "Nursing services costs" are the direct costs associated with nursing services.

(7) "All other costs" are other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(8) The "basic per diem cost" for each major cost category (nursing services costs and all other costs) is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(9) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(10) "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(11) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(12) "Upper limit" means the maximum level at which the cabinet shall reimburse, on a facility by facility basis, for routine services.

(13) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(14) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(15) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(16) "Nursing facility with a mental retardation specialty (NF/MRS)" means a skilled nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

Section 2. Reimbursement for Nursing Facilities (NFs) (Including Nursing Facilities with Waiver) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). All nursing facilities (NFs) (including nursing facilities with waiver) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022, Nursing facility and intermediate care facility for the mentally retarded services. A nursing facility desiring to participate in Medicaid shall be required to have at least thirty-five (35) percent of its Medicaid participating beds (but not less than ten (10) beds; for a facility with less than ten (10) beds, all beds) participate in the Medicare program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, is prohibited from participation in Medicare. If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least thirty-five (35) percent of its Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) beds, all beds) participate in the Medicare Program. The Medicaid program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual, revised July 1, 1992 [~~1991~~] which is hereby incorporated by reference) and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medical Assistance Program Nursing Facility 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 upon payment of an appropriate fee which shall not exceed approximate cost.

Section 4. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Medicare Principles of Reimbursement, with the system utilizing the [~~such~~] principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section, including the provisions contained in subsections (13) and (14) of this section. Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit). The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year with prospective rates based on cost reports which are not audited or desk reviewed subject to adjustment when the audit or desk review is completed. Appropriate cost report adjustments will be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990. (Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports are subject to adjustment to the audited amount. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

(a) Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF/MRs, NF/IMDs, and NF/pediatric facilities) shall be divided into urban and rural arrays. The urban array shall include all facilities within a standard metropolitan statistical area (SMSA). The rural array shall include all facilities in non-SMSA counties. For purposes of arraying, current multilevel facilities (i.e., SNF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey). The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

(b) Nursing facility upper limits. The following NF upper limits shall be applied:

1. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable).

2. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities.

3. The upper limit for NF/MRS shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

(c) Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

1. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost.

2. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year; the swing bed rates shall change effective January 1, 1991 and each January 1 thereafter.

3. Hospital dual licensed beds shall be paid at the hospital based facility upper limits.

4. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be equal to projected costs.

5. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at $360 per diem.

(d) Other factors relating to costs and upper limit determination.

1. When the cabinet has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the cabinet shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors is to avoid paying the facilities twice for the same costs. When the trending and indexing factors include costs related to a minimum wage increase, the cabinet shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

2. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

3. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureaus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

4. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment

amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

5. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of such indebtedness may include, but shall not be limited to, notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation shall be based on total licensed beds (all levels). Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist when an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship shall be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the cabinet shall determine the allowable costs of these [~~such~~] arrangements based on the general reasonableness of the [~~such~~] costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless the [~~such~~] costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Notwithstanding the provisions contained in subsection (9) of this section, or in any other section or subsection of this administrative regulation or the "Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (9)(e) of this section) shall be determined in accordance with the methodology set forth herein for the reevaluation of assets of [~~skilled~~] nursing [~~and intermediate care~~] facilities.

(a) No increase shall be allowed in capital costs.

(b) The allowable historical base for depreciation for the purchaser shall be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price.

(c) The amount of interest expense allowable to the purchaser shall be limited to the amount that was allowable to the seller at the time of the sale.

(11) Each facility shall maintain and make available any records (in a form acceptable to the cabinet) which the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost

report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report.

(c) Cabinet approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the [~~such~~] costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(13) The cabinet shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The cabinet may develop and utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, IMDs, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive (CSI). Facilities qualifying for the CSI (except for NF/MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array. The CSI shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array. NF/MRSs shall qualify for the CSI when the NF/MRS has costs less than the NF/MRS upper limit, and the CSI shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. No return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$ 96.99 & below	$1.38	$.87
97.00 -102.99	1.29	$.75
103.00 -108.99	1.18	$.62
109.00 -114.99	1.06	$.47
115.00 -120.99	.92	$.31
121.00 -126.99	.76	$.13
127.00 -133.49	*.53	----

*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992. This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system. For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, IMDs, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low-intensity), the PRO will then determine the case weight). The average case weight thereafter shall be based on all level of care

determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available). The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the CSI adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs. Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost. Upon authorization by the Medicaid agency, the cost shall be allowable. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the CSI factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost). Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment. Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform. Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs. The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency. A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed. No interim rate adjustments for nursing home reform shall be allowed for periods after June 30, 1992.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual; however, the cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division of Reimbursement Operations, a reevaluation of the point at issue. This request shall be received within forty-five (45) days following notification of the prospective rate or forwarding of the desk review or audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services, a review by a standing reimbursement review panel to be established by the commissioner. This request must be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement Operations. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement Operations, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement Operations) as designated by the Commissioner, Department for Medicaid Services, with such designated member to act as chairperson of the review panel. A date for the reimbursement review panel to convene shall be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1992 [~~1991~~].

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: July 15, 1992
FILED WITH LRC: July 16, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 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 September 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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 nursing facilities and intermediate care facilities for the mentally retarded that participate 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:
1. First year: $4 million (costs).
2. Continuing costs or savings: $4 million (costs).
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.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, AUGUST 14, 1992

GENERAL GOVERNMENT CABINET
Kentucky Board of Respiratory Care

201 KAR 29:020. Code of ethics; unprofessional conduct.

RELATES TO: KRS 314A.010 to 314A.225
STATUTORY AUTHORITY: KRS 314A.205, 314A.225
NECESSITY AND FUNCTION: KRS 314A.225 requires the board to adopt regulations defining unprofessional conduct and establishing a code of ethics. This regulation sets forth both a code of ethics and unprofessional conduct.

Section 1. The following code of ethics consists of general guidelines which embody certain standards of practice for the respiratory care practitioner. The respiratory care practitioner shall practice within the parameters of this code of ethics. The respiratory care practitioner shall:

(1) Continually strive to increase and improve his knowledge and skill and render to each patient the full measure of his ability;

(2) Provide services with respect for the dignity of the patient, unrestricted by considerations of social or economic status, personal attributes, or the nature of health problems;

(3) Be responsible for the competent and efficient performance of his assigned duties and shall expose incompetence and illegal or unethical conduct of members of the profession;

(4) Hold in strict confidence all privileged information concerning the patient and refer all inquiries to the physician in charge of the patient's medical care;

(5) Uphold the dignity and honor of the profession and abide by its ethical principles;

(6) Be familiar with existing state and federal laws governing the practice of respiratory care and comply with those laws;

(7) Cooperate with other health care professionals and participate in activities to promote community, state, and national efforts to meet the health needs of the public.

Section 2. Unprofessional conduct in the practice of respiratory care shall include but shall not be limited to, the following acts by a person credentialed by this board:

(1) Violating any of the provisions of KRS Chapter 314A or the regulations adopted thereunder;

(2) Committing any unfair, false, misleading, or deceptive act or practice;

(3) Acting incompetently or negligently in the practice of respiratory care;

(4) Practicing respiratory care while under the suspension, revocation, or restriction of the individual's certification by competent authority in any state, federal, or foreign jurisdiction;

(5) Unlawfully failing to cooperate with the board by:

(a) Not furnishing any papers or documents requested by the board;

(b) Not furnishing in writing a complete explanation covering the matter contained in the complaint filed with the board;

(c) Not appearing before the board at the time and place designated;

(d) Not properly responding to subpoenas issued by the board.

(6) Failing to comply with an order issued by the board or an agreed order established with the board;

(7) Aiding or abetting an uncertified person to practice respiratory care when a certificate is required;

(8) Practicing beyond the scope of practice set forth in KRS 314A.100;

(9) Failing to provide adequate supervision to persons holding a limited or temporary certification;

(10) Being convicted of any misdemeanor or felony relating to the practice of respiratory care. For purposes of this subsection, conviction includes all instances in which a plea of nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended;

(11) Physically abusing or having sexual contact with a patient or client;

(12) Accepting by any means, a valuable consideration or gratuity of any kind in return for preferential consideration or treatment of a patient;

(13) Practicing respiratory care while intoxicated or under the influence of alcohol or other mind-altering or mood-altering drugs not prescribed by a licensed physician;

(14) Engaging in any immoral conduct in the practice of respiratory care;

(15) Violating the code of ethics adopted by the board.

JAMES RAVENCRAFT, Chairman
APPROVED BY AGENCY: July 30, 1992
FILED WITH LRC: August 13, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1992, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 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 wishes to be heard 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296

REGULATORY IMPACT ANALYSIS

Agency contact: David Nicholas
(1) Type and number of entities affected: There are 1,962 persons credentialed by the board who would come under this regulation.
(a) Direct and indirect costs or savings to those affected: There are no costs or savings.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.
(2) Effects on the promulgating administrative body: This regulation sets forth a code of ethical practice and what constitutes unprofessional conduct.
(a) Direct and indirect costs or savings: There are no costs or savings.
1 . First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This regulation will allow respiratory care practitioners to be aware of ethics requirements.

TIERING: Is tiering applied? No. All credentialed practitioners will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Board of Respiratory Care

201 KAR 29:030. Complaint processing procedures.

RELATES TO: KRS 314A.225

STATUTORY AUTHORITY: KRS 314A.205

NECESSITY AND FUNCTION: KRS 314A.205(1) requires the board to investigate persons engaging in practices which violate the provisions of KRS Chapter 314A. This regulation establishes the detailed procedures for the investigation of complaints received by the board.

Section 1. Definitions. (1) "Chairman" means the chairman of the board.

(2) "Investigative assistant" means an appropriately certified individual designated by the board to assist the board's attorney in the investigation of a complaint or an investigator employed by the Attorney General or the board.

(3) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 314A or the administrative regulations promulgated thereunder by a certified individual or other person.

(4) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of a specified provision of KRS Chapter 314A or the regulations promulgated thereunder.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a certified individual or other person and commences a formal disciplinary proceeding.

(6) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any formal complaint.

(7) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal dispensation of any matter without further recourse to formal disciplinary procedures.

Section 2. Reception of Complaints. (1) Complaints may be submitted by an individual, organization, or entity. Complaints shall be in writing and shall be signed by the person offering the complaint. The board may also file a complaint based on information in its possession.

(2) Upon receipt of a complaint a copy of the complaint shall be sent to the board's attorney for an initial review and preliminary recommendation of subsequent action to the board. A copy of the complaint shall also be sent to the certified individual named in the complaint along with a request for that individual's response to the complaint. The response of the individual shall be required for the next regularly scheduled meeting of the board except that the individual shall be allowed a period of twenty (20) days from the date of receipt to make a response.

Section 3. Preliminary Recommendations and Initial Board Review. (1) After the receipt of a complaint and the period for the individual's response has concluded, the board shall consider the preliminary recommendation of the board's attorney, the individual's response, and any other relevant material available to the board in the initial review of the complaint. The determination that the board makes at this point is whether or not there is enough evidence to warrant a formal investigation.

(2) When in the opinion of the board a complaint does not warrant the formal investigation of a complaint against an individual, the board shall notify both the complaining party and the individual of the outcome of the complaint.

(3) When in the opinion of the board a complaint warrants the formal investigation of a complaint against either a certified individual or a person who may be practicing respiratory care without appropriate certification, the board shall authorize its attorney and a designated investigative assistant to investigate the matter and report their findings and recommendations to the board at their earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the board's attorney and/or the investigative assistant shall report to the board their findings and recommendations as to the proper disposition of the complaint. The determination that the board makes at this point is whether or not there is enough evidence to believe that a violation of the law or regulations may have occurred and that a hearing should be held.

(2) When in the opinion of the board a complaint does not warrant the issuance of a formal complaint and the holding of a hearing the complaint shall be dismissed or other appropriate action taken. The board shall notify both the complaining party and the individual of the outcome of the complaint.

(3) When in the opinion of the board a complaint warrants the issuance of a formal complaint, the board shall cause a complaint to be prepared stating clearly the charge or charges to be considered at the hearing. The formal complaint shall be signed by the chairman and served upon the individual as required by Section 6 of this regulation.

(4) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who may be practicing respiratory care without proper certification, the board shall cause a complaint to be prepared and signed by the chairman of the board, stating the board's belief the charges are based upon reliable information. Such complaint shall be forwarded to the county attorney of the county of residence of the person allegedly practicing respiratory care without appropriate certification with a request that appropriate action be taken under KRS 314A.990. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of respiratory care.

Section 5. Settlement by Informal Proceedings; Letter of Admonishment. (1) The board, through counsel may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter. Any agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman of the board.

(2) The board may at any time during this process, issue a letter of admonishment to the individual who is named in the complaint as a means of resolving the complaint. Such action may be taken if it is determined by the board that this is an appropriate method of dispensing with the complaint. Such letter of admonishment shall be sent to the individual with a copy placed in the individual's permanent file. Within thirty (30) days of the date of the letter, the individual shall have the right to file a written response to the letter and have it attached to the letter of admonishment and placed in the permanent file. The individual shall also, within thirty (30) days of the date of the letter, have the right to appeal the letter of admonishment and be granted a full hearing on the complaint. If this appeal is requested, the board shall immediately file a formal complaint in regard to the matter and set a date for a hearing.

Section 6. Notice and Service of Process. (1) Any notice required by KRS Chapter 314A or this regulation shall be in writing, dated and signed by the chairman of the board.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to

the individual's last known address of which the board has record or if known, by such service on the named individual's attorney of record, if appropriate. Refusal of service if by certified mail or avoidance of service if hand-delivered shall not prevent the board from pursuing proceedings as may be appropriate.

(3) When notice of the initial date for the administrative hearing is given by either the board or the hearing officer, such notice shall be sent to the appropriate person at least twenty (20) days prior to the hearing.

JAMES RAVENCRAFT, Chairman

APPROVED BY AGENCY: July 30, 1992

FILED WITH LRC: August 13, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1992, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 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 wishes to be heard 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Agency contact: David Nicholas

(1) Type and number of entities affected: There are 1,962 persons credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation sets forth a method of handling complaints received by the board.

(a) Direct and indirect costs or savings: There are no costs or savings.

1 . First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This method preserves the legal rights of all parties.

(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: Is tiering applied? No. All credentialed practitioners will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Board of Respiratory Care

201 KAR 29:040. Hearing procedures.

RELATES TO: KRS 314A.225

STATUTORY AUTHORITY: KRS 314A.205

NECESSITY AND FUNCTION: KRS 314A.225 mandates a hearing upon the filing of a complaint alleging a violation of KRS Chapter 314A or the regulations promulgated thereunder. This regulation establishes detailed procedures for the conduct of administrative hearings held pursuant to KRS 314A.205.

Section 1. Purpose and Rule of Construction. The purpose of this regulation is to enable the board to conduct an orderly and reasonably expeditious search for the truth while ensuring that due process is afforded to the certificate holder or applicant. Accordingly, this regulation shall be liberally construed so as to aid that process.

Section 2. Composition of the Board for Purposes of a Hearing. (1) Disciplinary actions shall be heard by a quorum of the board members eligible to hear that particular case, the board's designated hearing officer, or both.

(2) The board may appoint a hearing officer to preside over the hearing, conduct all prehearing activities, prepare findings of fact and conclusions of law at the direction of the board, and to provide legal advice to the board.

(3) A board member who has participated in the investigation of a disciplinary action or who has personal knowledge of the facts giving rise to a disciplinary action shall not sit as a member of the board hearing that particular action and shall not be considered an eligible member for purposes of determining a quorum.

(3) Staff members of the board, legal counsel for the board and a court stenographer may also be present for the hearing.

Section 3. Rights of the Certificate Holder or Applicant. The certificate holder or applicant shall have the right to be present and to be heard at the hearing, to be represented by legal counsel, to present evidence, to cross-examine witnesses presented by the board, and to make both opening and closing statements. The certificate holder or applicant shall also have the right to have subpoenas issued in accordance with KRS 314A.205.

Section 4. Prehearing Disclosure of Evidence. (1) By the board. The names, addresses and phone numbers of witnesses expected to be called by the board shall be made available. Copies of documentary evidence may be obtained upon the payment of a reasonable charge therefor, except documents protected from disclosure by state or federal law. Nothing in this section shall be construed as giving the certificate holder or applicant the right to examine or copy the personal notes, observations, or conclusions of the board's investigators nor shall it be construed as allowing access to the work product of legal counsel for the board. The certificate holder or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.

(2) By the certificate holder or applicant. At least ten (10) days prior to the scheduled hearing date the certificate holder or applicant shall furnish to the investigator or legal counsel for the board copies of any documents which the certificate holder or applicant intends to introduce at the hearing, and a list of the names, addresses, and home and work telephone numbers of any witnesses to be presented to the board by the certificate holder or applicant. The certificate holder or applicant shall also produce for inspection any items of tangible evidence within its possession or control which it intends to introduce at the hearing.

(3) Written response. At least ten (10) days prior to the scheduled hearing date the certificate holder or applicant shall also file with the board a sworn (under oath) written response to the specific allegations contained in the notice of charges. Allegations not properly answered shall be deemed admitted. The board may for good cause permit the late filing of a response.

(4) Sanctions for failure to comply with prehearing disclosure. Should a party fail to comply with this section the board hearing the disciplinary action may refuse to allow into evidence such items or testimony as have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make such other order as it deems appropriate.

(5) Continuing duty to disclose. After disclosure has been completed each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to its attention. Such additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

Section 5. Order of Proceeding. (1) The hearing officer or presiding officer shall call the hearing to order and shall identify the parties to the action and the persons present and shall read the letter of notice and charges. The hearing officer shall then ask the parties to state any objections or motions. The hearing officer shall rule upon any objections or motions, subject to being overridden by a majority vote of the members of the board. Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive opening statement.

(2) The taking of proof shall commence with the calling of witnesses on behalf of the board. Such witnesses shall be examined first by the attorney for the board, then by the certificate holder or applicant or that person's attorney, and finally by members of the board. Rebuttal examination of witnesses shall proceed in the same order. Documents or other items may be introduced into evidence as appropriate.

(3) Upon conclusion of the case for the board, the certificate holder or applicant shall call its witnesses. Such witnesses shall be examined first by the certificate holder or applicant or that person's attorney, then by the attorney for the board, and finally by the members of the board. Rebuttal examination of those witnesses shall proceed in the same order. Again, documents or other evidence may be introduced as appropriate.

(4) At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening and closing statements.

(5) The hearing officer shall also be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the case.

Section 6. Rules of Evidence. (1) The board shall not be bound by the technical rules of evidence. The board may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts need be authenticated only to the extent that the board is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) The board retains the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious. Rulings on objections to evidence shall be made by the hearing officer but may be overridden by a majority vote of the eligible members of the board.

Section 7. Decisions by the Board. (1) Upon the conclusion of the hearing, the board shall retire into closed session for the purpose of deliberations.

(2) At the conclusion of the board's deliberations it shall propose an order based upon the evidence presented. The hearing officer shall draft a proposed order including findings of fact and conclusions of law consistent with the board's deliberations as well as a recommended order to be submitted to the full board.

Section 8. Final Approval by the Board. The board, at the next scheduled regular meeting or as soon thereafter as may be arranged, shall review the proposed order and consider it for final approval.

Section 9. Continuances; Proceedings in Absentia. It is the policy of the board not to postpone cases which have been scheduled for hearing absent good cause. A request by a certificate holder or applicant for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer or chairman of the board. However, the burden is upon the certificate holder or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

JAMES RAVENCRAFT, Chairman

APPROVED BY AGENCY: July 30, 1992

FILED WITH LRC: August 13, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1992, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 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 wishes to be heard 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON; David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296

REGULATORY IMPACT ANALYSIS

Agency contact: David Nicholas

(1) Type and number of entities affected: There are 1,962 persons credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation sets forth hearing procedures for the board.

(a) Direct and indirect costs or savings: There are no costs or savings.

1 . First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This method preserves the legal rights of all parties.

(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: Is tiering applied? No. All credentialed practitioners will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Board of Respiratory Care

201 KAR 29:050. Continuing education requirements.

RELATES TO: KRS 314A.115

STATUTORY AUTHORITY: KRS 314A.205

NECESSITY AND FUNCTION: This regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. As used in this regulation, unless the context otherwise requires:

(1) "Approved" means Kentucky Board for Respiratory Care (KBRC) recognized.

(2) "Continuing education hour" means fifty (50) contact minutes of participating in continuing educational experiences.

(4) "Offering" means an organized learning experience planned and evaluated to meet behavioral objectives; offerings may be presented in one (1) session or in a series.

(5) "American Association for Respiratory Care for Continuing Respiratory Care Education (AARC-CRCE) approval" means any offering having received recognition by this organization.

(6) "Academic courses" offered by an accredited post-secondary institution means:

(a) Respiratory care course, designated by a respiratory care course number, beyond the premandatory certification level;

(b) An academic course in the biological, psychological, sociological or physical sciences relevant to patient care and is beyond the premandatory certificate level;

(c) An academic course applicable to respiratory care practice and appropriate for the respiratory care practitioner employed in the areas of clinical practice, administration, education or research. General education courses, either electives or designated to meet degree requirements, are not acceptable. Academic credit equivalency for continuing education hours will be based on one (1) credit hour = fifteen (15) continuing education hours.

(7) "Relevant" means having content applicable to the practice of respiratory care.

(8) "Provider" means an organization approved by the Kentucky Board of Respiratory Care (KBRC) for offering continuing education programs.

(9) "Successful completion" means that the practitioner has satisfactorily met the specific requirements of the offering and the practitioner has earned the continuing education hours. Presenters of nonacademic offerings may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit will not be issued for repeated instruction of same course.

Section 2. Accrual of Continuing Education Hours Mandatory; Computation of Accrual. A minimum of twenty-four (24) continuing education hours shall be accrued by each person holding mandatory certification during the two (2) year certification period for renewal, except that those persons holding mandatory certification which is due to be renewed in January of 1995, shall receive twelve (12) continuing education hours for this renewal period only. All persons holding mandatory certification shall receive twenty-four (24) continuing education hours for each renewal thereafter. The certification period shall be January I of one year through December 31 of the following calendar year. All hours must be in or related to the field of respiratory care.

Section 3. Methods of Acquiring Continuing Education Hours. The following educational activities are examples of, but not limited to, methods of acquiring continuing education hours provided they are directly related to the professional growth and development of respiratory care practitioners. Continuing education hours applicable to the renewal of the mandatory certificate may be earned by completing any of the following educational activities:

(1) Offerings having American Association for Respiratory Care (AARC) - Continuing Respiratory Care Education (CRCE) approval (including traditional and nontraditional);

(2) Academic courses as set forth in Section 1 of this regulation;

(3) Offerings provided by Joint Review Committee for Respiratory Therapy Education (JRCRTE) accredited educational programs;

(4) Relevant offerings provided by other organizations or institutions approved by the KBRC including but not limited to:

(a) Kentucky Thoracic Society (KTS) and Kentucky Lung Association (KLA);

(b) Kentucky Board of Nursing (KBN);

(c) American Heart Association (AHA);

(d) American Medical Association (AMA); or

(e) American Cancer Society.

(5) Scientific and educational lectures, workshops, or seminars presented by the person holding mandatory certification. A maximum of one-half (1/2) of the continuing education hours may be credited for scientific and educational lectures, workshops, or seminars presented by the certificate holder. Credit will not be issued for repeated instruction of the same course;

(6) Related areas not specifically a part of the field of respiratory care may be approved for up to two (2) continuing education hours if the board believes that said related areas may serve to enhance the certificate holder's ability to practice.

Section 4. Procedures for Accreditation of Sponsors and Approval of Continuing Education Activities. Prior approval of a continuing education offering may be requested from the board by an institution, organization, agency, or person holding mandatory certification who desires approval of a continuing education offering prior to its presentation. Any entity desiring to establish accreditation of a continuing education offering prior to attendance shall apply for approval to the board at least forty-five (45) days in advance of the commencement of the offering, on a form provided by the board, stating the type of learning activity, the subject matter, the names and qualifications of the instructors, and the number of continuing education hours offered. A continuing education activity shall be qualified for approval if the board determines that the activity being presented:

(1) Is an organized program of learning; and

(2) Pertains to subject matters which integrally relate to the practice of respiratory care; and

(3) Contributes to the professional competency of the licensee; and

(4) Is conducted by individuals who have educational training, or experience acceptable to the board.

Section 5. Responsibilities and Reporting Requirements of Certificate Holders. The ultimate responsibility for continuing education hours rests with the individual. His responsibility is to identify his own continuing education needs, to take the initiative in seeking continuing professional education activities to meet these needs, and to seek ways to integrate new knowledge, skills and attitudes. Each person holding mandatory certification has specific responsibility to:

(1) Select approved activities by which to earn continuing education hours;

(2) Obtain from the board prior approval for continuing education activities not accredited by the board;

(3) Maintain records of continuing education hours. Each person holding mandatory certification shall maintain, for a period of three (3) years, all documentation verifying successful completion of continuing education hours. During each certification renewal period, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification

of continuing education hours is not otherwise reported to the board.

(4) Document attendance and participation in a continuing education activity in the form of, but not limited to, official documents such as transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsor, or less formal evidence such as written summaries of experiences that are not otherwise formally or officially documented in any way. The type of documentation required varies depending on the specific activity submitted to the board for approval.

(5) Fully comply with the provisions of this regulation. Failure to comply shall constitute unprofessional conduct as set forth in KRS 314A.225 and may result in the refusal to renew, suspension, or revocation of the certification.

Section 6. Carry-over of Continuing Education Hours. A person holding mandatory certification may carry over five (5) continuing education hours earned in excess of those required under Section 2 of this regulation into the immediately following certification renewal period.

Section 7. Board to Approve Continuing Education Hours; Appeal when Approval Denied. (1) The board reserves the right to appoint a committee to review all applications for approval of continuing education hours.

(2) In the event of denial, in whole or part, of any application for approval of continuing education hours, the person holding mandatory certification shall have the right to appeal in writing to the board. Notice of such appeal must be received by the board within thirty (30) days after the entry date of the board's order denying approval of continuing education hours.

(3) A hearing before the full board may be held at the request of the person holding mandatory certification if the written appeal is denied, provided the board receives written request for such hearing within ten (10) days after the entry date of the board's order denying the written appeal.

Section 8. Temporary Certificate Holders; Limited Mandatory Certificate Holders. Continuing education requirements do not apply to the holders of a temporary certificate or a limited mandatory certificate.

JAMES RAVENCRAFT, Chairman

APPROVED BY AGENCY: July 30, 1992

FILED WITH LRC: August 13, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1992, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 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 wishes to be heard 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Agency contact: David Nicholas

(1) Type and number of entities affected: There are 1,962 persons credentialed by the board who would come under this regulation.

(a) Direct and indirect costs or savings to those affected: There will be small costs to certificate holders receiving continuing education.

1. First year: Certificate holders may incur small costs to receive continuing education.

2. Continuing costs or savings: Certificate holders may incur small costs to receive continuing education.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Certificate holders may be required to report CE hours every two years.

(2) Effects on the promulgating administrative body: This regulation sets forth continuing education requirements for certificate holders.

(a) Direct and indirect costs or savings: There will be small costs to the agency and no savings.

1 . First year: Minimal costs.

2. Continuing costs or savings: Minimal costs.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Certificate holders may be required to report CE hours every two years.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This method provides a flexible means of acquiring continuing education hours.

(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: Is tiering applied? No. All credentialed practitioners will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Board of Respiratory Care

201 KAR 29:060. Continuing education requirements for persons on inactive status; waiver.

RELATES TO: KRS 314A.115

STATUTORY AUTHORITY: KRS 314A.205

NECESSITY AND FUNCTION: This regulation delineates the continuing education requirements for mandatory certificate holders on inactive status, as well as the circumstances under which waivers or extensions for such requirements may be granted.

Section 1. The board may, in individual cases involving medical disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports. A written request for waiver or extension of time shall be submitted by the person holding mandatory certification and shall be accompanied by a verifying document signed by a licensed physician. Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same may be granted by the board for a period of time not to exceed one (1) calendar year. In the event that the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding mandatory certification must reapply.

Section 2. Continuing educational requirements may be waived for licensees on inactive status during the time period they remain inactive. However, if at any time the inactive person holding mandatory certification applies to the board to return to active status, the person holding mandatory certification must submit proof that he or she has completed twenty-four (24) continuing education hours within the twenty-four (24) month period immediately preceding the date on which the application is submitted. The person holding mandatory

certification may request that they be allowed to return to active status immediately, with the provision that they shall receive twenty-four (24) continuing education hours within six (6) months of the date on which they return to active status. Additionally, certificate holders proceeding under this provision shall be responsible for meeting the requirements of 201 KAR 29:050 in order to properly qualify for renewal of their license in the next certification period.

JAMES RAVENCRAFT, Chairman
APPROVED BY AGENCY: July 30, 1992
FILED WITH LRC: August 13, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 23, 1992, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 18, 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 wishes to be heard 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Agency contact: David Nicholas
(1) Type and number of entities affected: There are 1,962 persons credentialed by the board who would come under this regulation.
(a) Direct and indirect costs or savings to those affected: There will be small costs to certificate holders receiving continuing education.
1. First year: Certificate holders may incur small costs to receive continuing education when returning to active status.
2. Continuing costs or savings: Certificate holders may incur small costs to receive continuing education when returning to active status.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Certificate holders will be required to report CE hours when returning to active status.
(2) Effects on the promulgating administrative body: This regulation sets forth continuing education requirements for certificate holders on inactive status.
(a) Direct and indirect costs or savings: There will be small costs to the agency and no savings.
1 . First year: Minimal costs.
2. Continuing costs or savings: Minimal costs.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Certificate holders will be required to report CE hours when returning to active status.
(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This method provides a means of allowing persons on inactive status to return to active status.
(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: Is tiering applied? No. All credentialed practitioners will be subject to this regulation in the same ways.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Hay and Grain

302 KAR 34:060. Criteria for maintaining license under forward pricing contracts.

RELATES TO: 1992 Acts c. 76
STATUTORY AUTHORITY: KRS 251.480, 251.490, 251.500, 251.990, 1992 Acts c. 76 §1,2
NECESSITY AND FUNCTION: To establish the criteria for maintaining status as licensed grain establishment, when forward pricing (delayed pricing) contracts are in use.

Section 1. By the tenth day of each month the licensee shall submit an original 1992 Daily Position Reporting Form to the Department of Agriculture, Division of Hay and Grain. This form is hereby incorporated by reference and may be obtained from the Department of Agriculture, Division of Hay and Grain, 106 West Second Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. - 4:30 p.m. Each form shall be completed in its entirety. In completing this form each grain type must be listed separately.

Section 2. All forward pricing (delayed pricing) contracts shall be kept in a readily accessible and fully indexed file. The licensee shall make this file available for review by the Department of Agriculture, Division of Hay and Grain Inspectors during regular business hours.

Section 3. All scale tickets, deferred price contracts, settlement sheets, and any other forms required by KRS Chapter 251 shall be printed and maintained by the licensee. Each form shall be prenumbered at the time of printing. The forms shall be filed consecutively by serial number pursuant to Section 2 of this regulation.

Section 4. A licensed grain establishment will carry insurance to cover the following: combustion, fire, tornado and lightening. This insurance shall be sufficient to fully cover damage to all grain obligated to the Department of Agriculture under a contract agreement.

ED LOGSDON, Commissioner
APPROVED BY AGENCY: August 4, 1992
FILED WITH LRC: August 14, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1992, at 9 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 19, 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: Lee Sisney, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas "Buddy" Sims, Jr.
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: The department has issued 110 grain dealer licenses and 77 grain

warehouse licenses for the July 1, 1992 through June 30, 1993 year. Only 43 of these 187 licensees offer forward pricing (delayed pricing).

1. First year: Minimum costs are associated since the location already maintains a daily position report. They will carry their numbers over to our form.

2. Continuing costs or savings: The continued cost will be the same cost associated with first year. No saving should be expected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors which should effect cost.

(b) Reporting and paperwork requirements: Each month by the tenth day of the month, they must submit a daily position reporting form to the department.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a minimal increase of cost the first year working with the licensee setting up their files and helping them understand the new inspection procedures.

2. Continuing costs or savings: No additional costs or savings continue after the first year.

3. Additional factors increasing or decreasing costs: There are no additional factors which should effect cost.

(b) Reporting and paperwork requirements: The reports will remain the same with one additional delayed price worksheet.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods suggested.

(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: 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. Pursuant to KRS 251.010 to 251.990 this regulation requires that accounts be maintained and reports filed by all licensees that offer forward pricing (delayed pricing).

WORKERS' COMPENSATION BOARD
Department of Workers' Claims

803 KAR 25:012. Resolution of medical fee disputes.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.260, 342.325.

NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such rules and regulations as it considers necessary to carry on its work and the work of the administrative law judges under KRS Chapter 342. KRS 342.260 requires that questions arising under KRS Chapter 342 which are not settled by agreement of the parties shall be determined by an administrative law judge. The function of 803 KAR 25:012 is to regulate the resolution of medical fee disputes before the administrative law judges.

Section 1. Parties. Any employee, provider of medical services, employer or employer's medical payment obligor may seek adjudication of a dispute regarding the payment or nonpayment of any medical expense by filing a request to resolve medical fee dispute (Form 112).

Section 2. Procedure. (1) A request to resolve medical fee dispute (Form 112) may be filed to resolve questions concerning the payment, nonpayment, reasonableness, necessity or work-relatedness of any medical expenses, treatment, procedure, statement or service performed, rendered, or about to be performed or rendered under KRS Chapter 342.

(2) A Form 112 and supporting affidavits setting forth facts sufficient to show that the movant is entitled to the relief sought shall be filed with the commissioner and served upon all other parties within thirty (30) days of the date of receipt of a statement for services or within thirty (30) days of the time in which the compensability of a medical expense or treatment is known to be in dispute, whichever first occurs. Opposing parties may file responses within twenty (20) days after notice of the request to resolve medical fee dispute. A response shall be accompanied by affidavits setting forth facts sufficient to show the movant is not entitled to the relief sought, and shall be served on the other parties.

(3) Requests to resolve medical fee disputes shall be assigned as follows:

(a) If an application for adjustment of claim has not been filed concerning the injury or disease which is the subject of the dispute, the commissioner shall assign a request to resolve medical fee dispute to the Frankfort administrative law judge motion docket and the request shall be processed in the same manner as other motions in claims to which an administrative law judge has not been permanently assigned.

(b) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the request shall be assigned to the same administrative law judge as the application for adjustment of claim.

(c) If an award or other final decision has been rendered by an administrative law judge concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion to reopen in accordance with KRS 342.125 and other applicable law.

(d) If an appeal is pending before the board concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion for a partial remand to the administrative law judge who ruled on the application for adjustment of claim, unless entitlement to medical services under KRS 342.020 is dependent upon resolution of the appeal. If entitlement to medical services is dependent upon resolution of the appeal, the request shall be accompanied by a motion to the board to hold the request in abeyance pending a final decision on the appeal.

(4) If an employer's first report of injury (S.F. 1) has not been filed with the Department of Workers' Claims concerning the injury or disease which is the subject of the dispute, the movant shall include in the request information necessary to complete an S.F. 1 in the matter or proof of written notice to the employer in compliance with KRS 342.185 through 342.195.

Section 3. Scope of Request and Burden of Proof. (1) A single request may encompass statements, services and treatment previously rendered as well as future statements, services and treatment of the same nature, or for the same condition, if noted in the request, in which event the dispute shall be deemed continuing and repeated requests concerning the same subject matter need not be made.

(2) If a final award or decision has not been previously entered establishing the employee's right to medical services under the Act, the burden of proving entitlement shall be upon the employee while the burden with respect to unreasonableness and nonnecessity shall fall upon the employer or employer's medical payment obligor.

(3) An administrative law judge shall review all pleadings, affidavits, or other evidence in the record and render a decision which shall be filed of record and served on all parties to the dispute. The administrative law judge shall not be precluded from taking any other action deemed necessary to resolve the dispute, including an order directing the parties to file a formal application for adjustment of claim.

(4) If the administrative law judge determines that such proceedings have been brought, caused to be brought, prosecuted, or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the party who has brought, caused to be brought, prosecuted, or defended the proceedings without reasonable ground as provided by KRS 342.310.

(5) Any party aggrieved by the decision of the administrative law judge may appeal to the Workers' Compensation Board by following the procedures set out in Section 12 of 803 KAR 25:011.

Section 4. Forms. (1) Form 112 is adopted by order of the

Workers' Compensation Board effective January 8, 1992, and is incorporated by reference in this regulation.

(2) Information available.

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - Fourth Floor - The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

3. Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah - 220B North 8th Street, Paducah, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: August 13, 1992

FILED WITH LRC: August 14, 1992 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m. on September 21, 1992. Individuals interested in attending this hearing shall notify this agency in writing by September 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 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Valerie L. Salven

(1) Type and number of entities affected: Employers, employees, insurers, and providers of medical services involved in workers' compensation medical fee disputes. It is estimated that 700 of these disputes are filed in a year.

(a) Direct and indirect costs or savings to those affected:

1. First year: Most provisions of this regulation were previously contained in 803 KAR 25:011, Section 26, and will for that reason not create new costs or savings. Some savings should result from use of simplified procedure to resolve some medical fee disputes after a formal application for adjustment of claim has been filed.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.

(b) Reporting and paperwork requirements: Increased use of Form 112.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional costs to agency may result from need to process greater number of Form 112s.

2. Continuing costs or savings: Use of Form 112 should save time for administrative law judges as a result of simplified procedure.

3. Additional factors increasing or decreasing costs: One or two additional employees may be needed to process Form 112s.

(b) Reporting and paperwork requirements: See discussion above.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Use of nonstandard, elaborate pleadings in medical fee disputes is more time consuming and expensive for parties and administrative law judges.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Duplication of 803 KAR 25:011, Section 26, is being eliminated by amendment to 803 KAR 25:011.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Medical fee disputes are assigned and handled differently if an application for adjustment of claim has been filed, an award has been rendered, or an appeal is pending.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims

803 KAR 25:095. Statements for medical services.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260, 342.430

NECESSITY AND FUNCTION: KRS 342.260 permits the Workers' Compensation Board to promulgate regulations not inconsistent with KRS Chapter 13A or 342 for carrying out the provisions of the Workers' Compensation Act, and KRS 342.430 requires the board to prepare and furnish forms necessary for the efficient administration of the Workers' Compensation Act. KRS 342.020 requires an employer, or insurer on behalf of the employer, to make all payments for medical services within thirty (30) days of receipt of a "statement for services." The function of this regulation is to define what constitutes a "statement of services" requiring payment or challenge within thirty (30) days under KRS 342.020 and to provide an appropriate form. Balance billing of employees is prohibited since all payments are required by KRS 342.020 to be made by employers or insurance carriers.

Section 1. Definitions. "Statement for services" means, for the purposes of KRS 342.020(1), a completed Form SMS 1.

Section 2. Payment or Challenge of Statements for Services. (1) Payment to a provider of medical services or a challenge to the compensability of medical services under the Kentucky Workers' Compensation Act shall not be required, and the thirty (30) day payment period of KRS 342.020 shall not commence to run:

(a) Until the employer or its payment obligor has received a substantially complete statement for services (SMS 1);

(b) During such period as the employee refuses to execute the medical authorization required by KRS 342.020(4);

(c) During such period as a medical provider fails to respond to a reasonable information request served by the employer or its medical payment obligor under KRS 342.020(4); or

(d) During such period as the employee's designated provider fails to provide a treatment plan when required by 803 KAR 25:096.

(2) In the event payment of a statement for services is delayed by the occurrence of any of the events set forth in subsection (1) of this section, the employer or its medical payment obligor is granted twenty (20) days after the receipt of a substantially complete statement for services, release of medical information authorization, response to a reasonable request for information, or a "treatment plan" as defined in 803 KAR 25:096 in which to either make payment or file a request for resolution of medical fee dispute.

(3) Should the employer or its medical payment obligor fail to make payment by reason of the occurrence of any of the events of subsection (1) of this section, written notice setting forth the reason for nonpayment shall be promptly sent by mail to the medical provider and employee.

(4) If the medical provider renders a statement for services containing charges in excess of those provided in the applicable fee schedule adopted by the board, the employer or its medical payment obligor may make payment in the scheduled amount and serve written notice to the medical provider of the reason for refusing to pay

a greater amount. The medical provider may dispute such payment in accordance with 803 KAR 25:012, provided that the request for resolution of medical fee dispute is filed within twenty (20) days of receipt of payment.

Section 3. Balance Billing. (1) No provider of workers' compensation medical services or treatment, or agent, servant, employee, assignee, employer or independent contractor acting on behalf of any workers' compensation medical provider shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge for services covered by KRS 342.020 in excess of that provided by a fee schedule adopted by the board, nor cause the credit of any workers' compensation patient to be impaired by reason of the patient's failure or refusal to pay the excess charge.

(2) If only a portion of the charges contained on a statement for medical services is reasonably disputed by an employer or medical payment obligor, the balance upon which there is no dispute shall be paid in a timely manner as provided in KRS 342.020.

Section 4. Forms. (1) Form SMS 1 is adopted by order of the Workers' Compensation Board effective August 13, 1992, and is incorporated by reference in this regulation.

(2) Information available.

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - Fourth Floor - The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

3. Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

5. Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: August 14, 1992

FILED WITH LRC: August 14, 1992 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m. on September 21, 1992. Individuals interested in attending this hearing shall notify this agency in writing by September 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 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Valerie L. Salven

(1) Type and number of entities affected: This regulation will affect medical providers, insurance carriers, and self-insured employers in workers' compensation cases. During fiscal year 1990-1991, the Department of Workers' Claims processed nearly 70,000 employer's first reports of injury. This regulation will apply whenever an employee covered by the Workers' Compensation Act receives medical services or treatment for a work-related injury.

(a) Direct and indirect costs or savings to those affected:

1. First year: Use of the new form (SMS 1) by medical providers in the first year may result in some additional costs to medical providers until they have adapted to use of the new form. Insurance carriers and self-insured employers should realize some savings during the first year because the additional information provided on the SMS 1 will enable insurance carriers and self-insured employers to determine the compensability of more claims based solely on a review of the paperwork.

2. Continuing costs or savings: After the first year, insurance carriers and self-insured employers should continue to realize savings in the processing of claims as the result of a reduced need for investigation beyond the paperwork supplied by the medical provider. Medical providers should benefit by receiving prompt payment in workers' compensation cases.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.

(b) Reporting and paperwork requirements: Medical providers will be required to use a new form, the SMS 1.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs of printing the new form, SMS 1, for statements for medical services are estimated at not more than $5,000.

2. Continuing costs or savings: Continuing costs for printing the SMS 1 should not exceed $5,000 a year. There may be some savings if use of the new form results in fewer disputes over medical fees being filed with the Department of Workers' Claims.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: The Department of Workers' Claims will be required to print and make available the SMS 1, but agency personnel will not be required to "process" this new form since it is to be submitted by the medical provider directly to an insurance carrier or self-insured employer.

(3) Assessment of anticipated effect on state and local revenues: There should be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: An alternative method would be to have each medical provider create its own form containing information required under the regulation, but this could be more confusing than the proposed method and could result in additional fee disputes being filed with the Department of Workers' Claims.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflicts known. The section on "balance billing" is similar to a provision contained in the Kentucky Medical Fee Schedule which is incorporated by reference in 803 KAR 25:090.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All affected entities receive equal treatment.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims

803 KAR 25:096. Selection of physicians and treatment plans.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260, 342.320

NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such rules and regulations as it considers necessary to carry on its work and the work of the administrative law judges under KRS Chapter 342. The function of 803 KAR 25:096 is to regulate the selection of physicians and provide for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Long-term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending

beyond three (3) months.

(b) Medical treatment that in fact continues for a period of more than three (3) months.

(c) Medical treatment including the recommendation that the patient not engage in the performance of the patient's usual work for a period of more than sixty (60) days.

(2) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license.

(3) "Treatment plan" means a written plan prepared by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency and duration of treatment. It shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results.

Section 2. Employee Selection of Physician. (1) All treatment for a work related injury or occupational disease shall be rendered under the supervision of a single physician selected by the employee. The designated physician may refer the employee to such additional physicians or medical service providers as are reasonably necessary for treatment or evaluation.

(2) An employee, following his initial selection of a physician, may change the designated treating physician not more than one (1) time without prior authorization of the employer or its medical payment obligor. Thereafter, the employee may not, except as may be required by medical emergency, make additional selections of treating physicians without the employer's or medical payment obligor's prior written consent. Such consent shall not be unreasonably withheld.

Section 3. Necessity for Treatment Plan. (1) When as a result of a work related injury or disease an employee will be or has been placed under long-term medical care, the employee's designated physician shall prepare a treatment plan. A treatment plan may be amended, supplemented or changed as conditions warrant.

(2) Whenever a treatment plan is required to be prepared, amended, supplemented or changed pursuant to this regulation, it shall be served by mail upon the employer or its medical payment obligor within fifteen (15) days of request.

(3) A treatment plan shall be prepared and furnished to the employer or its payment obligor fifteen (15) days in advance of an elective surgical procedure or placement of the employee in a resident work hardening, pain management or medical rehabilitation program. The treatment plan shall set forth specific and measurable performance goals for the employee through any surgery, work hardening, or medical rehabilitation program.

(4) If the employee has received treatment with passive modalities, including but not exclusively, manipulations, adjustments, electronic stimulation, heat/cold, massage, ultrasound, diathermy, whirlpool and/or similar modes over a period exceeding thirty (30) days, the treatment plan shall detail the need for such treatment, the benefits, if any, derived from such treatment, the risk attendant with termination of such treatment, the time frame in which such treatment shall continue, and, a plan by which such treatment shall terminate in the absence of improvement in the physical condition of the employee.

(5) Preparation of a treatment plan as required by these regulations is a necessary part of the care to be rendered to the patient and is an integral part of the fee authorized in the board fee schedule for the underlying services. No additional fee shall be charged for the preparation of a treatment plan and progress reports, except a reasonable amount for the photocopying and mailing of such records.

Section 4. Experimental or Questioned Procedures. (1) Where the employee has designated a medical doctor as his treating physician, charges for treatment, diagnostic modalities, or methods which have been determined by the American Medical Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(2) Where the employee has designated a chiropractor as his treating physician, charges for treatment, diagnostic modalities, or methods which have been determined by the American Chiropractic Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: August 14, 1992

FILED WITH LRC: August 14, 1992 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m. on September 21, 1992. Individuals interested in attending this hearing shall notify this agency in writing by September 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 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Valerie L. Salven

(1) Type and number of entities affected: This regulation will affect workers' compensation patients and their medical services providers when injuries/diseases cause the patients to be off work for more than 60 days, or the treatment will last for more than 3 months, or when elective surgery is requested. The exact number of cases affected cannot be precisely estimated, but is probably greater than the approximately 8,000 claims per year currently being litigated. Workers' compensation patients who wish to change treating physicians more than once will be affected, and this number is probably included in the 8,000 litigated claims per year.

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation is anticipated to result in a minimal increase of costs to physicians, chiropractors and others who are required to prepare treatment plans. Another indirect cost is the extra time needed by the practitioner's office staff to type and mail the treatment plans and the additional postage required. Savings should result from medical care providers receiving payment more promptly in some cases. It is anticipated that the requirement of a treatment plan will result in savings to medical payment obligors because it will cause the practitioner to give a detailed explanation of the proposed course of treatment of the workers' injury to the medical payment obligor. This will allow the payment obligor to review, with expert assistance, the proposed plan to ensure the treatment is appropriate. Limitation on the patient's change of treating physician more than once without consent will save the payment obligor the time and expense of reviewing multiple or successive proposals for treatment.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.

(b) Reporting and paperwork requirements: This amendment will increase practitioners' reporting and paperwork requirements slightly. The practitioners should only need to slightly expand their existing office notes to create treatment plans for submission to the medical payment obligors.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No changes anticipated.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are known.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation is applicable to all workers whose injuries or diseases are covered under the Kentucky Workers' Compensation Act and who require "long-term medical care" or who wish to change treating physicians more than once, and their medical services providers.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals

805 KAR 5:030. Prohibition against working or traveling under unsupported roof; penalties.

RELATES TO: KRS 351.020, 352.201

STATUTORY AUTHORITY: KRS Chapter 13A, 351.070(13)

NECESSITY AND FUNCTION: KRS 352.201 requires each underground mine to have an approved roof control plan and directs that no person shall proceed beyond temporary or permanent roof support. This regulation establishes procedures for the department's response in those circumstances in which persons work or travel under unsupported roof.

Section 1. (1) No person shall work or travel under unsupported roof in any underground coal mine. "Unsupported roof" shall be deemed to be in any portion of an underground coal mine in which no temporary or permanent roof support system has been installed and shall include any and all areas of an underground coal mine, including breaks, fall areas, and pillar lines; but "unsupported roof" shall not refer to roof which has adequate natural support and has been determined to have adequate natural support either initially or following the installation of artificial roof support. No mining-related activities, including though not limited to equipment installation and maintenance, clean-up or activities preparatory to the installation of temporary or permanent roof support shall be performed under unsupported roof, and no justification for performing any such act(s) shall be accepted by the department.

(2) Within sixty (60) days from the effective date of this regulation, all persons working in an underground coal mine shall be instructed by the management of the mine in the hazards of proceeding beyond temporary or permanent roof support and all such persons shall be personally liable for any violation of proceeding beyond temporary or permanent roof support. Without regard to individual responsibility, however, each mine's foreman or section foreman shall exercise primary and ultimate responsibility to ensure that no person(s) under the authority of that foreman works or travels under unsupported roof.

(3) Unless an inspector of the department observes persons working or traveling under unsupported roof, he shall determine if the area below unsupported roof appears to have been used or otherwise occupied by mining personnel. Use or occupancy shall be deemed to have occurred if there is physical evidence indicating to the inspector that persons have worked or traveled under unsupported roof.

Section 2. (1) Whenever an inspector of the department observes or otherwise determines that mine personnel have proceeded under unsupported roof, the inspector shall document same in a report to his district supervisor. That report shall include the name and location of the mine at which the violation is alleged to have occurred; the time and date of the violation, if known; the person or persons observed or believed to have worked or traveled under unsupported roof; the basis for that belief if no such conduct was actually observed; the name of the foreman or section foreman under whose responsibility the person(s) were working at the time the conduct occurred; the name of the instructor who administered the most recent training to the person alleged to have proceeded under unsupported roof, the date of that training, and the location at which it was administered; and a recommendation of the action to be taken by the department with respect to the violation(s) alleged. The report shall be tendered to the district supervisor within two (2) working days of the date upon which the inspector observes or becomes aware of the violation alleged.

(2) Upon his receipt of the report from the inspector, the district supervisor shall attempt to verify the matters set out in the inspector's report and in making that verification, may enter upon the premises of the underground mine at which the violation is alleged to have occurred, pursuant to KRS 351.140(8). Within five (5) working days of his receipt of the report from the inspector, the district supervisor shall tender to the commissioner a report of the alleged violation, together with a summary of the efforts undertaken by the district supervisor to verify the information set out in the inspector's report, and a recommendation to the commissioner as to any response to the violation alleged which the department should make.

(3) Within thirty (30) days of his receipt of the report and recommendation from the district supervisor, the commissioner shall determine whether the violation alleged is to be made subject to hearing. If the commissioner determines that a hearing is required to adjudicate the violation alleged, he shall cause a notice of violation to be prepared and delivered to all persons named in the district supervisor's report who appear to have responsibility, in some capacity, for that violation, which notice shall describe the violation alleged and establish a time and place for the hearing to consider it. Any person alleged to have worked or traveled under unsupported roof, or to otherwise have some responsibility for that violation, shall be given not less than thirty (30) days notice of the hearing at which he or they will be required to appear and respond to the allegation(s) made.

(4) Not more than thirty (30) days following a hearing, at which the commissioner or his designee shall preside, the department shall issue findings of fact, conclusions of law and an order with respect to the matters heard at the hearing, copies of which shall be provided to the mine operator and to all parties to the hearing; if the person charged with working or traveling under unsupported roof is found guilty of that charge, he shall be required to complete an eight (8) hour course of roof control methods and safety procedures, including though not limited to roof control plans and the hazards of working or traveling under unsupported roof. The course of instruction shall be developed by the department, which shall administer it in the office of the district in which the violation is found to have occurred. An employer shall not be responsible for paying the salary of any person required to complete the eight (8) hour course following a finding of that person's having worked or traveled under unsupported roof, although the eight (8) hour period required to complete the course shall be treated as an excused absence by the mine operator. A person found guilty of having worked or traveled under unsupported roof or to have otherwise permitted or contributed to that violation shall not be permitted to resume employment in any underground coal mine until he has completed the eight (8) hour course of instruction, which shall be timely provided by the department to the person(s) required to complete it.

(5) If any person fails to complete the eight (8) hour course of instruction, he shall be required to enroll for and complete another such course. At the discretion of the department, however, the Board of Miner Training, Education and Certification, established in KRS 351.105, may also be advised of his failure to complete the eight (8) hour course of instruction and may commence whatever action it deems appropriate with respect to the failure to complete the eight (8) hour course of instruction.

(6) Upon the department's determination that a person has proceeded beyond temporary or permanent roof support, the management of the mine at which he was employed at the time of the

violation shall conduct, with all mine employees and in the presence of a representative of the department, a training session of not less than thirty (30) minutes duration concerning roof control methods and safety procedures, specifically including though not limited to a discussion of the prohibition against working or traveling under unsupported roof.

Section 3. The following procedure shall apply to any person who has been found by the commissioner to have worked or traveled under unsupported roof and who has thereafter completed the eight (8) hour course on roof control methods and safety procedures described above, and who is alleged to have again worked or traveled under unsupported roof: the department's inspector shall make his report and recommendation to the district supervisor within two (2) working days of observing or becoming aware of the alleged violation. The contents of that report shall be identical to those described in Section 2(1) of this regulation. Upon his receipt of the inspector's report and recommendation, the district supervisor shall, within five (5) working days, make the determination and forward to the commissioner the recommendation described in Section 2(2) of this regulation. Upon his receipt of the district supervisor's report and recommendation, the commissioner shall, within thirty (30) days of his receipt of it, make the determination required of him in Section 2(3) of this regulation. If the commissioner determines that a person has, following his completion of the eight (8) hour course of instruction in roof control methods and safety procedures, again worked or traveled under unsupported roof, the commissioner shall immediately make a written report of that determination to the Board of Miner Training, Education and Certification. Accompanying that report shall be the commissioner's recommendation as to possible action by the board with respect to the second alleged violation, that action to potentially include though not be limited to the board's requiring that the person(s) alleged to have worked or traveled under unsupported roof appear at a hearing convened by the board to show cause why he or they should not be decertified as an underground miner or as the holder of a certificate to practice a mining specialty in this Commonwealth, or both. Any hearing ordered by the Board of Miner Training, Education and Certification shall be conducted in accordance with KRS 351.102(11) and 352.390.

EDWARD J. HOLMES, Secretary
BURL SCOTT, Commissioner
APPROVED BY AGENCY: August 12, 1992
FILED WITH LRC: August 12, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, September 22, 1992 at 10 a.m., prevailing local time, in the Conference Room of the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 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 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. 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Eugene D. Attkisson, Kentucky Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512, (606)254-0367.

REGULATORY IMPACT ANALYSIS

Agency contact: Eugene D. Attkisson

(1) Type and number of entities affected: This proposed administrative regulation will apply to the employees of all underground coal mines in the Commonwealth licensed by this agency. There were 694 licenses issued in 1991, the last year for which figures are available.

(a) Direct and indirect costs or savings to those affected: In 1992, this agency has received approximately 2-3 reports per month of persons working or traveling beyond temporary or permanent roof support. Since the proposed administrative regulation provides that this agency will provide the 8-hour course of instruction described therein, there will be no costs for instruction to persons alleged to have worked or traveled under unsupported roof. However, those persons would be subject to nonpayment of wages for the time required to complete that instruction; the amount of those lost wages varies from individual to individual and mine to mine.

1. First year: It is anticipated that costs to the miners prospectively affected by the proposed regulation will be greatest in its first year of enforcement, since the proposal will hopefully develop a deterrent effect through on-going and subsequent enforcement.

2. Continuing costs or savings: It is anticipated that costs will decrease over the life of the proposed administrative regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Costs, in the form of lost wages by affected miners, are anticipated to steadily decrease as the enforcement of the proposal results in safer mining practices and therefore fewer allegations of working or traveling under unsupported roof.

(b) Reporting and paperwork requirements: This proposed administrative regulation requires mine inspectors, district supervisors, and the commissioner or his designee to generate reports concerning alleged violations. If, as described above, there are no more than 2-3 allegations of working or traveling under unsupported roof made monthly, the reporting and paperwork requirements of this proposal will not have a significant impact upon affected persons.

(2) Effects on the promulgating administrative body: This agency will be required to implement a three-and-four-tiered reporting and fact-finding system, from the mine inspector to the district supervisor to the commissioner, and possibly from the commissioner to the Board of Miner Training, Education and Certification. As noted in (1)(b), these effects are not anticipated to be unduly administratively burdensome, if the allegations to which the proposal applies are not made more frequently than 2-3 times, monthly.

(a) Direct or indirect costs or savings: The inspection and reporting requirements of the proposed administrative regulation can be satisfied during the regular work day of the employees responsible for those inspections and reports; there will accordingly be no additional administrative costs relating to that activity. There will, however, be additional costs for the services of court reporters required to participate in hearings scheduled by this agency. If those hearings number no more than 2-3 monthly, the fees for court reporters are not anticipated to total more than $500 a month.

1. First year: It is anticipated that costs to the promulgating agency will be greatest in the first year of the administrative regulation's enforcement, since the proposal will hopefully develop a deterrent effect through on-going and subsequent enforcement.

2. Continuing costs or savings: It is anticipated that costs will decrease over the life of the proposed administrative regulation.

3. Additional factors increasing or decreasing costs: Costs are anticipated to steadily decrease as the enforcement of the proposal results in safer mining practices and therefore fewer allegations of working or traveling under unsupported roof.

(b) Reporting and paperwork requirements: This proposed administrative regulation requires mine inspectors, district supervisors, and the commissioner or his designee to generate reports concerning alleged violations. If, as described above, there are no more than 2-3 allegations of working or traveling under unsupported roof made monthly, the reporting and paperwork requirements of this proposal will not have a significant impact upon affected persons.

(3) Assessment of anticipated effect on state and local revenues: With the exception of the court reporter costs described above, there is no effect on state and local revenues as a result of the proposed administrative regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the enactment of this proposal would be to leave unchanged the current standards for roof control in underground mines, which standards are silent as to the personal

liability of persons who violate them. Since this agency is charged with implementing and enforcing standards for underground coal mine safety, we believe that the proposed administrative regulation will best enable us to respond to that mandate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This proposal neither conflicts with, overlaps, nor duplicates any statute, administrative regulation or government policy.

(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:

(6) Any additional information or comments: Rooffalls are the principal cause of underground mine fatalities, both in Kentucky and nationwide. As such, this agency is required, through the legislative dictate of KRS 351.101 and 351.241, among others, to implement standards reasonably calculated to preserve and enhance safe underground mining practices. The proposed administrative regulation represents an attempt by this agency to be responsive to that statutory mandate. Hopefully, Kentucky's coal mining community will view this administrative regulation not as a punitive measure, but as one intended to create a safer work environment for Kentucky's coal miners. Only when a person has been found to have worked or traveled under unsupported roof for a second time will he be subject to possible decertification as an underground coal miner.

TIERING: Was tiering applied? Yes. Tiering was applied in the promulgation of this proposed administrative regulation because Kentucky's underground coal miners work in an environment which is significantly different from that of surface coal mines, both in technique of mining and attendant hazards. This proposal would apply only to those underground coal miners who work or travel beneath unsupported roof which does not satisfy the exemption established in the proposal's Section 1(1).

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal

815 KAR 30:041. Repeal of 815 KAR 30:040.

RELATES TO: KRS 250.483, 250.484
STATUTORY AUTHORITY: KRS 227.300, 250.483
NECESSITY AND FUNCTION: 815 KAR 30:040 is no longer necessary because the requirements are covered in 815 KAR 10:040, Fire Prevention Code (Kentucky Standards of Safety), Article 24.

Section 1. 815 KAR 30:040, Anhydrous ammonia, is hereby repealed.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: July 24, 1992
FILED WITH LRC: August 13, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 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 September 17, 1991, (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: See comments at bottom.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This regulation is being repealed because a separate regulation is no longer required because the requirements are covered in the Fire Prevention Code, 815 KAR 10:040.

TIERING: Was tiering applied? No. Doesn't apply to repeal.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 10:035. Inactive status registration.

RELATES TO: KRS 223.030(3)
STATUTORY AUTHORITY: KRS 194.050(1), 223.030
NECESSITY AND FUNCTION: KRS 223.030(3) provides for an inactive status for those persons previously registered by the cabinet but not engaged in environmental health practice in the Commonwealth. The function of this administrative regulation is to provide procedures for inactive status.

Section 1. Definitions. As used in this administrative regulation:

(1) "Active status" means the status of a person engaged in program areas of environmental health activity that is the responsibility of the cabinet.

(2) "Inactive status" means the status of a person previously registered by the cabinet as a registered sanitarian or environmental health specialist and not engaged in environmental health activity that is the responsibility of the cabinet.

Section 2. Procedure for Applying to be in Inactive Status. (1) A person wishing to be placed in an inactive status must make a request by letter to the cabinet for inactive status.

(2) The cabinet may after review of the request, grant inactive status.

(3) Any person with inactive status shall pay the annual registration fee.

(4) A person placed in an inactive status may request by letter to the cabinet for active status at any time.

RICE C. LEACH, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: July 9, 1992
FILED WITH LRC: July 16, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 22, 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 September 17, 1992 of their desire to appear and testify at the hearing. Maston Childers II, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Corum

(1) Type and number of entities affected: @25 persons not actively engaged in environmental health activities.

(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):

(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: Requires review of request for inactive status.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available.

(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:

TIERING: Was tiering applied? No. There is no way to tier since this administrative regulation deals only with inactive status in regard to registration.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the August 6 and 7, 1992 Meeting

The August meeting of the Administrative Regulation Review Subcommittee was held on Thursday, August 6, 1992 at 2 p.m. and Friday, August 7, 1992 at 10 a.m. in Room 125 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the July 1 and 2, 1992 meeting were approved.

Present were:

Members: August 6, 1992: Representative Tom Kerr, Chairman; Senators Gene Huff and Bill Quinlan; Pat McCuiston; Representatives Woody Allen, Jim Bruce and James Yates. August 7, 1992: Representative Tom Kerr, Chairman; Senators Pat McCuiston, Gene Huff and Bill Quinlan; Representatives Jim Bruce, Woody Allen and James Yates.

Guests: Paul P. Borden, Richard Casey, Kentucky Higher Education Assistance Authority; Jack A. Wilson, Martha L. Hall, Lisa Detherage, Robert A. Slaughter, Natural Resources and Environmental Protection Cabinet; Tom Campbell, Lucinda Davidson, Department of Corrections; Ed Logsdon, Rick Taylor, Charlie L. Williams, Danny R. Willis, Walter Carl Dills, Craig C. Diljes, Connie D. Kelly, Bill Froehlich, Department of Agriculture; Harlan W. Stubbs, Jr., Keith A. Byers, Beverly H. Haverstock, Tara H. Parker, Workforce Development Cabinet; Donald F. Zeller, Carl T. Harmon, Alcoholic Beverage Control Board; Patrick Watts, Department of Insurance; Mike Fulkerson, Penny Dailey, Kentucky Racing Commission; Tom Barnes, Department of Housing, Buildings and Construction; Mark Cornett, Robert Hurst, Cathy Mobley, John A. Volpe, Don Nodler, Vicki D. Jeffs, Barbara Coleman, Dudley J. Conner, Larry W. Moore, Larry Taylor, Ked Fitzpatrick, Beth Jurek, Ralph Von Derau, Eric Friedlander, Janie A. Miller, Cabinet for Human Resources; Gary R. Myers, Medigen of Kentucky; John Hinkle, Kentucky Restaurant Association; D. Ray Gillespie, Kentucky Hotel/Motel Association; D. Kevin Ryan, Attorney; Michael Duffy, William P. Schreck, City of Louisville; Norman C. Hargreaves, Koehring Cranes & Excavators; Grant Balwanz, Vernon Balwanz, Tower Specialties, Inc.; Kevin Noone, Bungee Enterprises, Inc.; Jim Hawkins, Bonzi Bungee, Inc.; Nancy Galvagni, Kentucky Hospital Association; Daniel G. Quinn, Link-Belt Construction Equipment Co.; Dennis W. Eckstine, David M. Nicholas, Grove Worldwide; John F. Nichols, Jr., Associated Industries of Kentucky; Joyce A. Gee, Georgetown Municipal Water and Sewer.

LRC Staff: Greg Karambellas, Joe Hood, Patrice Carroll, Tom Troth, Susan Wunderlich, Donna Pierce, Peggy Jones, Susan Eastman, Don Hines, OEA.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Commerce Cabinet: Department of Agriculture: Amusement Rides

302 KAR 16:080 - Designated bungee ("bungy") or similar apparatus. Commissioner Logsdon informed the committee that it was the Department's opinion that bungy jumping was an amusement ride and subject to regulation by the Department of Agriculture. The Commissioner stated that the Department was hopeful that bungy jumping was a passing fad that would eventually go the way of the mechanical bull but right now the Department felt compelled to regulate the practice. He further pointed out that the state of Florida had, by Executive Order, outlawed bungy jumping altogether and that other states were considering prohibiting the activity.

Senator McCuiston asked the Commissioner how the Department intended to regulate bungy jumping pursuant to this administrative regulation.

Agency personnel stated that the administrative regulation was designed to control: (1) The layout of the equipment when it is brought in to the state; (2) The mechanical functions and design of the equipment; (3) The safety factors built into the equipment to keep from injuring the public; (4) The use of an operator's manual; and (5) Any other technical aspects of the equipment.

Agency personnel stated that this administrative regulation allowed the use of equipment designed and manufactured for use in bungy jumping but prohibited the use of mobile cranes for bungy jumping.

Commissioner Logsdon stated that the Department prohibited the use of mobile cranes primarily because the mobile crane manufacturers wrote letters to all regulatory agencies which advised that mobile cranes were not designed for bungy jumping. This was an attempt by the crane manufacturers to release themselves from any liability should someone get hurt in a bungy jumping accident on a mobile crane.

Commissioner Logsdon pointed out that there are two lawsuits pending where bungy jumping operations have received restraining orders prohibiting the Department from enforcing its administrative regulation. The Department felt that once these restraining orders were issued that the issue of enforcement in those jurisdictions became the court's problem and not the Department's.

Representative Allen asked if the Department could guarantee that no one would be injured even with this administrative regulation. Agency personnel stated the Department could not guarantee there would never be an injury. Representative Allen also asked if there were administrative regulations that could be adopted to shield the Commonwealth of Kentucky from liability in the event of an injury from bungy jumping. Commissioner Logsdon stated he felt the state would not be responsible for injuries due to bungy jumping but he was not an attorney. Representative Allen stated he felt people should take responsibility for their own actions and not attempt to hold someone else liable when they choose to engage in bungy jumping. Commissioner Logsdon stated that anyone who jumps must sign a statement that they will not hold the owner of the bungy jumping operation responsible.

Chairman Kerr stated that the state has sovereign immunity when it comes to its liability but that an action for the state's negligence could be filed in the Board of Claims. Representative Allen pointed out that sooner or later someone in the state is going to get hurt bungy jumping and that we should be prepared.

Representative Bruce asked why the court granted a restraining order in Jefferson and Warren County. Commissioner Logsdon stated that in the Bowling Green case the bungy jumping operation was a fund raiser for a charitable organization. Commissioner Logsdon further stated that by the time you go back in to lift the injunction the event is over.

Representative Yates asked if there was a safety net used in bungy jumping. Agency personnel stated that an air pillow was required by the administrative regulation. The agency stated that these air bags are designed for life safety support. Agency personnel stated that the air bag must be big enough to compensate for the rebound of the person when he falls into the air bag.

Representative Yates asked if a safety net would be safer than an air bag. Agency personnel stated that a safety net does not provide enough cushion and so an air bag is the best apparatus to use.

Pursuant to questions from the subcommittee staff it was determined that the standard for measuring the size of the air bag had not been incorporated by reference in the administrative regulation and an amendment was offered to incorporate the air bag standard in the administrative regulation. The amendment incorporating the air bag standard was adopted by the subcommittee. Subcommittee staff pointed out that anything the agency uses as a standard must be incorporated by reference in an administrative regulation. The agency can not impose a requirement unless it is in an administrative regulation.

Representative Allen asked if bungy jumping was allowed over water and if so, which was better an air bag or water. Agency personnel stated that bungy jumping over water is permitted but the

water must be a minimum of 9 feet deep. The agency representative stated that he felt the air bag was better than water because at a certain point water becomes the same as a solid.

Kevin Noone, representing Bungy Enterprises, Inc. spoke in support of the administrative regulation. Bungy Enterprises, Inc. manufactures the mobile bungy jumping platform which is designed specifically for bungy jumping and approved by the Kentucky Department of Agriculture. This platform was designed with the standards of the ASTM, ANSI and OSHA. Mr. Noone stated there is a drastic need for regulation of bungy jumping. Bungy Enterprises, Inc. feels that a national policy is needed to regulate bungy jumping. The administrative regulation needs to apply to all aspects of bungy jumping from assembly to disassembly to operation. Bungy Enterprises supports the Kentucky administrative regulation because it regulates all aspects of bungy jumping. While cranes have the lifting capacity necessary to carry passengers a mobile crane was not designed for bungy jumping. The problem with using mobile cranes is they are very accessible from crane rental companies. Mobile cranes are relatively inexpensive to rent while Bungy Enterprise's platform costs $130,000 to build. An individual who invests a significant amount of money in a properly designed platform is going to do a better job operating the bungy jumping ride and will be willing to be inspected and otherwise comply with all administrative regulations. With administrative regulations like Kentucky's problems with bungy jumping will be eliminated.

Daniel Quinn, representing Link-Belt Construction Equipment; Dennis Eckstine and David Nicholas, representing Groves Worldwide, spoke in favor of this administrative regulation and against the use of mobile cranes for bungy jumping. Both Link-Belt and Groves Worldwide stated that mobile or lift cranes should not be used for bungy jumping for the following reasons: (1) ANSI B 30.5; Power Crane and Shovel Association Standard No. 4; OSHA-1926-550 (1972) do not recommend the use of Suspended Platforms for employees from cranes or derricks because of the risk of spilling the personnel or employees from the platform either due to human or mechanical error. Paragraph g of OSHA-1926-550 prohibits the use of a cranes or derricks to hoist employees on a platform, unless other means of getting employees to a work site is not possible or more hazardous than the use of a crane; (2) In 1992 the International Standard Association committee that deals with the safe use of cranes adopted a resolution that would prohibit the use of cranes for recreational purposes; (3) Link-Belt has issued its own policy which seeks to limit the use of its cranes to the handling of material because there are no secondary backup safety features designed into the cranes in the event the platform gives way; (4) Link-Belt has issued a policy statement to all field personnel which provides that cranes are not to be used for hoisting personnel because of safety factors; (5) Groves Worldwide does not approve of the use of cranes for bungy jumping because Groves Cranes do not have the safety features necessary for hoisting personnel; (6) Groves has great concern that bungy operators do not know how to handle cranes properly; (7) The set up of the crane and the environment of use of a mobile crane in bungy jumping is an improper and unsafe use; (8) Several accidents involving serious physical injury or death have resulted from the use of mobile cranes in bungy jumping; and (9) ANSI SIA A92 standards which allow for the use of personnel on cranes requires a controlled personnel platform or basket and stringent stability and structural requirements; Groves Worldwide does not use this standard in the manufacturing or testing of its cranes.

Grant Balwanz, representing Tower Specialties, favors the regulation of Bungy Jumping and the use of permanent structures. Mobile or temporary cranes are the biggest safety hazard in bungy jumping. Wind Shear or Wind Gust can cause a mobile crane to tip or fall. Mr. Balwanz has designed the Bungee-vator which is a fixed crane with an elevator type apparatus to lift people waiting to jump. Mr. Balwanz brought a mock-up of his Bungee-vator which he demonstrated to the committee.

Kevin Ryan, an attorney from Louisville representing The Brewery and Go Bungee Inc., spoke against the administrative regulation. The Brewery filed suit in the Jefferson Circuit Court to enjoin the enforcement of this emergency administrative regulation. Mr. Ryan believes that anyone in this state can go to court and enjoin the enforcement of this administrative regulation the way the regulation is written. Mr. Ryan states the following: (1) The Department of Agriculture does not have the legal authority to be regulating in this area; (2) The implementation of this administrative regulation on an emergency basis was wrong in that they did not follow procedures correctly; (3) The outlawing of cranes merely by reviewing letters from manufacturers of cranes is not the proper way to prohibit crane use; (4) There should be a public hearing to go through the pros and cons of using cranes; (5) The distributors of the cranes want to rent the cranes for bungy jumping because it makes the distributors money; (6) Its going to cost the state a lot of money to get involved in regulating bungy jumping; (7) The individual operators should employ their own engineers to inspect the bungy jumping site and the state should not involve itself in regulating these matters; (8) The crane manufacturers that spoke in favor of the administrative regulation don't represent all crane manufacturers, they are a group of lobbyists and a splinter group from the crane manufacturers; (9) The crane deaths were not related to the crane itself but relate to the improper operation of the crane or the improper use of the harness that holds the person who bungy jumps; and (10) OSHA does not apply in this situation nor do any of the other standards mentioned by the crane manufacturers.

Chairman Kerr pointed out that he was aware that OSHA does not apply in this situation but he asked Mr. Ryan to comment on why, when the hydraulic system fails, there is not a back-up safety system on these cranes as required when personnel are being lifted. Mr. Ryan stated that if the main cable were to break there is no back-up but that a cable that can lift 10,000 or 20,000 pounds will not break with someone bungy jumping. The problem comes if the cable comes off of the track or pulley and the safety wires break. Mr. Ryan stated that on the Brewery's mobile crane there are four safety wires.

Mr. Ryan stated that you can have some "fly-by-night" operators come into the state who don't have all the safety protections but you can have that in any new sport.

Chairman Kerr asked whether The Brewery rented or leased their bungy jumping equipment. Mr. Ryan stated that The Brewery Company leases ground to an operator who then runs the bungy jumping site. This operator rents cranes on a monthly basis. The operator spends a lot of money on air bags and site preparation. The safety regulators in Florida go to the "Go-Bungee" site to learn how a safe operation should work. All those who bungy jump must sign waivers and releases to hold Mr. Ryan's client harmless.

Senator Quinlan asked whether or not Florida had just outlawed bungy jumping. Senator Quinlan asked for a simple yes or no answer to the question. Mr. Ryan stated that the matter was in the courts. Senator Quinlan stated that Mr. Ryan must mean that Florida had outlawed bungy jumping. Senator Quinlan asked that the subcommittee hear from the next speaker.

Mr. Norman Hargreaves, representing Koehring Cranes and Excavations, spoke in favor of the administrative regulation and against the use of mobile cranes. Mr. Hargreaves stated that: (1) Litigation is not the issue with crane manufacturers but safety of people is; (2) The standards spoken of here today were not written by crane manufacturers but by crane users, legislators, the Navy, and the Army; (3) The worldwide consensus is that mobile cranes should not be used for handling personnel; this is a construction industry position throughout the world; (4) No license or certification is required to operate a crane; anyone off the street can run a crane; (5) Cable breaking is one of the major problems with hoisting personnel on cranes; (6) There are 63 incidents per year where individuals are injured or killed on cranes at construction sites and these are people that use cranes every day in their work; (7) The incident in Michigan where an individual was killed was caused by something that does happen with cranes called "tube locking". The weight of the basket does not break the cable but on a hydraulic crane you can telescope the boom in and out. If an operator inadvertently telescopes the boom and the basket or the block that supports the basket hits the tip of the boom you have enough power to break the cable. The accident is caused not only by the design of the crane but by operator error; (8) Cranes can be tipped over.

A motion was passed to adopt the amendments requested by the

Department of Agriculture and recommended by staff which: (1) Moved the "Definitions" section of the administrative regulation to Section 1 as required by KRS 13A.222(4)(d)&(e); (2) Combined and clarified Section 1 and Section 2 as required by KRS 13A.222(4)(a); (3) Incorporated by reference the National Fire Prevention Association 1983 Standard on Fire Service Life Safety Rope, Harness and Hardware (1990 Edition) and The Safety Air Cushion Standards (1992 Edition); (4) Clarified the title of the administrative regulation; and (5) Added language to express mandatory obligations with the word "shall" as required by KRS 13A.222(4)(b). The amended administrative regulation passed without objection.

Senator McCuiston stated that he regretted not having a chance to vote to ban bungy jumping all together.

Chairman Kerr stated that as he and the committee read the statute the Department clearly has the authority to regulate bungy jumping in the Commonwealth of Kentucky.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection
Water Quality

401 KAR 5:010 - Certification of wastewater system operators. Representative Bruce asked for a definition of "Wastewater". The agency stated that the administrative regulation dealt with the certification of wastewater system operators. Each wastewater plant in the state of Kentucky is required to have a "certified operator" for its facility. The primary change in this administrative regulation is a change in the classification system. "Class 1" facilities are currently those with a 0 to 300,000 gallon capacity per day. The agency is lowering the capacity to 50,000 gallons which will require some operators to be re-certified as a "Class 2" operator. Representative Bruce asked if that would still leave many facilities requiring "Class 1" operators. The agency responded in the affirmative. The agency stated that "Class 1" facilities are primarily package plants. In response to a question from Representative Bruce the agency stated that most small cities or municipalities had a capacity higher than a "Class 1" facility. The agency stated that there have been no complaints from regulated entities concerning this reclassification because the training will be tailored to the regulated entity's specific needs.

The agency stated that it wanted to be sure that small package plants or "Class 1" facilities were not combined with municipalities. The agency stated that there were many subdivisions of towns with package plant operators in them primarily in Jefferson County. The agency stated that it wanted to be sure that training was increased and tailored to the needs of the small operator. The agency stated that the increased training would not require any increase in personnel for the agency.

The agency requested that the administrative regulation be amended to: (1) Require a duty or obligation be expressed by "shall" pursuant to KRS 13A.222(4)(a); (2) Delete a requirement that an applicant "may be required to give evidence of good moral character, dependability, initiative, interest in his work, and other pertinent characteristics in relation to operation of the class of wastewater system" because of the requirement's vagueness; and (3) Insert the word "administrative" before the word regulation as required by KRS 13A.010(2).

Public Water Supply

401 KAR 8:030 - Water treatment plants; water distribution systems; certification of operators. Representative Bruce clarified that this administrative regulation relates to wastewater systems. The agency amended this administrative regulation to: (1) Insert the word "administrative" before the word regulation as required by KRS 13A.010(2); and (2) Correct the address listed for the Division of Wastewater.

Corrections Department: Office of the Secretary

All the above administrative regulations were amended to insert the word "administrative" before regulation pursuant to KRS 13A.010(2) and to change the designation of "Corrections Cabinet" to "Department of Corrections". The following additional amendments were made to conform the reference material with KRS 13A.222(4)(a):

501 KAR 6:020 - Corrections policies and procedures. Page 6, "c" was deleted because damages for negligence are to be filed in the Board of Claims.

501 KAR 6:030 - Kentucky State Reformatory.

501 KAR 6:060 - Northpoint Training Center.

501 KAR 6:110 - Roederer Correctional Complex. Amendments were made to the following policies: RCC 08-01-01, Page 1, A.2.- "U.L." was deleted and "Underwriter's Laboratory" was inserted; RCC 08-08-01-The U.S. Code citation was inserted for "SARA-Title 3"; RCC 12-06-01-The spelling of "vermin" was corrected.

501 KAR 6:130 - Western Kentucky Correctional Complex.

Workforce Development Cabinet: Department for Adult and Technical Education: Adult Education

780 KAR 9:130 - Qualifications for progressing satisfactorily through a GED program. Amendments were made to various sections to: 1). clarify the standard "progressing satisfactorily through a GED program"; 2) establish instructional level, testing, evaluation and reporting; and 3). modification or temporary waiver of program requirements under special circumstances.

Department of Alcoholic Beverage Control: Conduct of Business; Employees

804 KAR 5:070 - Minors. A section of this administrative regulation was amended to establish a definition section pursuant to KRS 13A.222(4)(d)&(e).

Department of Insurance: Administration

In three administrative regulations listed below, the word "administrative" was inserted before the word "regulation" as required by KRS 13A.010(2).

806 KAR 2:070 - Preservation of records.

Health Insurance Contracts

806 KAR 17:066 - Medicare supplement insurance policies. The agency clarified Sections 1(7), 8(3) and 10(1) of this administrative regulation by inserting the appropriate U.S. Code citation as required by KRS 13A.222(4)(a). This administrative regulation was amended by the agency to correct certain typographical errors in Section 1(8), Section 5(2)(g)2, Section 11(1), Section 11(1)(a)2., Section 14(3)(d), and Appendix C.

Insurance Holding Company Systems

806 KAR 37:010 - Insurance holding company systems. Section 2(1) of this administrative regulation was amended to delete the word "guides" when referring to forms to be filled out by regulated entities. The requirements in these forms are mandatory and not guides. The amendment clarifies that the information required by those forms is required but the instructions are not required to be printed in the forms.

Kentucky Racing Commission: Harness Racing

811 KAR 1:215 - Kentucky standardbred development fund. This administrative regulation was amended to conform to the format and drafting requirements of KRS 13A.220(4) and KRS 13A.222(4)(a).

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:020 - Parts or materials list. This administrative regulation was amended to conform to the format requirements of KRS 13A.220(4).

Cabinet for Human Resources

In the five administrative regulations listed below, the agency amended the RELATES TO, STATUTORY AUTHORITY, and NECESSITY AND FUNCTION Sections to properly cite the "Budget Bill" as follows: Acts 1992, Chapter 462, Part I. G. 52. g..

Acts 1992, Chapter 462, Part I G. 52. g. allows CHR to prescribe "user fee amounts" by administrative regulation upon the written approval of the State Budget Director and the Secretary of Finance.

The above-referenced administrative regulations did not contain the approval of the Secretary of Finance and the State Budget Director as required by KRS 13A.120(3) and KRS 13A.220(5)(a).

The fee increases were approved in writing by the Deputy

Secretary of Finance and the State Budget Director in a May 28, 1992 letter, but the agency did not properly file the approval with these administrative regulation as required by KRS 13A.220(5)(a).

Chairman Kerr advised the agency that they would need to file the appropriate approval required by KRS 13A.220(5)(a) on all future administrative regulations.

Office of Administrative Services: Vital Statistics

901 KAR 5:050 - Fees for searches, certified copies of certificates and records.

Department for Health Services: Sanitation

902 KAR 10:021 - License fee for frozen food locker plants.

902 KAR 10:060 - On-site sewage disposal.

902 KAR 10:121 - Inspection fees for public swimming and bathing facilities.

902 KAR 10:130 - Licensing fee for septic tank servicing.

Food and Cosmetics

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. This administrative regulation was amended to: 1). reflect the correct appropriation bill citation: "ACTS 1992, Chapter 462, Part I.G. 52 g, p. 63 and 65"; and 2). conform to KRS 13A.220(4) format requirements.

902 KAR 45:120 - Inspection fees; permit fees; hotels, mobile home and recreational vehicle parks. This administrative regulation was amended to reflect the correct appropriation bill citation: "ACTS 1992, Chapter 462, Part I.G. 52 g, p. 63 and 65".

Radiology

902 KAR 100:012 - Fee schedule. This administrative regulation was amended to reflect the correct appropriation bill citation: "ACTS 1992, Chapter 462, Part I.G. 52 g, p. 63 and 65".

Radiation Operators Certification

902 KAR 105:020 - General requirements. This administrative regulation was amended to: 1). reflect the correct appropriation bill citation: "ACTS 1992, Chapter 462, Part I.G. 52 g, p. 63 and 65"; and 2). conform to KRS 13A.220(4) format requirements.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Kentucky Higher Education Assistance Authority: Kentucky Loan Program

11 KAR 3:100 - Administrative wage garnishment.

Cabinet for Human Resources: Department for Employment Services: Unemployment Insurance

903 KAR 5:290 - Employer contribution rates.

Department for Social Insurance: Food Stamp Program

904 KAR 3:010 - Definitions.

904 KAR 3:020 - Financial requirements.

904 KAR 3:025 - Technical requirements.

904 KAR 3:035 - Certification process.

Office of Inspector General

906 KAR 1:110 - Rural primary-care hospital services. (Amended After Hearing)

Department for Medicaid Services

907 KAR 1:045 - Payments for mental health center services.

907 KAR 1:376 - Incorporation by reference of the hospital services manual.

907 KAR 1:382 - Incorporation by reference of the preventive health manual.

907 KAR 1:408 - Incorporation by reference of the nurse-midwife services manual.

907 KAR 1:412 - Incorporation by reference of the podiatry services manual.

907 KAR 1:416 - Incorporation by reference of the pharmacy services manual.

907 KAR 1:432 - Incorporation by reference of the home and community based waiver services manual.

907 KAR 1:550 - Incorporation by reference of the targeted management services adults manual.

907 KAR 1:555 - Incorporation by reference of the targeted case management services children manual.

The following regulations were deferred to the September meeting, unless otherwise noted, upon agreement by the promulgating agency and the Subcommittee:

Personnel Board

101 KAR 1:365 - Appeal and hearing procedures.

101 KAR 1:375 - Employee grievances and complaints.

Board of Examiners and Registration of Landscape Architects

201 KAR 10:050 & E - Fees.

201 KAR 10:060 - Renewals.

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:040 & E - Fees.

201 KAR 18:075 - Examination credit for qualified experience.

Board of Physical Therapy

201 KAR 22:135 - Fees.

Natural Resources and Environmental Protection: Department of Environmental Protection: Division of Waste Management: Identification and Listing of Hazardous Waste

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

401 KAR 31:040 - Lists of hazardous wastes.

401 KAR 31:060 - Rule-making petitions for hazardous waste.

401 KAR 31:170 - Appendix on hazardous waste constituents.

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

401 KAR 34:020 - General facility standards.

401 KAR 34:050 - Manifest system, recordkeeping and reporting.

401 KAR 34:060 - Groundwater protection.

401 KAR 34:070 - Closure and postclosure.

401 KAR 34:190 - Tanks.

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

401 KAR 35:020 - General facilities standards (IS).

401 KAR 35:050 - Manifest system, recordkeeping and reporting (IS).

401 KAR 35:070 - Closure and postclosure (IS).

401 KAR 35:190 - Tanks (IS).

Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

401 KAR 36:030 - Recyclable materials used in a manner constituting disposal.

Waste Management - Land Disposal Restrictions

401 KAR 37:010 - General provisions for land disposal restrictions.

401 KAR 37:030 - Prohibitions on land disposal.

401 KAR 37:040 - Treatment standards.

401 KAR 37:050 - Prohibitions on storage.

Hazardous Waste Permitting Process

401 KAR 38:010 - General provisions for permitting.

401 KAR 38:020 - Interim status provisions.

401 KAR 38:040 - Changes to permits; expiration of permits.

401 KAR 38:050 - Public information procedures.

401 KAR 38:060 - Special types of permits.

401 KAR 38:070 - Application procedures.

Solid Waste Planning

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

401 KAR 49:011 - General provisions relating to area solid waste management plans.

401 KAR 49:040 - Solid waste planning assistance program.

Justice Cabinet: Kentucky Community Corrections Grant Program

500 KAR 10:001 - Definitions.

500 KAR 10:010 - Authority, purpose, name of grant program.

500 KAR 10:020 - Administration.

500 KAR 10:030 - Community corrections board.

500 KAR 10:040 - Annual review for compliance.

Transportation Cabinet: Administration
600 KAR 1:070 - Motor pool procedure.
Property Acquisition and Uniform Relocation
600 KAR 3:010 - Relocation assistance payments of the Transportation Cabinet.

Department of Vehicle Regulation: Division of Motor Carriers
601 KAR 1:005 - Safety regulations.
601 KAR 1:015 - Special overweight or overdimensional permits issued at highway district offices and the Transportation Cabinet in Frankfort.
601 KAR 1:016 - Special annual overweight of overdimensional permits issued for the transportation of specialized equipment.
Department of Highways: Traffic
603 KAR 5:070 - Motor vehicle dimension limits.
603 KAR 5:075 - Overweight and overdimensional permits.
603 KAR 5:105 - Annual permits for moving wood trusses.
603 KAR 5:112 - Annual permits for moving utility equipment, poles or pipes.
603 KAR 5:260 - Annual permits for moving farm equipment.
603 KAR 5:270 - Annual overweight permits for the movement of steel products or materials.
Education and Humanities Cabinet: Department of Education: Office of District Support Services: General Administration
702 KAR 1:035 - Group health and life insurance. (The agency requested that this regulation be deferred to the October meeting; the Subcommittee agreed to the deferral.)
Labor Cabinet: Occupational Safety and Health
803 KAR 2:015 - General industry standards.
803 KAR 2:306 - Adoption of 29 CFR Part 1910.94 - 1910.100.
803 KAR 2:310 - Adoption of 29 CFR Part 1910.151-.153.
803 KAR 2:313 - Adoption of 29 CFR Part 1910.176 - 1910.190.
803 KAR 2:317 - Adoption of 29 CFR Part 1910.261-.275.
803 KAR 2:320 - Adoption of 29 CFR Part 1910.1000 - 1910.1500.
Department of Alcoholic Beverage Control: Quotas
804 KAR 9:040 & E - Retail package liquor license quota.

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 11:45 a.m. until September 3, 1992 at 1 p.m. in Room 131 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of July 22, 1992

The Interim Joint Committee on Agriculture and Natural Resources met July 22, 1992, and submits this report:

The committee determined that Department of Fish and Wildlife Resources administrative regulation 301 KAR 2:111, relating to deer gun and archery season and turkey season on special areas, does comply with KRS Chapter 13A.

The committee determined that administrative regulation 301 KAR 3:022, relating to hunting and fishing license fees, is deficient and exceeds statutory authority on the basis that the department's budget goes beyond the biennial period since the $5 million is for a number of years into the future.

The meeting adjourned July 22, 1992, at 3:15 p.m.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of August 3, 1992

The Interim Joint Committee on State Government, on August 3, 1992, reviewed the following administrative regulations of the Department of Personnel and found that they comply with KRS Chapter 13A:

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.

The Committee reviewed the following Kentucky Retirement Systems administrative regulation and found it deficient:

105 KAR 1:010. Contributions and interest rates.

The Committee voted to attach a statement of objection to 105 KAR 1:010 because the regulation is inconsistent with the provisions of 1992 HB 468 (budget bill).

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates C2

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 C10

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 C15

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
201 KAR 18:040E	3310	4-27-92
302 KAR 16:080E	3130	4/7/92
804 KAR 9:040E	3313	4-24-92

ORDINARY REGULATIONS:

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11 KAR 3:100	3541	(See VOLUME 19)
11 KAR 5:001	3543	(See VOLUME 19)
11 KAR 5:033	3544	8-1-92
11 KAR 5:034	3545	8-1-92
11 KAR 5:036	3546	8-1-92
11 KAR 5:110 Amended	3475	8-1-92
11 KAR 5:120 Amended	3476	8-1-92
11 KAR 5:130 Amended	3477	(See VOLUME 19)
11 KAR 5:140 Amended	3478	8-1-92
11 KAR 5:145	3547	8-1-92
11 KAR 5:150 Amended	3480	8-1-92
11 KAR 5:160 Amended	3481	8-1-92
11 KAR 5:170 Amended	3483	8-1-92
11 KAR 5:180 Amended	3485	8-1-92
11 KAR 10:010 Amended	3486	8-1-92
11 KAR 10:020 Amended	3489	8-1-92
11 KAR 11:040 Repealed	3480	8-1-92
11 KAR 11:050 Repealed	3481	8-1-92
11 KAR 11:060 Repealed	3483	8-1-92
11 KAR 11:070 Repealed	3485	8-1-92
13 KAR 2:020 Amended	3491	8-1-92
101 KAR 2:036	3549	8-1-92
101 KAR 2:046	3551	(See VOLUME 19)
101 KAR 2:056	3553	8-1-92
101 KAR 2:066	3554	8-1-92
101 KAR 2:076	3555	8-1-92
102 KAR 1:162 Expired		7-14-92
105 KAR 1:010 Amended	3494	8-1-92
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	
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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	
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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
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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	
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201 KAR 18:040 Amended	3210	
201 KAR 18:075	3271	
201 KAR 18:131	2450	6-7-92
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201 KAR 20:200 Amended	3211	
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201 KAR 20:215 Amended	3212	
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201 KAR 20:220 Amended	3213	
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301 KAR 2:111 Amended	3498	7-22-92
301 KAR 2:170 Amended	3216	6-24-92
301 KAR 2:210 Amended	3220	6-24-92
301 KAR 3:022	3556	(See VOLUME 19)
302 KAR 16:080	3271	(See VOLUME 19)
401 KAR 5:010 Amended	3501	(See VOLUME 19)

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401 KAR 45:010	3076	
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401 KAR 45:110	3103	6-24-92
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401 KAR 45:140	3109	6-24-92
401 KAR 45:160	3111	
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401 KAR 45:210	3115	6-24-92
401 KAR 45:250	3117	6-24-92
401 KAR 50:010		
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401 KAR 50:012		
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401 KAR 51:001	2737	
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401 KAR 59:185		
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401 KAR 59:190		
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401 KAR 59:210		
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401 KAR 59:212		
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401 KAR 59:214		
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401 KAR 59:225		
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401 KAR 59:230		
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401 KAR 59:240		
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401 KAR 61:050		
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401 KAR 61:130		
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401 KAR 61:132		
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401 KAR 61:137		
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401 KAR 61:150		
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401 KAR 63:025		
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405 KAR 8:040		
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501 KAR 6:030		
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501 KAR 6:040		
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501 KAR 6:050		
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501 KAR 6:060		
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501 KAR 6:070		
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603 KAR 3:020		
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603 KAR 4:025		
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603 KAR 5:096		
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605 KAR 1:150		
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702 KAR 1:035		
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702 KAR 3:045		
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702 KAR 3:250		
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702 KAR 5:010		
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702 KAR 5:030		
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702 KAR 7:050		
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704 KAR 3:035		
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780 KAR 2:110		
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780 KAR 2:120		
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780 KAR 3:020		
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780 KAR 3:070		
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803 KAR 1:063		
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803 KAR 2:307		
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803 KAR 2:320		
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803 KAR 6:010		
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804 KAR 4:060		
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804 KAR 9:040		
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807 KAR 5:066		
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808 KAR 10:010		
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810 KAR 1:026	3285	(See VOLUME 19)
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902 KAR 10:085		
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904 KAR 2:016		
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904 KAR 2:040		
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905 KAR 2:080		
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905 KAR 6:070		
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907 KAR 1:040		
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907 KAR 1:525		
Amended	3269	
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*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))

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201 KAR 10:050E	4	5-18-92
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405 KAR 7:001E	682	7-24-92
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905 KAR 2:100E	703	7-24-92
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11 KAR 4:060	531	
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11 KAR 5:130		
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11 KAR 11:020		
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