ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 20, NUMBER 5
MONDAY, NOVEMBER 1, 1993

Administrative Regulation Review Subcommittee, November Agenda **911**
Regulation Review Procedure **913**
Statement of Ownership **914**
Emergency Regulations Now In Effect:
Higher Education Assistance Authority 915
Workforce Development Cabinet 918
Human Resources 929
As Amended:
Psychology Board 931
Fish and Wildlife Resources 946
NREPC - Air Quality 952
Transportation Cabinet 962
Education 966
School Facility Construction Commission 967
Labor Cabinet - OSHA 968
Human Resources 970
Amended After Hearing:
Personnel Department 972
NREPC - Water 976
NREPC - Air Quality 982
Petroleum Storage Tank Fund Commission 1006
Education 1010
Workers' Compensation Board 1015
Human Resources 1016
Proposed Amendments Received Through Noon, October 15, 1993:
Higher Education Assistance Authority 1022
Hairdressers and Cosmetologists Board 1026
Nursing Board 1037
Athletic Commission 1038
Occupational Therapy Board 1050
NREPC - Waste Management 1068
Corrections 1370
Transportation 1381
Workforce Development Cabinet 1388
Insurance 1389
Housing, Buildings and Construction 1391
Human Resources 1396
Proposed Regulations Received Through Noon, October 15, 1993:
Higher Education Student Loan Corporation 1427
Military Affairs 1427
Athletic Commission 1429
Kentucky Housing Corporation 1432
NREPC - Waste Management 1433
Transportation 1506
Insurance 1509
Racing Commission 1510
Housing, Buildings and Construction 1511
Human Resources 1531
October Minutes of the Administrative Regulation Review Subcommittee 1533
Other Committee Reports 1542

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates E2
KRS Index E10
Subject Index E19

MEETING NOTICE: The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on November 1, 1993 at 10 a.m.. See **tentative** agenda on pages 911-913 in this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1993 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

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

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISSN 0096-1493)
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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $48 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year. Second class postage paid at Frankfort, Kentucky.
POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - November, 1993 @ 10 A.M.
Room 149, Capitol Annex

EXECUTIVE BRANCH ETHICS COMMISSION

Ethics Commission

9 KAR 1:040 & E. Initial registration statement and registration card.

STATE BOARD OF ELECTIONS

Voting

31 KAR 5:020 & E. Placement of voting machines.

PERSONNEL BOARD

Personnel Board

101 KAR 1:335. Employee actions.

PERSONNEL DEPARTMENT

Classified

101 KAR 2:100 & E. Leave regulations. (Amended After Hearing)

Unclassified

101 KAR 3:010 & E. Leave regulations for unclassified service.

KENTUCKY EMPLOYEES' RETIREMENT SYSTEM

General Rules

105 KAR 1:130. Hazardous duty coverage.
105 KAR 1:210. Disability procedures.
105 KAR 1:270. Special federal income tax withholding.

GENERAL GOVERNMENT CABINET

Board of Dentistry

201 KAR 8:420. The prevention of transmission of human immunodeficiency virus and hepatitis B virus to patients by dental health care workers.

Board of Embalmers and Funeral Directors

201 KAR 15:021. Repeal of 201 KAR 15:020 and 201 KAR 15:070.
201 KAR 15:030. Application for examination; fees.

Board of Veterinary Examiners

201 KAR 16:010. Code of ethical conduct.

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:200. Minimum standards of practice for mortgage inspections in Kentucky.

TOURISM CABINET
Department of Fish and Wildlife Resources

Game

301 KAR 2:140. Seasons for wild turkey.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection

Water Quality

401 KAR 5:036. Groundwater protection plans. (Amended After Hearing)

Air Quality - General Administrative Procedures

401 KAR 50:034. Permit application form. (Not Amended After Hearing)
401 KAR 50:035. Permits. (Amended After Hearing)
401 KAR 50:038. Title V emission fee. (Amended After Hearing)

Air Quality - Hazardous Pollutants

401 KAR 57:061. Hazardous air pollutants and source categories. (Amended After Hearing

Air Pollution - Mobile Source-related Emissions

401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65. (Not Amended After Hearing) (Deferred from October)
401 KAR 65:010. Vehicle emission control program. (Amended After Hearing) (Deferred from October)

Department for Natural Resources

Division of Conservation

402 KAR 2:030. Soil and water conservation peer group. (Amended After Hearing)

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

Petroleum Storage Tank Environmental Assurance Fund Commission

415 KAR 1:110. Contractor costs. (Amended After Hearing)

415 KAR 1:115 & E. Contractor certification. (Amended After Hearing)

KENTUCKY RIVER AUTHORITY

Kentucky River Authority

420 KAR 1:010. Definitions.

420 KAR 1:020. Administrative procedures of the authority.

420 KAR 1:030. Management of surface water and groundwater in the Kentucky River basin.

420 KAR 1:040. Tier I water use fees.

420 KAR 1:050. Tier II water use fees.

DEPARTMENT OF CORRECTIONS

Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:040. Kentucky State Penitentiary.

TRANSPORTATION CABINET

Department of Vehicle Regulation

Division of Motor Carriers

601 KAR 1:005. Safety regulations.

Driver Improvement

601 KAR 13:031. Approved alcohol or substance abuse education or treatment program. (Repeals 601 KAR 13:030 and 601 KAR 13:050)

EDUCATION, ARTS, AND HUMANITIES CABINET

Department of Education

Office of Chief State School Officer

701 KAR 5:110. Use of local monies to reduce unmet technology need.

Office of Instruction

704 KAR 3:035. Annual professional development plan.

704 KAR 3:345. Evaluation guidelines.

Office of Learning Programs Development

Education Professional Standards Board

704 KAR 20:620. Interdisciplinary early childhood education, birth to primary. (Amended After Hearing)

WORKFORCE DEVELOPMENT CABINET

Department for Adult and Technical Education

Personnel System for Certified and Equivalent Employees

780 KAR 3:070 & E. Attendance, compensatory time, and leave.

Unclassified Personnel Regulations

780 KAR 6:060 & E. Attendance, compensatory time, and leave.

LABOR CABINET

Workers' Compensation Board

803 KAR 25:092. Workers' compensation pharmacy fee schedule. (Amended After Hearing)

PUBLIC PROTECTION AND REGULATION CABINET

Kentucky Racing Commission

Thoroughbred Racing

810 KAR 1:031 & E. Intertrack simulcasting. (Deferred from September)

Harness Racing

811 KAR 1:015. Race officials. (Deferred from September)

811 KAR 1:055. Declaration to start; drawing horses. (Deferred from September)

CABINET FOR HUMAN RESOURCES

Department for Health Services

Health Services and Facilities

902 KAR 20:350. Boarding homes. (Repeals 905 KAR 8:150) (Amended After Hearing)

Controlled Substances

902 KAR 55:020. Schedule II substances.

902 KAR 55:025. Schedule III substances.

902 KAR 55:030. Schedule IV substances.

902 KAR 55:040. Excluded over-the-counter products.

902 KAR 55:045. Exempt prescription products.

Kentucky Health Care Data Commission

902 KAR 65:010 & E. Health data reporting by hospitals and ambulatory care facilities.

Department for Social Services

Child Welfare

905 KAR 1:010. Application for permission to place or receive a child.

Department for Medicaid Services

Medicaid Services

907 KAR 1:013 & E. Payments for hospital inpatient services. (Not Amended After Hearing) (Deferred from October)

Department for Mental Health and Mental Retardation Services

Mental Health

908 KAR 2:080. Quality assurance standards for supported living services.

ADMINISTRATIVE REGULATION REVIEW PROCEDURE

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

U.S. Postal Service

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION

Required by 39 U.S.C. 3685)

1A. Title of Publication	1B. PUBLICATION NO.	2. Date of Filing
ADMINISTRATIVE REGISTER of Kentucky	9 6 1 4 9 3	Sept. 21, 1993
3. Frequency of Issue	3A. No. of Issues Published Annually	3B. Annual Subscription Price
Monthly	12	$48

4. Complete Mailing Address of Known Office of Publication *(Street, City, County, State and ZIP+4 Code) (Not printers)*

Room 46, State Capitol, Frankfort, KY 40601-3486

5. Complete Mailing Address of the Headquarters of General Business Offices of the Publisher *(Not printer)*

Room 300, State Capitol, Frankfort, KY 40601-3486

6. Full Names and Complete Mailing Address of Publisher, Editor, and Managing Editor *(This item MUST NOT be blank)*

Publisher *(Name and Complete Mailing Address)*

Legislative Research Commission, Room 300, Capitol, Frankfort, KY 40601

Editor *(Name and Complete Mailing Address)*

Susan Wunderlich, Compiler, Room 46, Capitol, Frankfort, KY 40601-3486

Managing Editor *(Name and Complete Mailing Address)*

None

7. Owner *(If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding I percent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual must be given. If the publication is published by a nonprofit organization, its name and address must be stated.) (Item must be completed.)*

Full Name	Complete Mailing Address
Commonwealth of Kentucky Legislative Research Commission	Room 300, State Capitol Frankfort, KY 40601-3486

8. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages or Other Securities *(If there are none, so state)*

Full Name	Complete Mailing Address
NONE	

9. For Completion by Nonprofit Organizations Authorized To Mail at Special Rates *(DMM Section 423.12 only)*
The purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes *(Check one)*

(1) [X] Has Not Changed During Preceding 12 Months
(2) [ ] Has Changed During Preceding 12 Months
(If changed, publisher must submit explanation of change with this statement.)

10. Extent and Nature of Circulation *(See instructions on reverse side)*	Average No. Copies Each Issue During Preceding 12 Months	Actual No. Copies of Single Issue Published Nearest to Filing Date
A. Total No. Copies *(Net Press Run)*	875	900
B. Paid and/or Requested Circulation 1. Sales through dealers and carriers, street vendors and counter sales	183	189
2. Mail Subscription *(Paid and/or requested)*	592	630
C. Total Paid and/or Requested Circulation *(Sum or 10B1 and 10B2)*	775	819
D. Free Distribution by Mail, Carrier or Other Means Samples, Complimentary, and Other Free Copies	1	1
E. Total Distribution *(Sum of C and D)*	776	820
F. Copies Not Distributed 1. Office use, left over, unaccounted, spoiled after printing	99	80
2. Return from News Agents		
G. TOTAL *(Sum of E, F1 and 2—should equal net press run shown in A)*	875	900

11. I certify that the statements made by me above are correct and complete	Signature and Title of Editor, Publisher, Business Manager, or Owner
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PS Form 3526, Feb. 1989 *(See instructions on reverse)*

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 3:001E

KRS 164.740(12) and (14) define the terms "insured student loan" and "loan guarantee" to pertain to loans reinsured by the secretary to the extent of not less than eighty (80) percent. PL 103-66 §4108(a) amended 20 USC §1078(c)(1) by reducing the minimum rate of reinsurance from eighty (80) percent to seventy-eight (78) percent. KRS 164.748(15) authorizes the authority board to adopt "rules, regulations and policies consistent with the federal act" to overcome a conflict "between KRS 164.740 to 164.764 and the federal act, which conflict would result in a loss by the authority of any federal funds." Unless KRS 164.740(12) and (14) are modified by this proposed amendment of the administrative regulation under the authority of KRS 164.748(15) to conform the definitions of "insured student loan" and "loan guarantee" to changes in the federal act, the authority would lack necessary statutory authority to insure student loans on which the first disbursement is made on or after October 1, 1993. This would result in the loss of federal funds for reimbursement of the authority and the consequent denial of needed student loans to Kentucky students. For the foregoing reasons, an emergency is hereby deemed to exist. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 27, 1993.

BRERETON C. JONES, Governor
WAYNE STRATTON, Chairman

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 3:001E. Definitions.

RELATES TO: KRS 164.740, 164.744(1), 164.748(1), (3) (14), (15), 164.753(2), 164.766, 8 USC 1101(a)(22), 10 USC Chapters 2, 106, 107, 20 USC 421-429, 1070a, 1070b, 1070c, 1078, 1078-1, 1078-2, 1078-3, 1078(c)(1), as amended by PL 103-66 §4108(a), 1087a, 1087aa-1087ii, 1095-1, 37 USC Chapter 2, 38 USC Chapters 30, 31, 32, 35, PL 97-376 §156, PL 96-342 §903

STATUTORY AUTHORITY: KRS 13A.222(4)(e), 164.746(6), 164.748(4), (15), 34 CFR §682.401(b)(10)(ii)

EFFECTIVE: October 4, 1993

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal act. This administrative regulation sets forth general definitions applicable to one (1) or more administrative regulations in this chapter. KRS 164.740(12) and (14) define the terms "insured student loan" and "loan guarantee" to pertain to loans reinsured by the secretary to the extent of not less than eighty (80) percent. PL 103-66 §4108(a) amended 20 USC §1078(c)(1) by reducing the minimum rate of reinsurance from eighty (80) percent to seventy-eight (78) percent. KRS 164.748(15) authorizes the authority board to adopt "rules, regulations and policies consistent with the federal act" to overcome a conflict "between KRS 164.740 to 164.764 and the federal act, which conflict would result in a loss by the authority of any federal funds." This amendment is necessary to conform the definitions of "insured student loan" and "loan guarantee" to changes in the federal act enacted in PL 103-66 §4108(a).

Section 1. The following definitions apply to all authority insured student loan programs:

(1) "Academic year" means:

(a) A period of at least thirty (30) weeks of instructional time in which a full-time student is expected to complete at least twenty-four (24) semester hours or thirty-six (36) quarter hours at an institution which measures academic progress in credit hours but does not use a semester, trimester or quarter system; or

(b) At least 900 clock hours at a participating institution which measures academic progress in clock hours.

(2) "Applicable interest rate" means the maximum annual interest rate that a lender may charge on an authority insured loan.

(3) The definition of "authority" is governed by KRS 164.740(1).

(4) "Borrower" means a student or parent to whom a federal Stafford loan, a federal SLS loan, a federal PLUS loan, or a federal Consolidation loan is made.

(5) "Clock hour" means the equivalent of:

(a) A fifty (50) to sixty (60) minute class, lecture or recitation;

(b) A fifty (50) to sixty (60) minute faculty supervised laboratory, shop training, or internship; or

(c) Sixty (60) minutes of preparation in a program of study by correspondence.

(6) "College work study program (CWS)" means the part-time employment program for students authorized by Part C of the federal Act (42 USC §2751 - 2756b).

(7) "Co-maker" means one (1) of two (2) individuals who are joint borrowers on a federal PLUS Program loan and who are equally liable for repayment of the loan.

(8) "Default" means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the authority finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for:

(a) 180 days for a loan repayable in monthly installments; or

(b) 240 days for a loan repayable less frequent installments.

(9) "Defense loan" means a loan made before July 1, 1972, under Title II of the National Defense Education Act (20 USC 421-429).

(10) "Dependent student" means any student who does not qualify as an independent student (see independent student).

(11) "Direct loan" means a loan made under Part E of the federal Act (20 USC 1087aa, et seq.) after June 30, 1972, which does not satisfy the definition of "Perkins loan."

(12) "Disbursement" means the transfer of loan proceeds by a participating lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

(13) The definition of "disposable pay" is governed by Section 488A(d) of the federal Act (20 USC 1095-1).

(14) The definition of "eligible student" is governed by KRS 164.740(7).

(15) The definition of "endorser" is governed by KRS 164.740(8).

(16) "Enrolled" means the status of a student who:

(a) Has completed the registration requirements (except for the payment of tuition and fees) at the participating institution he is attending; or

(b) Has been admitted into a correspondence study program and has submitted one (1) lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

(17) "Escrow agent" means the authority acting in a capacity in which it agrees to receive the proceeds of an insured student loan as

an agent of a participating lender for the purpose of transmitting those proceeds to the borrowers.

(18)(a) "Estimated cost of attendance" means, for loans disbursed prior to July 1, 1993, the tuition and fees applicable to a student, plus the participating institution's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses shall not include the purchase of a motor vehicle. The expenses may include, but are not limited to, reasonable transportation and commuting costs, costs for room, board, books, and supplies, the insurance premium for the loan, and if applicable, the origination fee for the loan.

(b) "Estimated cost of attendance" means, for loans disbursed on or after July 1, 1993.

1. Tuition and fees normally assessed a student carrying the same academic workload as determined by the participating institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

2. An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the participating institution on at least a half-time basis, as determined by the participating institution at which such student is enrolled;

3. An allowance (as determined by the participating institution) for room and board costs incurred by the student, which shall be not less than $1,500 for a student without dependents residing at home with parents, the amount normally assessed most of the institution's residents for room and board for students without dependents residing in institutionally owned or operated housing, or an allowance of not less than $2,500 for all other students based on the expenses reasonably incurred by the students for room and board;

4. For a student enrolled in an academic program of study abroad approved for credit by the student's home institution, reasonable costs associated with the study (as determined by the participating institution at which such student is enrolled);

5. For a student with one (1) or more dependents, an allowance based on the estimated actual expenses incurred for such dependent care, based on the number and age of such dependents, except that the allowance shall not exceed the reasonable cost in the community in which the student resides for the kind of care provided, and the period for which dependent care is required includes, but is not limited to, class time, study time, field work, internships, and commuting time;

6. For a student with a disability, an allowance (as determined by the participating institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies;

7. For a student receiving all or part of the student's instruction by means of telecommunications technology, no distinction shall be made with respect to the mode of instruction in determining costs, except that the financial aid officer at a participating institution shall reduce the amount of an authority insured student loan for which a student is otherwise eligible, if the financial aid officer determines that the student's cost of attendance is substantially reduced due to instruction by means of the use of telecommunication, but this paragraph shall not be construed to permit including the cost of rental or purchase of equipment; and

8. For a student placed in a work experience under a cooperative education program, an allowance for reasonable costs associated with such employment (as determined by the participating institution at which such student is enrolled).

(19) "Estimated financial assistance" means the estimated amount of assistance that a student has been or will be awarded during the period of enrollment for which the loan is sought from federal, state, institutional or other scholarship, grant, work, or loan programs, including but not limited to:

(a) Any Social Security benefits paid to, or on account of, the student that would not be paid if he was not a student;

(b) Any veterans' education benefits paid because of enrollment in a postsecondary education institution, including veterans' education benefits received under United States Code Title 10 chapters 2, 106, and 107; Title 37 chapter 2; Title 38 chapters 30, 31, 32, and 35; PL 97-376, section 156; and PL 96-342, section 903; and

(c) Other scholarship, grant, or loan assistance;

(d) The estimated amount of other federal student financial aid, including but not limited to Pell Grants and assistance under the SEOG, federal work-study, and federal Perkins Loan programs, which the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(e) Loan proceeds withheld by the lender and applied towards an origination fee or insurance premium, if these costs are included in computing the borrower's estimated cost of attendance.

(20) The definition of "federal act" is governed by KRS 164.740(9).

(21) "Federal Consolidation Loan Program" means the loan program authorized by section 428C of the federal Act (20 USC Section 1078-3).

(22) "Federal PLUS Program" means the loan program authorized by section 428B of the federal Act (20 USC Section 1078-2).

(23) "Federal Supplemental Loans for Students (SLS) Program" means the loan program authorized by section 428A of the federal Act (20 USC Section 1078-1) and formerly called the ALAS Program.

(24) "Foreign school" means a school not located in a state.

(25) "Full-time student" means:

(a) A student enrolled in a participating institution (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research or social studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(b) A student enrolled in a vocational program of study (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than twenty-four (24) clock-hours per week or twelve (12) semester or quarter hours of instruction, or its equivalent.

(26) "Grace period" means the period that begins on the day on which a federal Stafford loan borrower ceases to be enrolled as at least a half-time student at a participating institution and ends on the day that the repayment period begins. See also "postdeferment grace period".

(27) "Graduate or professional student" means a student who:

(a) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(b) Has completed the equivalent of at least three (3) years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(c) Is not receiving aid under Title IV of the federal Act (20 USC Sections 1070 through 1099c-1) as an undergraduate student for the same period of enrollment.

(28) "Guarantee agency" means a state or private nonprofit organization that has an agreement with the secretary to administer a loan guarantee program under the federal Act.

(29) "Guaranteed Student Loan (GSL) Program" means the student loan program, which has been redesignated as the Robert T. Stafford Federal Student Loan program, authorized by Part B of Title IV of the federal Act (20 USC 1071(c)).

(30) "Half-time student" means a student who is enrolled in a participating institution, is carrying an academic workload that amounts to at least one-half (1/2) the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence is

considered a half-time student.

(31) "Holder" means a participating lender in possession of authority insured student loan.

(32) "Income Contingent Loan (ICL) Program" means the student loan program authorized by Part D of the federal Act (20 USC 1087a, et seq.).

(33) "Independent student" means any individual who:

(a) Is twenty-four (24) years of age or older by December 31 of the award year;

(b) Is an orphan or ward of the court;

(c) Is a veteran of the Armed Forces of the United States;

(d)1. Is a graduate or professional student; and

2. For award years beginning prior to July 1, 1993, declares that he will not be claimed as a dependent for income tax purposes by his parents for the first calendar year of the award year;

(e)1. Is a married individual; and

2. For award years beginning prior to July 1, 1993, declares that he will not be claimed as a dependent for income tax purposes by his parents for the first calendar year of the award year;

(f) Has legal dependents other than a spouse;

(g) For award years beginning prior to July 1, 1993, is a single undergraduate student with no dependents who was not claimed as a dependent for income tax purposes by his parents for the two (2) calendar years preceding the award year and demonstrates total self-sufficiency for those two (2) years by total annual resources of at least $4,000; or

(h) Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

(34) The definition of "insured student loan" is governed by KRS 164.740(12), except that, for loans on which the first disbursement is made on or after October 1, 1993, the term shall include loans reinsured by the secretary to the extent of not less than seventy-eight (78) percent.

(35) "Legal guardian" means an individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his financial resources for the support of that person.

(36) The definition of "loan" is governed by KRS 164.740(13).

(37) The definition of "loan guarantee" is governed by KRS 164.740(14), except that, for loans on which the first disbursement is made on or after October 1, 1993, the term shall include loans reinsured by the secretary to the extent of not less than seventy-eight (78) percent.

(38) "National Defense Student Loan program" means the student loan program authorized by Title II of the National Defense Education Act of 1958 (20 USC 421-429).

(39) "National Direct Student Loan (NDSL) Program" means the student loan program authorized by Part E of the federal Act (20 USC 1087aa-1087ii) between July 1, 1972, and October 16, 1986.

(40) "National of the United States" means:

(a) A citizen of the United States; or

(b) As defined in the Immigration and Nationality Act, 8 USC 1101(a)(22), a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(41) "One (1) year training program" means a program which is at least:

(a) Twenty-four (24) semester or trimester hours or units, or thirty-six (36) quarter hours or units at an institution using credit hours or units to measure academic progress;

(b) 900 clock hours of supervised training at an institution using clock hours to measure academic progress; or

(c) 900 clock hours in a correspondence program.

(42) "Origination relationship" means a special relationship between a participating institution and a lender, in which the lender delegates to the institution, or to an entity or individual affiliated with the institution, substantial functions or responsibilities normally performed by lenders before making loans.

(43) "Parent" means a student's mother, father, or legal guardian. A parent by adoption is considered to be a student's mother or father.

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

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

(46) "Pell Grant program" means the grant program authorized by subpart 1 of Part A of the federal Act (20 USC 1070a).

(47) "Perkins loan" means a loan made under Part E of the federal Act (20 USC 1087aa, et seq.) to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under the National Direct Student Loan program.

(48) "Perkins Loan program" means the student loan program authorized by Part E of the federal Act (20 USC 1087aa-1087ii) after October 16, 1986.

(49) "Postdeferment grace period" means for an insured student loan made prior to October 1, 1981, a period of six (6) consecutive months being on the day following the last day of an authorized deferment period.

(50) "Recognized equivalent of a high school diploma" means:

(a) A general education development (GED) certificate; or

(b) A state certificate received by a student after the student has passed a state authorized examination which the state recognizes as the equivalent of a high school diploma.

(51) "Regular student" means a person who is enrolled or accepted for enrollment at a participating institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

(52) "Robert T. Stafford Federal Student Loan program" means the student loan program authorized by Part B of the federal Act, consisting of subsidized and unsubsidized loans authorized by sections 428 (20 USC Section 1078) and 428H (20 USC Section 1078-8) of the federal Act, and includes loans previously made under the guaranteed student loan program.

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

(54) "Six (6) month training program" means:

(a) A program which is at least:

1. Sixteen (16) semester or trimester hours or units, or twenty-four (24) quarter hours or units, at an institution using credit hours or units to measure academic progress;

2. 600 clock hours of supervised training at an institution using clock hours to measure academic progress; or

3. 600 clock hours in a correspondence program;

(b) A program which the secretary determines is at least a six (6) month training program on the basis of:

1. A certification by the nationally recognized accrediting association that accredits the institution that the program offered by the institution is equal in course content and student workload to the comparable clock or credit hour program described in paragraphs (a)1 through 3 of this subsection; and

2. The secretary's ratification of that accrediting agency's determination.

(55) "State" means each state of the Union, the Commonwealth of Puerto Rico, the District of Columbia, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(56) "State Student Incentive Grant (SSIG) program" means the grant program authorized by subpart 4 of Part A of the federal Act (20 USC 1070c, et seq.).

(57) "Subsidized Federal Stafford Student loan" means a loan qualifying for payment of an interest subsidy on behalf of the borrower under section 428 of the federal Act (20 USC Section 1078).

(58) "Supplemental Educational Opportunity Grant (SEOG) program" means the grant program authorized by subpart 3 of Part

A of the federal Act (20 USC 1070b, et seq.).

(59) "Totally and permanently disabled" means the inability of a borrower to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(60) "Undergraduate student" means a student who is enrolled at a school in a course or program of study, at or below the baccalaureate level, that usually does not exceed four (4) academic years, or is up to five (5) academic years in length and shall be designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first four (4) academic years.

(61) "Unsubsidized federal Stafford student loan" means a student loan authorized under section 428H of the federal Act (20 USC Section 1078-8).

(62) "U.S. citizen or national" means:

(a) A citizen of the United States; or

(b) A person defined in the Immigration and Nationality Act (8 USC 1101, (a)(22)) who, though not a citizen of the United States, owes permanent allegiance to the United States.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: September 24, 1993
FILED WITH LRC: October 4, 1993 at 2 p.m.

STATEMENT OF EMERGENCY
780 KAR 3:070E

This emergency regulation is necessary to bring the regulation governing leave for public employees in the certified and equivalent service into compliance with federal law and regulations which became effective August 5, 1993. The Family and Medical Leave Act of 1993, PL 103-3 and the recently published federal regulations (29 CFR Part 829) require public and private employers of more than fifty employees to meet minimum standards in granting employees leave for certain personal and family-related reasons. An emergency exists in that the federal mandates have been in effect since August 5, 1993. This regulation is designed to amend the certified and equivalent service regulations to conform to federal requirements. This emergnecy regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 9, 1993.

BRERETON C. JONES, Governor
C. RICHARD WARNER, Chairman

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education

780 KAR 3:070E. Attendance, compensatory time, and leave.

RELATES TO: KRS 151B.035, Chapter 337, 29 USC 201-219
STATUTORY AUTHORITY: KRS 151B.035
EFFECTIVE: September 21, 1993
NECESSITY AND FUNCTION: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations with the provisions of KRS 151B.035. KRS 151B.035 specifies that the state board promulgate comprehensive regulations for the certified and equivalent staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993 (PL 103-3) as implemented by 29 CFR Part 825 requires the granting of family and medical leave. This regulation is necessary to comply with these statutory requirements.

Section 1. Attendance. (1) Full-time employees shall be required to work thirty-seven and one-half (37 1/2) hours per week for all positions unless otherwise specified by the appointing authority.

(2) The normal work day for school-based employees shall coincide with the appropriate school schedule as recommended by the principal and approved by the regional executive director of the respective school operation.

(3) The appointing authority may require employees to work hours and work days other than normal including but not limited to inclement weather schedules if it is in the best interest of the agency.

(4) Employees who work within schools, regions, or divisions which require more than one (1) shift or seven (7) days a week operation may be assigned from one (10) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to maintain or provide essential services of the agency, or to meet scheduling needs of students. Employees shall be given as much advance notice as possible when schedules are changed. The employee is required to give reasonable notice in advance of absence from a work station.

Section 2. Compensatory Time. (1) An employee who is requested in advance to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour for hour basis. Compensatory leave may be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) Compensatory time shall be granted for those working in full-time positions only and who perform duties and responsibilities pertaining only to this full-time position.

(3) Upon separation from state service, employees shall be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average rate of pay for the final three (3) years of employment.

(4) Any school-based employee who has accumulated compensatory leave shall be permitted to take time off during the following times:

(a) Spring break.

(b) Christmas break except on the four (4) official holidays normally given to state employees.

(5) All certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

(6) To maintain a manageable level of accumulated compensatory leave and for the specific purpose of reducing an employee's compensatory leave, the commissioner or designee may direct an employee to take accumulated compensatory time off from work.

Section 3. Annual Leave. (1) Full-time employees in the certified and equivalent personnel system except seasonal, temporary, per diem, emergency and part-time employees shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(2) Annual leave shall be accumulated only in the months in which the employee is hired to work. A teacher employed to teach ten and one-half (10 1/2) months shall only accrue leave during the actual school term, unless he is approved to work extended employment.

(3) Computing annual leave.

(a) A full-time employee must have worked more than half of the work days in a month to qualify for annual leave.

(b) Leave shall be credited on the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months

for which an employee earned annual leave shall be counted.

(c) Former employees who have been reinstated and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where dismissal resulted from a violation of KRS 151B.090. Only those months for which the employee earned annual leave shall be counted in computing months of total service.

(4) The maximum accumulated annual leave which may carry forward from one (1) fiscal year to the next shall not exceed the following amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days;
240 months and over	Sixty (60) work days

Leave in excess of the above maximum amounts shall be converted to sick leave at the end of the fiscal year or upon retirement. Months of service for the purpose of determining the maximum accumulation of annual leave and the amount to be converted to sick leave shall be computed as provided in subsections (1), (2), and (3) of this section. Annual leave shall not be granted in excess of that earned prior to starting date of leave.

(5) Absence due to sickness, injury, or disability in excess of that authorized for these purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(6) Taking annual leave.

(a) Accumulated leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(b) School-based employees shall take time off during the following times:

1. Spring break.

2. Christmas break except on the four (4) official holidays normally given to state employees.

(c) In cases of emergency, the supervisor may request an employee to work during the above times without loss of annual leave.

(7) Employees are charged with annual leave for absence only on days they would otherwise work and receive pay or on designated school closure days.

(8) Employees shall be allowed up to two (2) professional leave days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

(9) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated leave.

(11) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave and compensatory leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(12) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he worked for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) Any employee who leaves the Department for Adult and Technical Education certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(13) Lump sum payment for accumulated annual leave.

(a) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in subsection (5) of this section when separated by proper resignation or retirement.

(b) In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave.

(c) An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave.

(d) The effective date of the separation shall be the last work day.

(14) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in subsection (4) of this section.

(15) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(16) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-half (1/2) hour.

Section 4. Sick Leave. (1) Employees in the certified and equivalent personnel system, except emergency, per diem, and part-time employees shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave on the first day of the month following the month in which the sick leave is earned.

(2) Sick leave credits: full-time and former employees.

(a) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

1. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used.

2. Only those months for which the employee earned sick leave shall be counted in computing total months of service.

3. The total service must be verified before the leave is credited to the employee's record.

(b) Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where dismissal resulted from the violation of KRS 151B.090.

(3) Unused sick leave may be accumulated with no maximum on

accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay, with the exception of educational leave with pay.

(5) The appointing authority shall grant accrued sick leave with pay when an employee:

(a) Receives medical, dental, or optical examination or treatment;

(b) Is disabled by sickness, injury, or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement; supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post because of exposure to a readily transmittable contagious disease; or

(e) Has lost by death a spouse, or a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) Continuous leave limitation, doctor's statements, availability of position on return, dismissal after one (1) year, and sick leave without pay.

(a) The appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year.

(b) The appointing authority may require periodic doctor's statements attesting to the continued inability to perform his duties.

(c) When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit; if there is no position available, the statutes pertaining to layoff apply.

(d) An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of his sick leave, shall be dismissed by the appointing authority.

(e) An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provision of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) The Department for Adult and Technical Education shall continue to pay the state's contribution toward health and life insurance benefits between June 15 and August 1 for employees whose normal work year consists of ten and one-half (10 1/2) months.

(e) Any employee who leaves the certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(9) Absence for a fraction or a part of a day that is chargeable to sick leave shall be charged in hours or increments of one-half (1/2) hour.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated sick leave.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon reentrance and placed to their credit.

(12) In cases of absence due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) The appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. The appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) The appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 5. Sick Leave Sharing Procedures. (1) Definitions.

(a) "Employee" means an employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick Leave Sharing Program.

(b) "Immediate family" means the spouse, mother, father, son or daughter, or person of similar relationship who has resided with the employee for not less than thirty (30) days prior to application.

(c) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which renders the employee incapable of performing the essential duties of his job.

(d) "Medical emergency" means an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty on leave with or without pay for ten (10) or more consecutive working days.

~~[(15) An employee may donate or receive sick leave donation under the following conditions:]~~

(2) ~~[(a)]~~ An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all excess to an employee with a documented medical emergency who has exhausted all annual

leave, sick leave, and compensatory leave.

(3) [~~1.~~] Voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the Commissioner and shall include:

(a) [~~a.~~] The name of the donor.

(b) [~~b.~~] The agency or office in which the donor is employed.

(c) [~~c.~~] The position number of the donor.

(d) [~~d.~~] The social security number of the donor.

(e) [~~e.~~] The name of the employee to which leave is being donated.

(f) [~~f.~~] The agency or office in which the donee is employed.

(g) [~~g.~~] The donee position number.

(h) [~~h.~~] The donee Social Security Number.

(i) [~~i.~~] The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

(j) [~~j.~~] Certification by the donor that this donation is given without expectation or promise for any purpose other than that authorized by this regulation.

(4) [~~2.~~] The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

(5) [~~3.~~] A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this regulation.

(6) [~~(b)~~] An employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made on behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

(7) [~~1.~~] Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

(a) [~~a.~~] Employee name.

(b) [~~b.~~] Position number.

(c) [~~c.~~] Social Security number.

(d) [~~d.~~] Employee title.

(e) [~~e.~~] The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.

(f) [~~f.~~] Signature of the requestor or his personal representative.

(8) [~~2.~~] The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of this position for ten (10) or more consecutive working days.

(9) [~~(c)~~] The appointing authority may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(10) [~~(d)~~] At the end of each pay period while an employee is on donated leave, the appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay and shall reduce the donor's leave balance by that amount.

(11) [~~(e)~~] No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(12) [~~(f)~~] No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave or annual leave to any other employee.

[~~(g) For purposes of this regulation, medical emergency shall mean an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty for ten (10) or more consecutive working days.~~]

(13) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(14) Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(15) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be used retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.

(16) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(17) Donated sick leave shall be used on consecutive days except as provided by Section 4(7)(e) of this administrative regulation. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(18) When the recipient of donated leave returns to work, resigns, retires, or otherwise terminates from state employment, unused donated leave shall be restored to the donors, in chronological order of receipt of the donation forms, unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(19) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, such leave shall not be available for use by the recipient.

(20) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(21) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.

Section 6. Family and Medical Leave. (1) Definitions.

(a) "Child", son or daughter, means a biological, adopted, or foster child (under an agreement with a state government agency), a stepchild, a legal ward, or a child of a person standing in loco parentis who is under eighteen (18) years of age, or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

(b) "Health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or any other person determined by the United States Secretary of Labor to be capable of providing health care services.

(c) "Parent" means the biological parent of one (1) employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

(d) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(e) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

(2) Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family and medical leave without pay. On the first day of January of each year thereafter every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding calendar year shall qualify for twelve (12) weeks of family and medical leave without pay. Unused family and medical leave shall not be carried over from year to year.

(3) Calculating a week of family and medical leave.

(a) A week of family and medical leave is the amount of time an employee normally works each week.

(b) If an employee's schedule varies from week to week, a weekly

average of the hours worked over the twelve (12) weeks prior to the beginning of the family and medical leave shall be used for calculating the employee's normal work week.

(c) If there has been a permanent or long-term change in the employee's schedule (for reasons other than family and medical leave), the hours worked under the new schedule shall be used for calculating the employee's normal workweek.

(4) The appointing authority shall grant family and medical leave upon the receipt of a completed application from an employee. The appointing authority shall require the employee to use accumulated sick, annual and compensatory leave prior to granting unpaid family and medical leave, except that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family and medical leave shall be reduced by the amount of paid or unpaid leave used. A completed application consists of the request form and the medical certification required by subsection (6) of this section. The employee shall make the application as far in advance of the start of the leave as reasonable.

(5) Family and medical leave shall be granted:

(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child. The appointing authority shall require a couple in the employ of the same agency to limit the total amount of family and medical leave to twelve (12) weeks where leave is sought in connection with the birth, adoption, or placement of a foster child or to care for a sick parent;

(b) Within one (1) year of the birth of a child of the employee, adoption by the employee or placement with the employee of a foster child, for the care of such newborn, adopted, or foster child;

(c) To an employee to care for the employee's spouse, parent, or child if the spouse, parent, or child has a serious health condition.

(d) Because of a serious health condition of the employee that makes the employee unable to perform the essential functions of his position.

(6) Certification requirements.

(a) The appointing authority shall require an employee granted family and medical leave for a serious health condition of the employee or child, spouse or parent to supply a certification, on a form prescribed by the cabinet secretary, from a health care provider that includes a statement that the employee is needed to care for a child, spouse, or parent in order to assist in their recovery.

(b) An employee requesting intermittent leave or leave on a reduced leave schedule due to serious health condition of the employee or child, spouse, or parent shall be required to supply a certification from a licensed health care provider that such leave is medically necessary and the expected duration and schedule of such leave.

(c) If the appointing authority has reason to doubt the validity of a medical certification, the appointing authority may require the employee to obtain a second opinion at the agency's expense. The appointing authority shall designate the health care provider to furnish the second opinion. The designated health care provider shall not be employed on a regular basis by the agency.

(d) If the opinions of the employee and the designated health care provider differ, the appointing authority may request the employee to obtain certification from a third health care provider who is approved by the employee. This third opinion shall be final and binding. If the appointing authority does not act in good faith to attempt to reach an agreement on the third health care provider, the appointing authority shall be bound by the original certification. If the employee does not act in good faith to attempt to reach an agreement on the third health care provider, the employee shall be bound by the opinion of the second health care provider.

(e) The appointing authority may require recertification of the need for family and medical leave every thirty (30) working days and a report on the status and intention of the employee to return to work.

(7) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill child, parent, or spouse or for the employee's own serious health condition, and the need for leave is reasonably based on planned medical treatment, the appointing authority may temporarily reassign the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.

(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or shall have been on family and medical leave during the previous month subject to the following conditions:

(a) Work days and paid leave and family and medical leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall use his paid leave days consecutively;

(c) An employee who has exhausted paid leave and family and medical leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the work days in a month. If the employee is unable to work for more than half of the work days in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contribution and the employee contributions for such benefits.

(d) An employee who uses family and medical leave as the sole qualification for the state contribution for life insurance and health benefits who fails to return to work for thirty (30) calendar days after the family and medical leave is exhausted shall reimburse the agency for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the agency if the reason the employee does not return is due to:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to family and medical leave under this regulation.

2. Other circumstances beyond the employee's control. These circumstances include but are not limited to when a parent, spouse, or child has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Examples of circumstances which are not beyond the employee's control are where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care; or a parent's decision not to return to work to stay with a newborn child.

(e) An employee on family and medical leave shall continue to be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made if by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make any employee contributions for life insurance and health benefits. If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.

(9) At the conclusion of the family and medical leave, an employee shall be restored to the same position that the employee held before going on leave, or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

Section 7. [6.] Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to

comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding [~~plaintiff~~]. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 8. [~~6.~~] Military Leave: Training Duty and Military Duty. (1) Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and this absence shall not be charged to leave.

(a) Absence in excess of this amount will be charged as annual leave, compensatory leave, or leave with out pay.

(b) The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 9. [~~7.~~] Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. This absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 10. [~~8.~~] Special Leave of Absence. (1) In addition to leave as above provided, the appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) The Commissioner of Adult and Technical Education may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay, for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service. All employees granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave. Employees shall not be guaranteed the identical position held at time of beginning of leave.

(3) The appointing authority may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed to be in the best interest of the state. All employees granted this leave shall be guaranteed a position as similar as possible to this position held at the time of the beginning of leave. Employees shall not be guaranteed the identical position held at the time of leave.

(4) The Commissioner of Adult and Technical Education may grant a sabbatical leave of absence without pay when requested by a continuing status employee for a period not to exceed twelve (12) months for attendance at a college, university, vocational, business school or any other business and industrial training program for the purpose of retraining due to changing technology. If retraining occurs at a Kentucky Technical institution, the employee shall be exempt from tuition. Employees granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave, or if there is no similar position available, the first opening for a similar position for which the employee is qualified. Employees shall not be guaranteed the identical position held at the time of beginning leave.

(5) The appointing authority may place an employee on leave without pay for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct. Unless there is imminent danger to staff, students or other individuals, there shall be a preliminary hearing after which the employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If the investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of leave, and all records relating to the investigation will be purged from the Department for Adult and Technical Education files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken including those cases where the employee voluntarily resigns in the interim.

(6) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B, shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contributions for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) Any employee who leaves the Department for Adult and Technical Education certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

Section 11. [~~9.~~] Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of absence. Absence without leave may constitute grounds for disciplinary action.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: August 26, 1993
FILED WITH LRC: September 21, 1993 at 2 p.m.

STATEMENT OF EMERGENCY
780 KAR 6:060E

This emergency regulation is necessary to bring the regulation governing leave for public employees in the unclassified service into compliance with federal law and regulations which became effective August 5, 1993. The Family and Medical Leave Act of 1993, PL 103-3 and the recently published federal regulations (29 CFR Part 829) require public and private employers of more than fifty employees to meet minimum standards in granting employees leave for certain personal and family-related reasons. An emergency exists in that the

federal mandates have been in effect since August 5, 1993. This regulation is designed to amend the unclassified service regulation to conform to federal requirements. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 9, 1993.

BRERETON C. JONES, Governor
C. RICHARD WARNER, Chairman

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education

780 KAR 6:060E. Attendance, compensatory time, and leave.

RELATES TO: KRS 151B.035
STATUTORY AUTHORITY: KRS 151B.035
EFFECTIVE: September 21, 1993
NECESSITY AND FUNCTION: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specified that the state board promulgate administrative regulations for the unclassified service staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993 (PL 103-3) as implemented by 29 CFR Part 825 requires the granting of family and medical leave. This regulation is necessary to comply with these statutory requirements.

Section 1. Attendance. (1) Full-time employees shall be required to work thirty-seven and one-half (37 1/2) hours per week for all positions unless otherwise specified by the appointing authority.

(2) The appointing authority may require employees to work hours and work days other than normal if it is in the best interest of the agency. The employee shall be required to give reasonable notice in advance of absence from a work station. Employees shall be given as much advance notice as possible when schedules are changed.

Section 2. Compensatory Time. (1) An employee who is requested in advance to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis subject to the provisions of the Fair Labor Standards Act and the Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average rate of pay for the final three (3) years of employment.

(3) All unclassified employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

(4) To maintain a manageable level of accumulated compensatory leave and for the specific purpose of reducing an employee's compensatory leave, the commissioner or designee may direct an employee to take accumulated compensatory time off from work.

Section 3. Annual Leave. (1) Full-time employees in the unclassified service except seasonal, temporary, per diem, emergency and part-time employees shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(2) Annual leave shall be accumulated only in the months in which the employee is hired to work.

(3) Computing annual leave.

(a) A full-time employee must have worked more than half of the work days in a month to qualify for annual leave.

(b) Leave shall be credited on the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted.

(c) Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS Chapter 151B, Section 16. Only those months for which the employee earned annual leave shall be counted in computing months of total service.

(4) The maximum accumulated annual leave which may carry forward from one (1) fiscal year to the next shall not exceed the following amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days;
240 months and over	Sixty (60) work days

Leave in excess of the above maximum amounts shall be converted to sick leave at the end of the fiscal year or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsections (1), (2), and (3) of this section. Annual leave shall not be granted in excess of that earned prior to starting date of leave.

(5) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority be charged against annual leave.

(6) Accumulated leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(7) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(8) Employees shall be allowed sufficient leave days as determined by the commissioner for the purpose of continuing staff development; i.e., participation in professional organization workshops and meetings without loss of pay.

(9) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated leave.

(11) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave and compensatory leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(12) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the

employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he worked for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves the Department for Adult and Technical Education unclassified system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(13) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in subsection (5) of this section.

(14) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(15) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-half (1/2) hour.

Section 4. Sick Leave. (1) Employee in the unclassified system, except per diem, and part-time employees shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave on the first day of the month following the month in which the sick leave is earned.

(2) Sick leave credits: full-time and former employees.

(a) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

1. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used.

2. Only those months for which the employee earned sick leave shall be counted in computing total months of service.

3. The total service must be verified before the leave is credited to the employee's record.

(b) Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 151B.090.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) The appointing authority shall grant accrued sick leave with pay when an employee:

(a) Receives medical, dental, or optical examination or treatment;

(b) Is disabled by sickness, injury, or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement; supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post because of exposure to a readily transmittable contagious disease; or

(e) Has lost by death a spouse, or a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) Continuous leave limitation, doctor's statements, availability of position on return, dismissal after one (1) year, and sick leave without pay.

(a) The appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year.

(b) The appointing authority may require periodic doctor's statements attesting to the continued inability to perform his duties.

(c) When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit; if there is no such position available, the regulations pertaining to layoff apply.

(d) An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority.

(e) An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provision of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) Any employee who leaves the unclassified service on or prior to the 15th day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(9) Absence for a fraction or a part of a day that is chargeable to sick leave shall be charged in hours or increments of one-half (1/2) hour.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated sick leave.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reemployed shall have unused sick leave balances revived upon reentrance and placed to their credit.

(12) In cases of absence due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) The appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. The appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) The appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 5. Sick Leave Sharing Procedures. (1) Definitions.

(a) "Employee" means an employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick Leave Sharing Program.

(b) "Immediate family" means the spouse, mother, father, son or daughter, or person of similar relationship who has resided with the employee for not less than thirty (30) days prior to application.

(c) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which renders the employee incapable of performing the essential duties of his job.

(d) "Medical emergency" means an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty on leave with or without pay for ten (10) or more consecutive working days.

[~~(15) An employee may donate or receive sick leave donation under the following conditions:~~]

(2) [~~(a)~~] An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all of this excess to an employee with a documented medical emergency who has exhausted all annual leave, sick leave, and compensatory leave.

(3) [~~1.~~] Voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the commissioner and shall include:

(a) [~~a.~~] The name of the donor.

(b) [~~b.~~] The agency or office in which the donor is employed.

(c) [~~c.~~] The position number of the donor.

(d) [~~d.~~] The Social Security number of the donor.

(e) [~~e.~~] The name of the employee to which leave is being donated.

(f) [~~f.~~] The agency or office in which the donee is employed.

(g) [~~g.~~] The donee position number.

(h) [~~h.~~] The donee Social Security number.

(i) [~~i.~~] The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

(j) [~~j.~~] Certification by the donor that such donation is given without expectation or promise for any purpose other than that authorized by this regulation.

(4) [~~2.~~] The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

(5) [~~3.~~] A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this regulation.

(6) [~~(b)~~] An employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made on behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

(7) [~~1.~~] Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

(a) [~~a.~~] Employee name.

(b) [~~b.~~] Position number.

(c) [~~c.~~] Social Security number.

(d) [~~d.~~] Employee title.

(e) [~~e.~~] The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.

(f) [~~f.~~] Signature of the requestor or his personal representative.

(8) [~~2.~~] The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of this position for ten (10) or more consecutive working days.

(9) [~~(c)~~] The appointing authority may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(10) [~~(d)~~] At the end of each pay period while an employee is on donated leave, the appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay and shall reduce the donor's leave balance by that amount.

(11) [~~(e)~~] No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(12) [~~(f)~~] No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave or annual leave to any other employee.

[~~(g) For purposes of this regulation, medical emergency shall mean an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty for ten (10) or more consecutive working days.~~]

(13) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(14) Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(15) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be used retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.

(16) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(17) Donated sick leave shall be used on consecutive days except as provided by Section 4(7)(e) of this administrative regulation. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(18) When the recipient of donated leave returns to work, resigns, retires, or otherwise terminates from state employment, unused donated leave shall be restored to the donors, in chronological order

of receipt of the donation forms, unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(19) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, such leave shall not be available for use by the recipient.

(20) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(21) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.

Section 6. Family and Medical Leave. (1) Definitions.

(a) "Child", son or daughter, means a biological, adopted, or foster child (under an agreement with a state government agency), a stepchild, a legal ward, or a child of a person standing in loco parentis who is under eighteen (18) years of age, or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

(b) "Health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or any other person determined by the United States Secretary of Labor to be capable of providing health care services.

(c) "Parent" means the biological parent of one (1) employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

(d) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(e) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

(2) Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family and medical leave without pay. On the first day of January of each year thereafter every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding calendar year shall qualify for twelve (12) weeks of family and medical leave without pay. Unused family and medical leave shall not be carried over from year to year.

(3) Calculating a week of family and medical leave.

(a) A week of family and medical leave is the amount of time an employee normally works each week.

(b) If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the family and medical leave shall be used for calculating the employee's normal workweek.

(c) If there has been a permanent or long-term change in the employee's schedule (for reasons other than family and medical leave), the hours worked under the new schedule shall be used for calculating the employee's normal workweek.

(4) The appointing authority shall grant family and medical leave upon the receipt of a completed application from an employee. The appointing authority shall require the employee to use accumulated sick, annual and compensatory leave prior to granting unpaid family and medical leave, except that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family and medical leave shall be reduced by the amount of paid or unpaid leave used. A completed application consists of the request form and the medical certification required by subsection (6) of this section. The employee shall make the application as far in advance of the start of the leave as reasonable.

(5) Family and medical leave shall be granted:

(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child. The appointing authority shall require a couple in the employ of the same agency to limit the total amount of family and medical leave to twelve (12) weeks where leave is sought in connection with the birth, adoption, or placement of a foster child or to care for a sick parent;

(b) Within one (1) year of the birth of a child of the employee, adoption by the employee or placement with the employee of a foster child, for the care of such newborn, adopted, or foster child;

(c) To an employee to care for the employee's spouse, parent, or child if the spouse, parent, or child has a serious health condition.

(d) Because of a serious health condition of the employee that makes the employee unable to perform the essential functions of his position.

(6) Certification requirements.

(a) The appointing authority shall require an employee granted family and medical leave for a serious health condition of the employee, or child, spouse, or parent, to supply a certification, on a form prescribed by the cabinet secretary, from a health care provider that includes a statement that the employee is needed to care for a child, spouse, or parent in order to assist in their recovery.

(b) An employee requesting intermittent leave or leave on a reduced leave schedule due to serious health condition of the employee or child, spouse, or parent shall be required to supply a certification from a licensed health care provider that such leave is medically necessary and the expected duration and schedule of such leave.

(c) If the appointing authority has reason to doubt the validity of a medical certification, the appointing authority may require the employee to obtain a second opinion at the agency's expense. The appointing authority shall designate the health care provider to furnish the second opinion. The designated health care provider shall not be employed on a regular basis by the agency.

(d) If the opinions of the employee and the designated health care provider differ, the appointing authority may request the employee to obtain certification from a third health care provider who is approved by the employee. This third opinion shall be final and binding. If the appointing authority does not act in good faith to attempt to reach an agreement on the third health care provider, the appointing authority shall be bound by the original certification. If the employee does not act in good faith to attempt to reach an agreement on the third health care provider, the employee shall be bound by the opinion of the second health care provider.

(e) The appointing authority may require recertification of the need for family and medical leave every thirty (30) working days and a report on the status and intention of the employee to return to work.

(7) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill child, parent, or spouse or for the employee's own serious health condition, and the need for leave is reasonably based on planned medical treatment, the appointing authority may temporarily reassign the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.

(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or shall have been on family and medical leave during the previous month subject to the following conditions:

(a) Work days and paid leave and family and medical leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall use his paid leave days consecutively;

(c) An employee who has exhausted paid leave and family and medical leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the work days in a month. If the employee is unable to work for more than half of the work days in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contribution and the employee contributions for such benefits.

(d) An employee who uses family and medical leave as the sole qualification for the state contribution for life insurance and health benefits who fails to return to work for thirty (30) calendar days after the family and medical leave is exhausted shall reimburse the agency for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the agency if the reason the employee does not return is due to:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to family and medical leave under this regulation.

2. Other circumstances beyond the employee's control. These circumstances include but are not limited to when a parent, spouse, or child has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Examples of circumstances which are not beyond the employee's control are where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care; or a parent's decision not to return to work to stay with a newborn child.

(e) An employee on family and medical leave shall continue to be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made if by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make any employee contributions for life insurance and health benefits. If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.

(9) At the conclusion of the family and medical leave, an employee shall be restored to the same position that the employee held before going on leave, or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

Section 7. [~~5.~~] Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding [~~plaintiff~~]. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 8. [~~6.~~] Military Leave: Training Duty and Military Duty. (1) Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave.

(a) Absence in excess of this amount will be charged as annual leave, compensatory leave, or leave with out pay.

(b) The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 9. [~~7.~~] Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. This absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 10. [~~8.~~] Special Leave of Absence. (1) In addition to leave as above provided, the appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) The Commissioner of Adult and Technical Education may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay, for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service. All employees granted such leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave. Employees shall not be guaranteed the identical position held at time of beginning of leave.

(3) The appointing authority may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed to be in the best interest of the state. All employees granted such leave shall be guaranteed a position as similar as possible to this position held at the time of the beginning of leave. Employees shall not be guaranteed the identical position held at the time of leave.

(4) The appointing authority may place an employee on leave without pay for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct. Unless there is imminent danger to staff, students or other individuals, there shall be a preliminary hearing after which the employee shall be notified in writing that he is being placed on leave without pay and of the reasons therefor. If this investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of this leave, and all records relating to the investigation will be purged from the Department for Adult and Technical Education files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken including those cases where the employee voluntarily resigns in the interim.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contributions for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he

works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves the Department for Adult and Technical Education unclassified system on or prior to the 15th day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

Section 11. [~~9.~~] Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: August 26, 1993
FILED WITH LRC: September 21, 1993 at 2 p.m.

STATEMENT OF EMERGENCY
905 KAR 1:010E

This proposed amendment revises the current regulation that provides procedures for the application for permission to place or receive a child, the disposition of a child preceding the granting or denying of permission to place or receive a child, the investigation of circumstances surrounding the natural parents of a child to be placed or received under the law of independent adoption, and the determination of suitability of the proposed adoptive parents to receive a child. The function of this administrative regulation is to set forth the procedure in independent adoptions from the point of application to place or receive a child to the point of filing of the petition to adopt. It is necessary to promulgate an emergency to enable proposed adoptive parents to file simultaneous independent adoption applications and deletes one year waiting period from the time a child was previously placed in the adoptive home. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation shall be filed with the Regulations Compiler on or about September 15, 1993.

BRERETON C. JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Family Services

905 KAR 1:010E. Application for permission to place or receive child.

RELATES TO: KRS 199.470(4), 199.471, 199.472, 199.473, 199.480, 199.520, 199.572, 615.030
STATUTORY AUTHORITY: KRS 194.050, 199.472
EFFECTIVE: September 23, 1993
NECESSITY AND FUNCTION: This regulation is to provide procedures for the application for permission to place or receive a child, the disposition of a child preceding the granting or denying of permission to place or receive a child, the investigation of the circumstances surrounding the natural parents of a child to be placed or received under the law of independent adoption and the determination of suitability of the proposed adoptive parents to receive the child. The function of this regulation is to set forth the procedure in independent adoptions from the point of application to place or receive a child to the point of the filing of the petition to adopt. The regulation includes provisions relating to obtaining health history from the biological parents and to determining the biological and legal parents' feelings about possible future contact with the adopted person.

Section 1. The application for permission to place or receive a child, the DSS-187 herein incorporated by reference, shall be filed in duplicate, in writing with the Secretary of the Cabinet for Human Resources in care of the Commissioner of the Department for Social Services, by means of certified or registered mail. A certified or cashier's check payable to the Kentucky State Treasurer for a nonrefundable fee of $150 shall be filed with the written application for permission to place or receive a child. The DSS-187 may be obtained at the various local Department for Social Services offices or at the central office in Frankfort.

Section 2. The application for permission to place or receive a child shall be considered officially filed when received in the office of the Commissioner of the Department for Social Services. The returned receipt of certified or registered mail shall be proof of the filing of the application. However, the application shall not be considered filed unless it contains the required information and is received together with the $150 fee pursuant to KRS 199.473(5).

Section 3. Limitations to Filing. (1) [~~Proposed adoptive parents may apply to receive one (1) child at a time, unless applying for the available members of a sibling group.~~] In the case of twins who are available and suitable for adoption, an application shall not be accepted unless the proposed adoptive parents apply to receive both children.

(2) When an application for a child has been filed, subsequent applications for the same child shall not be accepted unless the previous application has been withdrawn by a written request to the cabinet by one (1) of the parties involved.

[~~(3) An application shall not be accepted unless a previously placed child has been in the home for a minimum of one (1) year and the adoption legally finalized. An exception may be made when the child to be placed is a sibling of the previously placed child.~~]

Section 4. The application for permission to place or receive a child shall contain:

(1) Name and address of a person wishing to receive a child;

(2) Names and addresses of the biological mother and father and legal father of the child to be placed or received. If the identity of the father is unknown, that fact shall be stated;

(3) The name and date of birth or expected date of birth of the child to be placed or received;

(4) Present address of the child to be placed or received;

(5) A statement of whether custody of the child has been awarded to an agency or person other than the biological parents; and, if applicable a copy of the custody order; and

(6) Names and addresses of attorneys, intermediaries or agents representing the respective parties involved in the proposed placement.

Section 5. The application for permission to place or receive a child shall be signed by the person wishing to receive a child, the person wishing to place the child, or by both parties involved.

Section 6. An application for permission to place or receive a child shall not be processed if prior to the receipt of the application, the child was committed to the Cabinet for Human Resources by order of the district or circuit court.

Section 7. An application for permission to place or receive a child may be made prior to the birth of the child.

Section 8. The child shall not be in the physical care, control or custody of the proposed adoptive family until the written approval of the Secretary of the Cabinet for Human Resources or his designee is received by the adoptive family.

Section 9. The Cabinet for Human Resources may cooperate with the parents of the child in finding suitable temporary placement for the child, pending the disposition of the application for permission to place or receive a child.

Section 10. During the time between the filing of the application for permission to place or receive a child and the decision of the Cabinet for Human Resources granting or denying the application, the responsibility for providing for the care of the child shall not rest with the Cabinet for Human Resources unless a court has placed the child with the cabinet, with the agreement of the cabinet, after the filing of the application. The responsibility shall remain with the parents of the child.

Section 11. The child shall not be physically placed in the care, control or custody of the proposed receiving parents until final written permission to receive the child has been granted by the Secretary of the Cabinet for Human Resources or his designee; however, if the child is found in the physical care of the proposed adoptive family, it is the responsibility of the applicants to arrange for the child's placement in a neutral setting within forty-eight (48) hours.

Section 12. When an application for permission to place or receive a child has been filed with the Secretary of the Cabinet for Human Resources, the Commissioner of the Department for Social Services shall cause an investigation to be made of the proposed receiving home, the best interest of the child.

Section 13. Interviews. (1) When the biological parents or legal father reside in Kentucky, a representative of the Cabinet for Human Resources shall make a diligent effort to interview the custodial biological parent of the child to be placed and the noncustodial, biological parent and legal father for the following purposes:

(a) To determine whether or not the biological mother and father are aware and accepting of the ethnic and religious background of the receiving parents;

(b) To determine whether or not they agree to the placement of the child with the proposed receiving parents;

(c) To obtain health history and sociological information on the child's family; and

(d) To determine the biological mother and father's feelings about possible future contact with the adopted person.

(2) The Cabinet for Human Resources may deny the application if the custodial parent refuses to be interviewed by the Cabinet for Human Resources representative or the appropriate out-of-state agency representative.

(3) Efforts shall be made to have parents interviewed, for the purposes specified in Section 13(1)(a) through (d), or to have home evaluations completed through interstate procedures when parents or prospective adoptive families live out of state. The home evaluation for out-of-state prospective adoptive families and interviews with out-of-state birth parents shall be accepted if conducted by the out-of-state public agency or by a licensed private adoption agency in the respective state if the public agency is unable or unwilling to provide the service.

(4) If after diligent efforts of the out-of-state public or private agency, the biological parents cannot be interviewed, or if the information and material cannot be obtained, the Secretary of the Cabinet for Human Resources or his designee shall not be precluded from approving the placement provided the other conditions of KRS 615.030, the Interstate Compact on the Placement of Children, have been met.

Section 14. The Cabinet for Human Resources may deny the application if the custodial parent is unwilling for the child to be placed for adoption with the proposed adoptive family.

Section 15. When the cabinet's investigation has been completed, the applicants shall be notified by registered or certified mail of the decision of the Secretary of the Cabinet for Human Resources or his designee, either granting or denying permission for the placement or receiving of the child. If the permission is granted, the child may be placed in the home of the receiving parents forthwith, if other requirements, including the requirements of the Interstate Compact on the Placement of Children, if applicable, have been met. If the permission is denied, the receiving parents or the birth parents may, within ten (10) days after notice of denial, appeal the decision to the circuit court.

Section 16. When a child has been placed in a proposed receiving home with the permission of the Secretary of the Cabinet for Human Resources or his designee, the proposed receiving parents may file the petition for adoption in the circuit court in the county of their residence three (3) months after the date of the child's placement in their home with the secretary's or his designee's written approval in accordance with KRS 199.470(4) and 199.473.

Section 17. Material Incorporated by Reference. (1) The application to place or receive a child is being incorporated by reference.

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

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: September 14, 1993
FILED WITH LRC: September 23, 1993 at 1 p.m.

ADMINISTRATIVE REGULATION AS 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 meeting on October 4, 1993, unless otherwise noted.

COMPILER'S NOTE: The following administrative regulation, 201 KAR 26:115, was amended at the October 24, 1993, meeting of the Administrative Regulation Review Subcommittee. It was also amended by the Interim Joint Committee on Health and Welfare, and became effective on October 21, 1993. The amendments made on October 21 are shown in double underlining.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:115. Definition of psychological testing.

RELATES TO: KRS 319.010
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: The purpose of defining psychological testing is to protect the people of this state from the unlawful, unqualified and improper use of psychological tests. The intent of this administrative regulation is to provide a definition of psychological testing sufficient to allow this board to regulate effectively this aspect of psychological practice. The ability to administer and interpret psychological testing assumes formal academic training in statistics, test construction, sampling theory, tests and measurement, individual differences, and personality theory. In addition, the interpretation of psychological tests for diagnostic purposes assumes formal academic training in the areas of abnormal psychology, psychopathology, psychodiagnosis and, in the case of neuropsychological diagnosis, training in neuropsychology. Competent administration and interpretation of psychological tests also includes formal supervised practice experience.

Section 1. **Definitions.** [~~(1)~~] "Psychological testing" is defined as the use of one (1) or more standardized measurement instruments, devices, or procedures including the use of computerized psychological tests, to observe or record human behavior, and which require the application of appropriate normative data for interpretation or classification. Psychological testing includes the use of standardized instruments for the purpose of the diagnosis and treatment of mental and emotional disorders and disabilities, the evaluation or assessment of intellectual abilities, personality and emotional states and traits, and neuropsychological functioning.

Section 2. [~~(2)~~] Psychological Tests. (1) [~~(a)~~] Individual tests for the evaluation of intellectual abilities, examples of which are:
(a) [~~1.~~] The Wechsler series;
(b) [~~2.~~] The Stanford-Binet; and
(c) [~~3.~~] The Kaufman Assessment Battery for Children.
(2) [~~(b)~~] Individual tests of personality and emotional states and traits, examples of which are:
(a) [~~1.~~] The Minnesota Multiphasic Personality Inventory; and
(b) [~~2.~~] Projective techniques including:
1. [~~a.~~] The Rorschach Ink Blots;
2. [~~b.~~] Thematic Apperception Test; and
3. [~~c.~~] The Holtzman Ink Blots.
(3) [~~(c)~~] Individual tests of neuropsychological functioning, examples of which are:
(a) [~~1.~~] The Halstead-Reitan Battery;
(b) [~~2.~~] The Luria-Nebraska Battery; and
(c) [~~3.~~] The "Lezak or Kaplan Battery".

Section 3. [~~(3)~~] Services which are described as "psychological testing" may only be administered and interpreted by persons licensed or certified by this board or who meet the formal academic training and experience qualifications described above and are otherwise exempt by statute.
(1) [~~(4)~~] Persons licensed or certified by this board, as well as other licensed or certified professionals, may also use tests of language, education and achievement, as well as tests of abilities, interests, and aptitudes. The use of these tests is not exclusively within the scope of this administrative regulation.
(2) [~~(5)~~] Members of other professions may not train or supervise any person in performing psychological testing.
(3) [~~(6)~~] The practice of psychology shall be construed within the meaning of the definition contained in KRS 319.010(3) without regard to whether payment is received for services rendered.
(4) Services which are described as "psychological testing and treatment" may be administered to minor children only upon the notification of and the granting of written permission by the parent or legal guardian, unless otherwise required by the courts subject to specific state or federal law.

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:121. Scope of practice.

RELATES TO: KRS 319.032
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: To fulfill the requirement of establishing the scope of practice of psychologists.

Section 1. A licensed psychologist, certified psychologist with autonomous functioning, certified psychologist, or psychological associate shall not practice or present himself outside the area of competency specified in the application and the area approved by the board based upon examination and [~~or~~] review of qualifications, training and experience.

Section 2. (1) A completed application for a change in a licensed or certified area(s) of competency shall be submitted to the board.
(2) The board shall review the applicant's credentials, qualifications and experience.
(3) Upon approval of the completed application by the board, the applicant shall take an examination in the requested area(s).
(4) The applicant shall submit the appropriate fee for the examination.

Section 3. Change from Certified to Licensed Psychologist. (1) If a person has been certified and later completes [~~wishes, on the basis of~~] additional training and education [~~experience~~], to become licensed

as a psychologist, a new and complete application for licensure as a psychologist with area of competency requested shall be submitted with an approved application fee.

(2) The board shall accept the applicant's previous examination results for the objective (EPPP) examination if the original test score satisfies the licensure requirement as to criterion level.

(3) The oral portions of the examination shall be successfully completed by the applicant.

Section 4. Scope of Practice - Clinical Psychology. (1) Clinical psychological [~~psychology~~] services refers to description, evaluation, interpretation and modification of human behavior by the application psychological of principles, methods, and procedures for the purpose of preventing, eliminating, or reducing symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health.

(2) [~~understanding, predicting, and alleviating intellectual, emotional, psychological, and behavioral disability and discomfort.~~] Direct services are provided in a variety of health settings including: psychiatric hospitals, general medical hospitals, community mental health centers, clinics, and private offices.

(3) [~~, and~~] Direct and supportive services are provided throughout [~~in~~] the entire range of social, organizational, and academic institutions and agencies.

(4) Clinical psychological services include [~~the following~~]:

(a) Psychological testing and the evaluation or assessment of personal characteristics such as:

1. Intelligence;
2. Personality;
3. Abilities;
4. Interests;
5. Aptitudes; and
6. Neuropsychological functioning;

(b) Psychotherapy;

(c) Counseling;

(d) Psychoanalysis;

(e) Hypnosis;

(f) Biofeedback and behavior analysis and therapy;

(g) Diagnosis and treatment of mental and emotional disorder or disability;

(h) Alcoholism and substance abuse disorders of habit or conduct;

(i) The psychological aspects of:

1. Physical illness;
2. Accident;
3. Injury; or
4. Disability;

(j) Psychoeducational evaluation, therapy, remediation, and consultation;

(k) [~~(1)~~] Assessment directed toward diagnosing the nature and causes, and predicting the effects, of subjective distress; of personal, social and work dysfunction; and of the psychological and emotional factors involved in and consequent to, physical disease and disability. Procedures may include[~~, but are not limited to~~]: interviewing, and administering and interpreting tests of intellectual abilities, attitudes, emotions, motivations, personality characteristics, psychoneurological status, and other aspects of human experience and behavior relevant to the disturbance;

(l) [~~(2)~~] Interventions directed at identifying and correcting the emotional conflicts, personality disturbances, and skill deficits underlying a person's distress [~~and/~~]or dysfunction. Interventions may reflect a variety of theoretical orientations, techniques, and modalities. These may include[~~, but are not limited to~~]: psychotherapy, psychoanalysis, behavior therapy, marital and family therapy, group psychotherapy, hypnotherapy, social-learning approaches, biofeedback techniques, and environmental consultation and design;

(m) [~~(3)~~] Professional consultation in relation to assessment and intervention;

(n) [~~(4)~~] Program development services in the areas of assessment, intervention, and consultation; and

(o) [~~(5)~~] Supervision of clinical psychological services.

Section 5. Scope of Practice - Counseling Psychology. (1) Counseling psychology refers to services provided by counseling psychologists that apply principles, methods, and procedures for facilitating effective functioning during the life-span developmental process.

(2) In providing these [~~such~~] services, counseling psychologists **shall** approach practice with a significant emphasis on positive aspects of growth and adjustment and with a developmental orientation.

(3) These services are intended to help persons acquire or alter personal-social skills, improve adaptability to changing life demands, enhance environmental coping skills, and develop a variety of problem-solving and decision-making capabilities.

(4) Counseling psychology services are used by individuals, couples, and families of all age groups to cope with problems connected with education, career choice, work, sex, marriage, family, other social relations, health, aging, and handicaps of a physical or social nature.

(5) The services are offered in such organizations as educational, rehabilitation, and health institutions and in a variety of other public and private agencies.

(6) Counseling psychological services include the following:

(a) [~~(1)~~] Assessment, evaluation, and diagnosis;

(b) [~~(2)~~] Interventions with individuals and groups;

(c) [~~(3)~~] Professional consultation in relation to assessment and intervention;

(d) [~~(4)~~] Program development services in the areas of assessment, intervention, and consultation;

(e) [~~(5)~~] Supervision of counseling psychological services; and

(f) [~~(6)~~] Evaluation of all counseling psychological services.

Section 6. Scope of Practice - School Psychology. School psychology services refers to one (1) or more of the following services offered to clients involved in educational settings, from preschool through higher education, for the protection and promotion of mental health and the facilitation of learning. School psychological services include:

(1) Psychological and psychoeducational evaluation and assessment of the school functioning of children and young persons. Procedures include screening, psychological and educational tests of intellectual functioning, cognitive development, affective behavior, and neuropsychological status, interviews, observation, and behavioral evaluations.

(2) Interventions to facilitate the functioning of individuals or groups, including [~~but not limited to~~]: recommending, planning, and evaluating special education services; psychoeducational therapy; counseling; affective educational programs; and training programs to improve coping skills.

(3) Interventions to facilitate the educational services and child care functions of school personnel, parents, and community agencies.

(4) Consultation and collaboration with school personnel [~~and/~~]or parents concerning specific school-related problems of students and the professional problems of staff.

(5) Program development services to individual schools, to school administrative systems, and to community agencies.

(6) Supervision of school psychological services.

[~~Section 7. Scope of Practice - Industrial/Organizational Psychology. Industrial/organizational psychological services involve the development and application of psychological theory and methodology to problems of individuals and groups in organizational settings. The~~

~~purpose of such applications to the assessment, development, or evaluation of individuals, groups or organizations is to enhance the effectiveness of these individuals, groups, or organizations. Industrial/organizational psychological may include, but are not limited to the following:~~

~~(1) Selection and placement of employees.~~
~~(2) Organizational development.~~
~~(3) Training and development of employees.~~
~~(4) Personnel research.~~
~~(5) Improving employee motivation.~~
~~(6) Design and optimization of work environments.]~~

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:125. Health service provider designation.

RELATES TO: KRS 319.050
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: Certain terms are used in the statute regulating the requirements for health service provider designation. This administrative regulation defines those terms.

Section 1. For purposes of this administrative regulation, the designation "health service provider" shall **refer to those persons defined in KRS 319.050(7)** **[**~~be made on the license of those psychologists who perform activities which include the delivery or supervision of direct health care services to individuals or groups of individuals who are the intended beneficiaries of such services~~**]** or the supervision of certified psychologists, psychological associates, or applicants for licensure or certification who are delivering **[**~~such~~**]** direct health care services.

Section 2. **A** **[**~~No~~**]** licensed psychologist who does not have the designation "health service provider" **shall not** **[**~~may~~**]** deliver or supervise direct health care services. Those psychologists granted licensure in the specialty areas of clinical, counseling, or school psychology shall have the designation "health service provider".

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:130. Complaint procedure.

RELATES TO: KRS 319.005, 319.082, 319.118, 319.990
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology, or using the title of psychologist. KRS 319.082 delineates the causes for which disciplinary action may be taken against a licensee, or certificate holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide **procedures for filing, evaluating, and disposing of complaints** **[**~~for procedures in the receipt and disposition of complaints~~**]**. **[**~~This regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.~~**]**

[~~Section 1. Purpose and Rule of Construction. The purposes of this administrative regulation is to establish procedures for filing, evaluating, and disposing of complaints.~~**]** **[**~~Unless exceptional circumstances require otherwise, all complaints shall be in writing and shall bear the date and signature of the person making the complaint.~~**]**

Section **1.** **[**~~2.~~**]** Definitions. (1) "Act" means the Chapter 319 of the Kentucky Revised Statutes.

(2) "Board" **is defined in KRS 319.010(2), and for purposes of this administrative regulation, shall also refer to a hearing panel.** **[**~~means the Kentucky Board of Examiners of Psychology or hearing panel.~~**]**

(3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or the administrative regulations promulgated thereunder.

(4) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth charges against a licensee, certificate holder or applicant and commences a formal disciplinary proceeding.

(5) "Initiating complaint" means any allegation in whatever form alleging misconduct by a licensee, certificate holder, or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.

(6) "Order" means the whole or any part of a final disposition of a hearing.

(7) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(8) "Presiding officer" means the person **appointed** **[**~~designated and given authority~~**]** by the board to preside **at a hearing pursuant to KRS 319.032(1)(f), and shall include either a hearing officer or a member of the hearing panel.** **[**~~over all proceedings pursuant to the issuance of any formal complaint. This shall be the hearing officer, if any, or otherwise, shall be a member of the hearing panel.~~**]**

(9) "Respondent" means the person against whom an initiating or a formal complaint has been made. **[**~~Unless exceptional circumstances require otherwise, before a complaint is investigated it shall present evidence of a specific violation.~~**]**

Section **2.** **[**~~3.~~**]** Initiating Complaint. (1) Source of initiating complaint. A complaint may be initiated by the board, by the public or by any state agency. A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid complaint.

(2) Form of initiating complaint. Initiating complaints shall be in writing and shall clearly identify the person against whom the complaint is being made. Further, the complaint shall contain the date, and shall identify by signature the person making the complaint, and shall contain a clear and concise statement of the facts giving rise to the complaint.

(3) Receipt of initiating complaint. A complaint**[**~~s~~**]** may be received by any board member, psychologist designated by the board, by the Office of the Attorney General, or by any **[**~~board~~**]** staff member.

(4) Consideration of initiating complaint. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board shall review the initiating complaint. At that time, the board shall determine if an investigation is warranted, and if so, the board may appoint one (1) of its members or any agent or representative of the board to conduct an investigation of the complaint.

(5) Investigation.

(a) The person about whom the initiating complaint has been considered shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he may respond to the allegations of the initiating complaint. A copy of the complaint shall be made available to the respondent prior to the meeting. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making such investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation. [~~If there is reasonable cause to believe that a licensee, certificate holder or applicant for a license or certificate is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the licensee, certificate holder, or applicant to submit to an examination by a psychologist or a physician designated by the board to determine the licensee's, certificate holder's or applicant's psychological or physical status to practice psychology. The expense of this examination shall be borne by the board. The board shall then consider the findings and conclusions of such examination and the final investigative report at its next regularly scheduled meeting or as soon thereafter as practicable.~~]

(c) Consideration of complaint and investigative report. Based on consideration of the complaint, the investigative report, if any, and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act. If the investigator is a member of the board, he shall not vote. If it is determined that the facts alleged in the complaint or investigative report do not constitute a prima facie violation of the statute or administrative regulations, the board shall notify the person making the complaint and the respondent that no further action will be taken at the present time. If it is determined that there is a prima facie violation of KRS 319.082 or administrative regulations, the board shall issue a formal complaint against the licensee, certificate holder, or applicant. In the case of a prima facie violation of KRS 319.005, the board shall file suit to enjoin the violator or shall seek criminal prosecution pursuant to KRS 319.990.

Section 3. [~~4.~~] Formal Complaint. If the board determines that the initiating complaint shall be made a formal complaint, the following actions shall be initiated: [~~If the complaint warrants a formal hearing, the board shall provide the respondent with:~~]

(1)(a) If there is reasonable cause to believe that a licensee, certificateholder or applicant for a license or certificate is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the licensee, certificateholder, or applicant to submit to an examination by a psychologist or a physician designated by the board to determine the licensee's, certificateholder's or applicant's psychological or physical status to practice psychology.

(b) The expense of this examination shall be borne by the board.

(c) The board shall then consider the findings and conclusion of the examination and the final investigative report at its next regularly-scheduled meeting or soon thereafter.

(2) [~~(1)~~] Issuance of formal complaint. The board shall provide the respondent with a written formal complaint which shall set forth: [~~A formal written presentation of charges;~~]

(a) Each offense charged;

(b) Notice of the respondent's right to be represented by counsel;

(c) Notice of the respondent's right to subpoena witnesses in the respondent's behalf; and

(d) Notice of the respondent's right to appeal after an adverse adjudication.

(3) [~~(2)~~] Service of formal complaint. Service of process is sufficient if served on the respondent personally or by certified mail, return receipt requested, to his last known address, whether or not the complaint is subsequently claimed by respondent. [~~A notice of the right to be represented by counsel;~~]

(4) [~~(3)~~] Issuance of hearing notice. At least twenty (20) days prior to the hearing, the board shall serve the respondent with notice of the hearing, giving the date, time, and place of the hearing. [~~A reasonable time to prepare any defense;~~

~~(4)[The right to answer charges;~~

~~(5) The right to subpoena witnesses in him or her behalf; or~~

~~(6) The notice of the right to appeal after an adjudication against them.~~]

Section 4. [~~5.~~] Formal Response. Within twenty (20) days of service of the formal complaint, the respondent shall file with the board a written response to the specific allegations set forth in the formal complaint. Allegations not properly responded to shall be deemed admitted. The board may, for good cause, permit the late filing of a response. [~~Any board member who has participated in the preliminary investigations shall not participate in the hearing process.~~

~~Section 6. All subpoenas shall be issued in the name of the board and shall be signed by the chairman of the board or a designated hearing officer. The person requesting the subpoena shall bear the cost of serving the subpoena, paying the witness fees and expenses. The board shall bear the cost of witnesses subpoenaed in the board's behalf.~~

~~Section 7. The board shall notify the person making the complaint and the person against whom the complaint was made of the final disposition of the matter.~~]

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:140. Procedures for disciplinary hearings.

RELATES TO: KRS 319.092
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: KRS 319.092 mandates a hearing upon the filing of a complaint alleging a violation of KRS Chapter 319. This administrative regulation establishes procedures for the conduct of administrative hearings held pursuant to KRS 319.092.

Section 1. Purpose and Rule of Construction. The purpose of this administrative 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 licensee, certificateholder or applicant. Accordingly, this administrative regulation shall be liberally construed so as to aid in that process.

Section 2. Composition of the Hearing Panel [~~Tribunal~~]. (1) Disciplinary actions shall [~~will~~] be heard by a hearing panel [~~tribunal~~] consisting of the hearing officer and at least one (1) board member appointed by the board [~~at least a quorum of the board, the board's designated hearing officer, or both~~].

(2) A board member who has participated in the investigation of an initiating complaint [~~disciplinary action~~] or who has personal knowledge of the facts giving rise to the complaint or for other reasons is unable to render a fair and impartial decision shall [~~will~~] not sit as a member of the panel [~~board~~] hearing that particular complaint [~~action~~].

(3) Separation of functions. No member, officer, or employee of

the board who is engaged in the performance of investigative or prosecutorial functions for the board in a particular case or a factually related case, shall participate in or advise in the decision of the disciplinary action, except as a witness or counsel in the hearing.

Section 3. Rights of the Respondent [~~Licensee, Certificateholder, or Applicant~~]. **The licensee, certificateholder or applicant shall have the right to:**

(1)(a) Represent himself; or

(b) Be represented by legal counsel;

(2) Be present and be heard at a hearing;

(3) Present evidence;

(4) Cross-examine witnesses;

(5) Present opening and closing statements; and

(6) Request the board to issue subpoenas in accordance with KRS 319.092. [~~The licensee, certificateholder 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 attorney prosecuting the matter before the board], and to make both opening and closing statements. The respondent [licensee, certificateholder or applicant] shall also have the right to have appropriate subpoenas issued in accordance with KRS 319.092.~~]

Section 4. Subpoenas. The board or the hearing officer shall issue subpoenas upon request. The person requesting the subpoenas shall bear the cost of serving the subpoenas, paying witness fees and expenses. The board shall bear the cost of witnesses subpoenaed on the board's behalf.

Section 5. Prehearing Disclosure of Evidence. (1) By the board. The respondent [~~licensee, certificateholder or applicant~~] shall have the right to inspect the investigative file relating to a disciplinary action either in person or by legal counsel. The licensee, certificateholder or applicant shall have the right to such other information as the board or the hearing officer deems appropriate within ten (10) days of the hearing. Nothing in this section shall be construed as giving the licensee, certificateholder or applicant the right to examine or copy the personal notes, observations, conclusions, or work product of legal counsel prosecuting the allegations of the complaint or the Attorney General. An appointment for the examination of an investigative file shall [~~must~~] be made upon reasonable notice, during regular office hours, and at a time acceptable to the staff members involved in the investigation. The licensee, certificateholder or applicant shall be allowed to examine any items of tangible evidence in the possession of the board.

(2) By the respondent. At least ten (10) days prior to the scheduled hearing date the licensee, certificateholder or applicant shall furnish to the [~~investigator or~~] legal counsel prosecuting **[~~the~~]** allegations of the complaint**:**

(a) Copies of any documents which the respondent [~~licensee, certificateholder or applicant~~] intends to introduce at the hearing;

(b) **[~~and~~]** A list of the names, addresses, and home and work telephone numbers of any witnesses to be presented by the respondent at the hearing; [~~such other information as the board or the hearing officer deems appropriate~~] **[~~. The respondent [licensee, certificateholder or applicant] shall also furnish to legal counsel prosecuting the allegations of the complaint~~]**

(c) Copies of any documents or other items of [~~produce for inspection any items or~~] tangible evidence within his [~~its~~] possession or [~~ef~~] control which he [~~it~~] intends to introduce at the hearing; and

(d) [~~such~~] Other information as the board or the hearing officer deems appropriate.

[~~(3) At least ten (10) days prior to the scheduled hearing date the licensee, certificateholder or applicant shall file with the board a written response to the specific allegations contained in the notice of charges. The tribunal may for good cause permit the late filing of a response.~~]

(3) Continuing duty to disclose. [~~(4)~~] After disclosure has been completed each party shall remain under an obligation to disclose any new or additional items of evidence 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.

(4) Sanctions for failure to comply with prehearing disclosure. If a party fails 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. Sanctions may be applied by the presiding officer, subject to being overruled by a majority vote of the board.

Section 6. [~~5.~~] Order of Proceeding. (1) Call to order. The presiding officer shall [~~will~~] call the meeting to order and shall [~~will~~] identify the parties to the action and the persons present. The presiding officer shall [~~will~~] rule upon any objections or motions, subject to being overruled by a majority vote of the board.

(2) Opening statements. Opening statements shall [~~will~~] be made, with the attorney prosecuting the allegations of the complaint proceeding first. Either side may waive opening statement, but opening statements may not be reserved. The presiding officer may impose reasonable limitations upon the time allowed for opening statements, subject to being overruled by a majority vote of the board.

(3) Taking of proof on behalf of the board. [~~(2)~~] The taking of proof shall [~~will~~] commence with the calling of witnesses on behalf of the attorney prosecuting the matter before the board. Such witnesses shall [~~will~~] be examined first by the attorney prosecuting the allegations of the complaint. An opportunity to cross-examine the witness shall then be given to the respondent, then to the members of the board, and then to the hearing officer, if any. [~~, then by the licensee, certificateholder or applicant or that person's attorney, and finally by the hearing officer or members of the board. Rebuttal examination of witnesses will proceed in the same order.~~] Documents or other items may be introduced into evidence as appropriate.

(4) Taking of proof on behalf of the respondent. [~~(3)~~] Upon conclusion of the case for the attorney prosecuting the matter before the board the respondent shall [~~licensee, certificateholder or applicant will~~] call his [~~its~~] witnesses. Such witnesses shall [~~will~~] be examined first by the respondent [~~licensee, certificateholder or applicant~~] or that person's attorney. An opportunity to cross-examine the witness shall then be given to the attorney prosecuting the matter before the board, then to the members of the board, and then to the hearing officer, if any. [~~, then by the attorney prosecuting the allegations of the complaint, and finally by the hearing officer or members of the board. Rebuttal examination of those witnesses will proceed in the same order.~~] Documents or other evidence may be introduced as appropriate.

(5) Recess. The presiding officer may, at his discretion, recess a hearing for the taking of additional discovery and evidence as required, subject to being overruled by a majority vote of the board.

(6) Deposition testimony. Testimony to be considered by the board or hearing officer, if any, may be taken by deposition. A party or witness may be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and a showing that the other parties shall have an opportunity to cross-examine at said deposition. The presiding officer shall rule upon motions to allow testimony to be considered by deposition, subject to being overruled by a majority vote of the board.

(7) Closing statements. At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney prosecuting the matter proceeding last. The presiding officer may impose reasonable limitations on the time allowed for

closing statements, subject to being overruled by a majority vote of the board.

(8) Decorum. The presiding officer shall [will] be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the complaint.

Section 7. [6.] Rules of Evidence. (1) The board or hearing officer [tribunal] shall not be bound by the technical rules of evidence. Subject to the discretion of the board or the hearing officer, the hearing panel [tribunal] 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, and need be authenticated only to the extent that the hearing panel [tribunal] 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 or hearing officer shall retain [tribunal 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 [will] be made by the presiding officer, subject to being [but may be] overruled by a vote of the board.

(3) The board may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the board's specialized knowledge; provided, however, the parties shall be afforded an opportunity to contest the facts so noticed.

(4) Objections to evidentiary offers may be made and shall be noted in the record.

Section 8. [7.] Deliberations by the Board. (1) Ex parte investigations. The board shall not, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law, except upon notice and opportunity for all parties to participate; provided, however, that any board member may consult with other members of the board hearing the case, and the hearing officer, if any.

(2) [Decisions by the Tribunal.] Upon the conclusion of the hearing, the board and the hearing officer, if any, shall [will] retire into closed session for the purpose of deliberations. The board shall make a decision based upon the evidence submitted. A decision shall be made by a majority vote of the board. Each board member shall have one (1) vote. The hearing officer shall not vote.

(3) An order including findings of fact and conclusions of law consistent with the board's decision shall be drafted. Said proposed order shall be submitted for signature to the board on the day of the deliberation or at the next regularly-scheduled meeting of the board or as soon thereafter as possible.

(4) A copy of the order shall be provided to the respondent, the person initiating the complaint, and the attorney prosecuting the case.

Section 9. Record to be Maintained. (1) The hearing shall be transcribed by a court stenographer.

(2) A transcript of the testimony taken during the hearing shall be kept by the board. A copy of that transcript shall be available to the respondent from the court stenographer, or, if the stenographer is unable to furnish a copy, from the board upon request and payment of the appropriate fee. A copy of the transcript of the hearing shall be available to all board members. Any documents or exhibits introduced into evidence shall be kept with the transcript or as ordered by the presiding officer.

Section 10. Continuance; Proceedings in Absentia. [8.] It is the policy of the board not to postpone cases which have been scheduled for hearing absent good cause. A request by a licensee, certificateholder or applicant or attorney prosecuting the allegations of the complaint 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 [will] be made by the hearing officer or chairman of the board. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall [will] be deemed a waiver of the right to appear and the hearing shall [will] be held as scheduled.

Section 11. Hearing Fee. If the board finds against the respondent on any charge, or if the hearing is scheduled at the request of a licensee, certificateholder or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 319, a hearing fee in an amount equal to the costs of stenographic services and the costs of the services of a hearing officer, if any, shall be assessed against the respondent. In case of financial hardship, the board may waive all or part of the fee.

Section 12. Notification of Action Taken. A press release describing all final disciplinary actions taken by the board to suspend, revoke, or refuse to issue or renew a license or certificate or accept an assurance of voluntary compliance, restrict, or place a licensee or certificateholder on probation shall be provided at least to the newspapers with the largest circulation in Louisville, Lexington, Frankfort, the city of business of the respondent and to the AP wire service. Nothing in this administrative regulation shall be construed to limit KRS 319.092(5).

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:155. Application procedures and temporary license or certificate.

RELATES TO: KRS 319.050, 319.064
STATUTORY AUTHORITY: 319.032
NECESSITY AND FUNCTION: This administrative regulation sets forth procedures for applying for a license or a certificate and specifies conditions of temporary licensure and certification.

Section 1. Application. (1) An application for a license to practice psychology may be submitted upon receipt of a doctoral degree in psychology and completion of one (1) year of supervised professional experience prior to the granting of the degree, or completion of the first year of a two (2) year postdoctoral supervised professional experience. The application shall be accompanied by the appropriate fee and documentation of education and professional experience.

(2) An application for a certificate to perform functions as a psychological associate may be submitted upon receipt of a master's degree in psychology. The application shall be accompanied by the appropriate fee and documentation of education and professional experience.

Section 2. Temporary Licensure. Upon acceptance of the application for licensure, the candidate may request permission to practice psychology on a temporary basis under the supervision of a licensed psychologist approved by the board. Unless temporary licensure is granted, the applicant may not engage in the practice of psychology until the examination process has been successfully

completed.

(1) Supervision during the period of temporary licensure shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(2) Reports of supervision shall be submitted on a regular basis as specified in 201 KAR 26:171 , Section 6.

(3) During the period of temporary licensure, the candidate may not supervise certified psychologists, psychological associates, other applicants for licensure, or temporarily licensed persons, nor shall he engage in an independent practice, except under the employment of his supervising psychologist.

(4) The candidate shall take the Examination for Professional Practice in Psychology (EPPP) at the next regularly-scheduled date.

(5) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or upon the candidate's failure to pass the third administration of the oral examination or upon the withdrawal of the application.

(6) Upon successful completion of the examination procedures, the candidate for licensure may use the title "Licensed Psychologist".

Section 3. Postdoctoral Supervisory Experience. (1) A candidate for licensure in clinical, counseling or school psychology who has not completed one (1) full year of postdoctoral supervised professional experience or the second year of a two (2) year postdoctoral supervised professional experience shall be considered to be temporarily licensed until such experience has been certified for the satisfaction of the board and all examination procedures have been successfully completed.

(2) A candidate for licensure in clinical, counseling or school psychology who is exempt from the requirement of a year of postdoctoral [~~ed~~] supervised experience or who is applying for licensure by reciprocity may petition the board to be temporarily licensed until all examination procedures have been successfully completed.

(3) Upon certification of completion of all supervised professional experience requirements and passage of the EPPP, the candidate for licensure shall be scheduled for the oral examination.

Section 4. Temporary Certification. Upon acceptance of the application for certification, the candidate may request permission to perform certain functions within the practice of psychology on a temporary basis under the supervision of a licensed psychologist approved by the board. Unless temporary certification is granted, the applicant may not engage in the practice of psychology until the examination process has been successfully completed.

(1) Supervision during the period of temporary certification shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(2) Reports of supervision shall be submitted on a regular basis as specified in 201 KAR 26:171 , Section 6 [~~5(7)~~].

(3) During the period of temporary certification, the candidate may not engage in an independent practice, except under the employment of his supervising psychologist.

(4) The candidate shall take the Examination for Professional Practice in Psychology (EPPP) at the next regularly-scheduled date.

(5) The period of temporary certification shall be terminated upon successful completion of all credentials and examination procedures or upon the candidate's failure to pass the third administration of the EPPP or upon the withdrawal of the application.

(6) Upon successful completion of the examination, the candidate for certification may use the title "Psychological Associate".

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:165. Inactive status.

RELATES TO: KRS 319.071
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: KRS 319.071(3) authorizes the board to grant inactive status for a licensee or certificate holder for a period of up to three (3) consecutive years. This administrative regulation establishes the requirements for inactive status.

Section 1. **Inactive status may be granted to a licensee or certificateholder pursuant to KRS 319.071(3).** [~~(1) Upon petition to the board, a licensee or certificate holder may be granted inactive status for a period of time not to exceed three (3) consecutive years.~~

~~(2) During this period of inactive status granted by the board, the licensee or certificate holder shall not practice psychology.~~]

(1) [~~(3)~~] The licensee or certificate holder shall be relieved of their obligation to pay the renewal fee and of maintaining supervision of their practice, but shall meet the requirements for continuing education.

(2) [~~(4)~~] The licensee or certificate holder may return to active status within the three (3) year period upon:

(a) Notification to the board;

(b) Payment of the current renewal fee;

(c) Resumption of any required supervisory relationship with a supervisor acceptable to the board; and

(d) Demonstration of compliance with all continuing education requirements during the period of inactive status.

(3) [~~(3)~~] If the licensee or certificate holder does not reactivate their credential during the three (3) year period of inactive status, then the credential shall be forfeited and the licensee or certificate holder shall make a new application to the board and be reexamined by the board before a new credential may be issued.

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:171. Requirements for supervision [~~of certified psychologists, psychological associates, and candidates for licensure~~].

RELATES TO: KRS 319.050, 319.058, 319.064
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: KRS 319.032 requires administrative regulations governing the supervision of certified psychologists, psychological associates, [~~and~~] candidates for licensure and certification, and license or certificate holders sanctioned by the board. This administrative regulation defines the requirements for **the** [~~such~~] supervision.

Section 1. All supervisory arrangements shall have the prior approval of the board, with both supervisor and supervisee petitioning the board in writing. [~~Certified Psychologists. (1) Approval of supervision. With the exception of those certified psychologists granted autonomous functioning pursuant to KRS 319.062, no certified psychologist may perform functions within the practice of psychology unless supervised by a licensed psychologist under conditions and arrangements approved by the board. The certified psychologist and~~

~~the proposed supervisor must apply to the board, in writing, for approval of the supervision.~~

~~(2) Direct supervision. One (1) hour of individual face to face supervision on a weekly basis is required for the first two (2) years following certification. Thereafter, the supervisory arrangement may be modified upon petition to and approval by the board.~~

~~(3) Reports of supervision. The supervisor must submit a written report on an annual basis for the first five (5) years following certification which describes the functioning of the certified psychologist. Thereafter, the supervisor may request approval by the board to submit reports once every two (2) years. The reports should include a description of functions, frequency of supervision, strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the functioning of the certified psychologist.~~

~~(4) Responsibilities of the supervisor. The licensed psychologist may not supervise a total of more than six (6) applicants for licensure, certified psychologists, or psychological associates at one (1) time. The supervisor must provide reports of supervision to the board in a timely manner. The supervisor is required to inform the board of any change in the ability to supervise or the ability of the certified psychologist to function.~~

~~(5) Responsibilities of the certified psychologist. The certified psychologist is responsible for keeping the supervisor adequately informed at all times and for seeking supervision as needed in addition to regularly scheduled supervisory sessions. The certified psychologist is responsible for checking to see that reports of supervision have been sent to the board in a timely manner.~~

~~(6) Identification of provider. The actual deliverer of services must be identified to the client and on all billings for services rendered indicating services performed by the certified psychologist and supervised by the licensed psychologist.]~~

Section 2. All supervision requirements shall be met with individual, face-to-face, weekly contact between supervisor and supervisee unless otherwise specified in these administrative regulations. [~~Psychological Associates. (1) Approval of supervision. No psychological associate may perform functions within the practice of psychology unless supervised by a licensed psychologist under conditions and arrangements approved by the board. The psychological associate and the proposed supervisor must apply to the board, in writing, for approval of the supervision.~~

~~(2) Direct supervision. One (1) hour of individual face to face supervision on a weekly basis is required.~~

~~(3) Reports of supervision. The supervisor must submit a written report on an annual basis which describes the functioning of the psychological associate. The reports should include a description of functions, frequency of supervision, strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the functioning of the psychological associate.~~

~~(4) Responsibilities of the supervisor. The licensed psychologist may not supervise a total of more than six (6) applicants for licensure, certified psychologists, or psychological associates at one (1) time. The supervisor must provide reports of supervision to the board in a timely manner. The supervisor is required to inform the board of any change in the ability to supervise or the ability of the psychological associate to function.~~

~~(5) Responsibilities of the psychological associate. The psychological associate is responsible for keeping the supervisor adequately informed at all times and for seeking supervision as needed in addition to regularly scheduled supervisory sessions. The psychological associate is responsible for checking to see that reports of supervision have been sent to the board in a timely manner.~~

~~(6) Identification of provider. The actual deliverer of services must be identified to the client and on all billings for services rendered, indicating services performed by the psychological associate and supervised by the licensed psychologist. Formal evaluation reports shall be signed by both the psychological associate and the supervising licensed psychologist.]~~

Section 3. (1) A certified psychologist or psychological associate may petition the board to be relieved of their obligation to maintain supervision during which period they may not practice psychology.

(2) The certified psychologist or psychological associate shall obtain a supervisor approved by the board before the resumption of practice.

(3) Upon renewal, the certified psychologist or psychological associate shall document compliance with continuing education requirements and shall report on their professional activities and employment during the period without supervision. [~~Candidates for Licensure. (1) Approval of supervision. No candidate for licensure may practice psychology unless supervised by a licensed psychologist under conditions and arrangements approved by the board. An applicant for licensure whose application and supervision have been approved by the board, may apply to the board for permission to practice psychology under the supervision of a licensed psychologist until the results of the next regularly scheduled examination for licensure are known.~~

~~(2) Direct supervision. One (1) hour of individual face to face supervision on a weekly basis is required until the candidate passes all examinations for the granting of licensure.~~

~~(3) Reports of supervision. The supervisor must submit a minimum of one (1) written report describing the skills of the candidate. The board may request additional reports if needed to assess the candidate's functioning. The reports should include a description of the function, frequency of supervision, strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the practice of the candidate. This report must be submitted prior to the date of the next regularly scheduled examination for licensure.~~

~~(4) Responsibilities of the supervisor. The licensed psychologist may not supervise a total of more than six (6) applicants for licensure, certified psychologists, or psychological associates at one (1) time. The supervisor must provide reports of supervision to the board in a timely manner. The supervisor is required to inform the board of any change in the ability to supervise or the ability of the candidate for licensure to function.~~

~~(5) Responsibilities of the candidate for licensure. The candidate for licensure is responsible for keeping the supervisor adequately informed at all times and for seeking supervision as needed in addition to regularly scheduled supervisory sessions. The candidate for licensure is responsible for checking to see that reports of supervision have been sent to the board in a timely manner.~~

~~(6) Termination of supervisory relationship of candidates for licensure. Following successful completion of the licensure requirements, the supervisory relationship will no longer be required.]~~

Section 4. (1) A licensed psychologist who currently functions as a supervisor with the permission of the board, shall attend a board-approved training session in supervisory practices by December 30, 1996. Failure to do so shall result in suspension of board approval as a supervisor.

(2) A licensed psychologist, who obtains for the first time board approval to function as a supervisor, shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining supervisory status.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall be responsible for reporting to the board any apparent violation of the statutes or administrative regulations on the part of the supervisee.

(3) The supervisor shall be required to inform the board immediately of any change in the ability to supervise, or any change in the

ability of any supervisee to function in the practice of psychology in a competent manner.

(4) The supervisor shall have the right and the responsibility to control, direct or limit the supervisee's practice in any way deemed appropriate to insure that the supervisee's practice of psychology is competent.

Section 6. (1) The supervisor shall provide reports to the board of the supervision of each supervisee according to the following schedule:

Credential Status	Reporting Period	Report Due Date(s)
Psychological Associate	Yearly	January 15th
Certified Psychologist	Yearly	January 15th
Certified Psychologist (with 5 or more years of full-time practice)	Every 2 Years (with prior board approval)	January 15th
Temporarily Licensed Psychologist	Every 6 Months and (wi/month prior to oral exam)	
Temporarily Certified Psychological Associate	Every 6 Months	April & October 15th
Sanctioned Psychologist	Quarterly	January, April, July and October 15th

(2) The reports shall include a description of the frequency, format and duration of supervision, an assessment of the functioning of the supervisee, including the strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. When a supervisee has more than one (1) board-approved supervisor, these supervisors shall be in direct contact with one another at least once every six (6) months, and they shall provide annual supervisory plans and reports to the board and copies to one another.

Section 8. If the supervisee is either a psychological associate, or a certified psychologist with less than five (5) years of full-time practice, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

(1) Read and countersign all psychological assessments;

(2) Review treatment plans, progress notes and correspondence on an as-needed basis to assess the competency of the supervisee to render psychological services;

(3) Jointly establish with the supervisee and submit a supervisory plan to the board at the beginning of the supervisory relationship. The plan shall:

(a) Be updated or revised annually and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.

(4) Have direct observation of the supervisee's work at least once every two (2) months. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 9. If the supervisee is a certified psychologist with more than five (5) years of full-time practice, the supervisor of record shall:

(1) Review and countersign psychological assessments as needed or appropriate;

(2) Review treatment plans, notes, and correspondence as needed or appropriate;

(3) Jointly establish with the supervisee and submit a supervisory plan to the board at the beginning of the supervisory relationship. The plan shall:

(a) Be updated or revised annually and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.

(4) Have direct observation of the supervisee's work on an as-needed basis;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 10. (1) The supervisee shall be responsible for:

(a) Keeping the supervisor adequately informed at all times of their activities and their ability to function; and

(b) [~~For~~] Seeking supervision as needed in addition to regularly scheduled supervisory sessions.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing yearly supervisory goals and in completing the regular supervisory reports;

(b) [~~(3) The supervisee shall~~] Be jointly responsible with the supervisor for ensuring that supervisory reports and plans have been sent to the board in keeping with the reporting schedule;

(c) [~~(4) The supervisee shall~~] Be responsible for reporting to the board any apparent violation of the statutes or administrative regulations, on the part of the supervisor.

Section 11. Identification of Provider. The actual deliverer of services shall be identified to the client and on all billings for services rendered, indicating services performed by the certified psychologist or psychological associate and supervised by the licensed psychologist.

Section 12. Frequency of Supervision. (1)(a) Psychological associates shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following certification.

(b) After two (2) years of full-time practice, the supervisor and supervisee may petition the board to alter the format, frequency or duration of supervision as long as proposed changes include a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of supervision is not less than four (4) hours per four (4) week period.

(2)(a) Certified psychologists shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following certification.

(b) **After the requirements of paragraph (a) of this subsection have been met,** [~~thereafter,~~] the supervisor and supervisee may petition the board for modification of the supervisory arrangement, with a minimum amount of supervision of one (1) hour per month.

Section 13. The board shall appoint an approved supervisor to supervise the **disciplined** [~~sanctioned~~] psychologist for the period of time defined by the board. The sanctioned psychologist shall be responsible for the fee for supervision.

(1) The board shall appoint a board member to serve as a liaison between the board and the approved supervisor;

(2) The board liaison shall be responsible for defining in writing to the supervisor and the supervisee cause for the **disciplined** [~~sanctioned~~] psychologist to be receiving board-mandated supervision and the expected goals or outcomes of the supervision;

(3) The approved supervisor and the sanctioned psychologist shall establish a written plan for supervision that incorporates the goals or expected outcomes as defined by the board liaison. This plan shall have board approval;

(4) The approved supervisor shall submit quarterly reports to the board which reflect progress, problems, and any other information relevant to the need for board-mandated supervision;

(5) The board, at its discretion, may reduce the supervision requirement or may alter the original supervisory requirement if there is sufficient evidence presented to the board that the goals or expected outcomes of supervision have been accomplished; (6) The board, at its discretion, may alter the goals or expected outcomes of the supervision, or may approve a change of supervisors, or may direct a change of supervisors if there is sufficient evidence presented to the board that the goals or expected outcomes of supervision or are not being met.

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:175. Continuing education.

RELATES TO: KRS 319.050, 319.058, 391.064
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: KRS 319.032 requires administrative regulations governing the completion of continuing education as a condition for renewal of license or certificate. **This administrative regulation establishes the continuing education requirements for renewal of a license or certificate.**

Section 1. **Definitions. (1)** "Continuing education" [~~shall~~] means participation in approved programs beyond the basic educational requirements that provide specific content planned and evaluated to improve the license or certificate holder's professional competence, make possible acquisition of new skills and knowledge required to maintain competence, and strengthen the habits of critical inquiry and balanced judgment.

(2) "Continuing education (CE) hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. [~~Each~~] License and certificate holder shall be required to document the completion of at least thirty (30) continuing education (CE) hours approved by the board within each three (3) year renewal period. [~~A continuing education hour shall be defined as a fifty-five (55) minute clock hour of instruction.~~] Continuing educational hours shall not carry over from one (1) renewal period to the next. Following the effective date of this administrative regulation, the initial requirement shall be prorated as follows:

(1) Holders of licenses or certificates with renewal dates between July 1, 1994 and June 30, 1995 shall have successfully completed ten (10) approved continuing education hours for that renewal period only. For each renewal period after this renewal, the requirement shall be thirty (30) CE hours approved by the board.

(2) Holders of licenses or certificates with renewal dates between July 1, 1995 and June 30, 1996 shall have successfully completed twenty (20) approved continuing education hours for that renewal period only. For each renewal period after this renewal, the requirement shall be thirty (30) CE hours approved by the board.

(3) Holders of licenses or certificates with renewal dates between July 1, 1996 and June 30, 1997 shall have successfully completed thirty (30) approved continuing education hours for this and for each ensuing renewal period.

Section 3. Hours required to satisfy the continuing education requirement shall be completed and reported [~~on a form provided by the board~~] at the time of license or certificate renewal. It shall be the responsibility of the license or certificate holder to maintain and provide adequate records including certificates of attendance and documentation of completion of approved programs of continuing education hours.

Section 4. Only continuing education activities approved by the board shall satisfy continuing education requirements for renewal of a license or certificate. It shall be the responsibility of the license or certificate holder to determine prior to attending that the specific continuing education program has been approved by the board or is offered or sponsored by an organization approved by the board to sponsor continuing education programs.

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) The following organizations are authorized to offer or sponsor continuing education programs for which participation shall satisfy the requirements of this administrative regulation:

(a) The American Psychological Association; American Medical Association; American Psychiatric Association; National Association of Social Workers;

(b) Recognized state, regional, national, or international psychological associations;

(c) Courses for graduate-level academic credit or workshops in psychology or psychiatry offered by national, regional, or state accredited academic institutions or their affiliated hospitals or medical centers;

(d) The Kentucky Mental Health Institute and The Kentucky School of Alcohol and Other Drug Studies sponsored by the Kentucky Department of Mental Health and Mental Retardation Services.

(2) The board may approve other organizations as sponsors of continuing education at its discretion.

(a) The application for approval shall be accompanied by a fee of fifty (50) dollars.

(b) Each approved sponsor shall submit an annual report of programs offered, and any other [~~such~~] information as the board shall request.

(c) The board may renew its approval of a sponsor of continuing education on an annual basis and may charge a fee not to exceed fifty (50) dollars for [~~such~~] renewal.

(3) The board may approve specific continuing education programs at its discretion.

(a) The application for approval shall be accompanied by a fee of fifty (50) dollars.

(b) The program shall meet the criteria **established** [~~outlined~~] in Section 6 of this administrative regulation.

(c) The program shall **only** be presented one (1) time following its approval by the board; a request may be made for a repeated

offering by submission of a request form and a renewal fee of ten (10) dollars for each request.

Section 6. Continuing education programs which satisfy the requirements for license or certificate renewal shall meet the following criteria:

(1) The program is offered or sponsored by an organization which has been approved by the board, or the specific program has been approved by the board;

(2) The program has a clearly-stated purpose and defined content area and is consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) Presenters are professionals qualified in the defined content area;

(4) The program's time is clearly stated. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Attendance is recorded by the program's sponsor;

(6) Documentation of completion is provided to the participant;

(7) Participants are required to complete an evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn CE hours on the following basis:

(a) Each one (1)-hour semester course shall be judged to be the equivalent of fifteen (15) CE hours for the purposes of meeting the requirements of this administrative regulation; and

(b) Each one (1)-hour quarter course be the equivalent of nine (9) CE hours for the purposes of meeting the requirements of this administrative regulation.

(2) The teaching of a graduate-level course in psychology at an accredited academic institution shall earn CE hours on the following basis: teaching a three (3)-hour semester or quarter course shall be judged to be the equivalent of six (6) CE hours for purposes of meeting the requirements of this administrative regulation. Within any given renewal period, credit may be obtained not more than once for teaching a particular course. No more than six (6) CE hours may be completed through these teaching activities.

(3) The teaching of approved continuing education workshops and programs shall earn CE hours on a one-to-one (1 to 1) basis within any given renewal period, credit may be obtained not more than once for teaching a particular workshop or program. No more than six (6) CE hours may be completed through these teaching activities.

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:185. Requirements for granting licensure or certification in psychology to an applicant licensed or certified in another state.

RELATES TO: KRS 319.032
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: This administrative regulation sets forth procedures for the granting of a license or certificate to an applicant who is licensed or certified in another state which does not have an agreement of reciprocity with this board.

Section 1. **(1) The board may consider an applicant for licensure or certification in psychology in Kentucky who:**

(a) Is licensed or certified in another state which does not have an agreement of reciprocity with the Kentucky Board of Examiners of Psychology; and

(b) Holds a current valid license or certificate to practice psychology which has been granted by:

(a) At least one (1) state;

(b) The District of Columbia; or

(c) A Canadian province which maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards.

(2) The board shall consider the following criteria in reviewing the credentials of the applicant:

(a) A graduate degree in psychology shall be required:

1. At the doctoral level for licensure;

2. At the master's level for certification; and

3. Other educational requirements as specified in 201 KAR 26:200.

(b) Standards of training and experience as specified in 201 KAR 26:190. If the applicant for licensure has less than one (1) year of postdoctoral supervised experience, a determination may be made by the board of the applicant's practice experience, with five (5) years of full-time practice after licensure or certification as an equivalent of the required year of postdoctoral experience.

(3) An applicant for licensure shall:

(a) Submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP):

1. Developed by the Professional Examination Service; and

2. Owned by the Association of State and Provincial Psychology Boards; and

(b) Obtain a score equal to passage of seventy (70) percent of the test items.

(4) The board shall review the applicant's:

(a) Record as to complaints, or hearings held in previous jurisdictions; and

(b) Professional references. ~~[The board shall consider the following criteria in reviewing the credentials of an applicant for licensure or certification in psychology who holds a current valid license or certificate to practice psychology which has been granted by at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards but which does not have an agreement of reciprocity with this board:~~

~~(1) A graduate degree in psychology, at the doctoral level for licensure and at the master's level for certification and other educational requirements as specified in 201 KAR 26:200.~~

~~(2) Standards of training and experience as specified in 201 KAR 26:190. When the applicant for licensure has less than one (1) year of postdoctoral supervised experience, a determination may be made by the board of the applicant's practice experience, with five (5) years of full-time practice after licensure or certification as an equivalent of the required year of postdoctoral experience.~~

~~(3) An applicant for licensure shall submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP) developed by the Professional Examination Service and owned by the Association of State and Provincial Psychology Boards. The applicant shall obtain a score equal to passage of seventy (70) percent of the test items.~~

~~(4) The board shall also review the applicant's record as to complaints, or hearings held in previous jurisdictions.~~

~~(5) Applicant's professional references.]~~

Section 2. An applicant for licensure shall submit to a structured oral examination administered by two (2) licensed psychologists, at least one (1) of whom is licensed in the candidate's specialty area.

(1) The examination shall cover ethical principles, professional practice in the candidate's specialty area, and Kentucky mental health law.

(2) Each examiner shall independently rate the applicant's performance.

(3) The applicant shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination.

(4) **An applicant who receives a pass rating from at least two (2) examiners shall have successfully passed the oral examination.** [~~Both examiners shall rate the applicant as having passed in order for the applicant to have passed.~~]

Section 3. An applicant for licensure with the health service provider designation shall demonstrate that he is qualified in at least one (1) of the specialty areas of clinical, counseling, or school psychology.

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: Certain terms are used in the statute regulating the requirements for supervised professional experience. This administrative regulation defines those terms.

Section 1. Definitions. (1) The predoctoral year, or the first year of a two (2) year postdoctoral supervised professional experience is [~~Those applying for licensure must complete one (1) year of supervised professional experience~~] defined as 1,800 [~~2,000~~] hours with at least 100 hours of supervisory sessions distributed over the year.

(2) The postdoctoral year, or the second of a two (2) year postdoctoral supervised professional experience is defined as 1,800 hours with at least one (1) hour of individual face-to-face supervision on a weekly basis.

[~~(3) The supervisors shall~~ [must] ~~be licensed psychologists or doctoral-level psychologists who meet the standards of applicable state law.~~] [~~and must be approved by the board.~~]

Section 2. Supervisors shall be licensed psychologists or doctoral-level psychologists who meet the standards of applicable state law.

Section **3.** [~~2.~~] [~~For those~~] Persons applying for licensure in either clinical or counseling psychology, the predoctoral internship or first year of a two (2) year postdoctoral program shall meet the following criteria:

(1) The experience shall occur within an organized training program, in contrast to supervised experience or on-the-job training and has a planned, programmed sequence of training experiences;

(2) The training program[~~, typically called an internship,~~] shall have a clearly designated staff psychologist who **shall be:**

(a) [~~is~~] Responsible for the integrity and quality of the training program;

(b) [~~and who is~~] Actively licensed by the Board of Examiners in Psychology; or

(c) [~~who is~~] Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law;

(3) The internship agency shall have two (2) or more psychologists on the staff as supervisors, at least one (1) of whom **shall be:**

(a) [~~is~~] Actively licensed as a psychologist by the Board of Examiners in Psychology; or

(b) [~~who is~~] Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law;

(4) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;

(5) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(6) At least twenty-five (25) percent of the trainee's time shall be in direct client contact (minimum 450 hours);

(7) The internship shall include a minimum of two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision. There shall also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, group supervision;

(8) Training shall be postclerkship, postpracticum and postexternship level;

(9) The internship shall have a written statement or brochure which describes the goals and content of the internship, stated clear expectations for quality and quantity the of trainee's work and which is made available to prospective interns; and

(10) The internship experience (minimum 1,800 hours) shall be completed within twenty-four (24) months. [~~For purposes of this administrative regulation, the designation "health service provider" shall be made on the license of those psychologists who perform activities which include the delivery or supervision of direct health care services to individuals or groups of individuals who are the intended beneficiaries of such services.~~]

Section **4.** [~~3.~~] For those persons applying for licensure in school psychology, the predoctoral internship or first year of a two (2) year postdoctoral program shall meet the following criteria:

(1) The experience shall occur within an organized training program which provides a sequence of experiences, including practice and field experiences;

(2) The training program, typically called an internship, shall provide training in a range of assessment and intervention activities conducted with and for children and youth needing school psychological services;

(3) The internship agency shall have a clearly designated staff member who shall be responsible for the integrity and quality of the internship program, but who does not necessarily provide the supervision;

(4) Internship supervision shall be provided by a professional psychologist who **shall be** [~~is~~] currently licensed by a State or Provincial Board of Examiners in Psychology or who **shall be** [~~is~~] licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law;

(a) The supervisor shall be a staff member of the internship agency or an affiliate of that unit who carries responsibility for cases being supervised, and when necessary, can change procedures and techniques for the intern and provide input to the agency staff.

(b)The supervisor may be provided by the school (agency), the intern, or the sending graduate program. When internship supervision is provided by an affiliate of that agency, a regular member of the agency staff **shall** [~~must~~] be responsible for providing administrative review.

(5) The internship includes an average of at least two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with school psychologi-

cal services rendered directly by the intern. The supervisor shall provide an average of one (1) hour a week of supervision but may delegate other supervision to appropriate members of the psychological service unit;

(6) In addition to individual supervision there shall be an additional average of at least two (2) hours per week in scheduled learning activities, which may be done in conjunction with professionals other than school psychologists, such as:

(a) Case conferences involving a case in which the intern is actively involved;

(b) Seminars dealing with professional issues; or

(c) Inservice training.

(7) Supervision and education shall account for at least ten (10) percent (150 hours) of the intern's time. Some of the activities may occur at times other than the "regular" work day;

(8) The total internship experience may occur in more than one (1) setting but shall include a minimum of 1,500 hours and shall be completed within twenty-four (24) months;

(9) At least twenty-five (25) percent (375 hours) of the trainee's time shall be in direct client contact;

(10) The intern may spend up to twenty-five (25) percent (375 hours) of the time in research activity;

(11) The intern shall have scheduled and unscheduled opportunities to interact with interns, school psychologists, [~~and/~~]or other psychologists. It is desirable for the internship agency to have two (2) or more [~~such~~] persons on the staff, but small agencies may meet this criterion by planning meetings with appropriate personnel in the area;

(12) The intern shall have the opportunity to interact professionally with persons from other disciplines and other agencies;

(13) The trainee has a title such as "intern", "resident," "fellow," or other designation of trainee status; and

(14) The internship agency, preparing institution, and intern have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work. [~~No one who does not have the designation "health service provider" may provide or supervise direct health care services. Those persons applying for licensure in the specialty areas of clinical, counseling, or school psychology shall have the designation "health service provider."~~

~~Section 4. Those persons applying for licensure with the designation "health service provider," excluding those applying in the specialty area of school psychology, must complete one (1) year of supervised professional experience defined as follows:~~

~~(1) The experience occurs within an organized training program, in contrast to supervised experience or on-the-job training and has a planned, programmed sequence of training experiences.~~

~~(2) The training program, typically called an internship, has a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed by the Board of Examiners in Psychology.~~

~~(3) The internship agency has two (2) or more psychologists on the staff as supervisors, at least one (1) of whom is actively licensed as a psychologist by the Board of Examiners in Psychology.~~

~~(4) Internship supervision is provided by a staff member of the internship agency or by an affiliate of that agency who carried clinical responsibility for the cases being supervised. At least half of the internship supervision is provided by one (1) or more psychologists with an appropriate doctorate degree.~~

~~(5) The internship provides training in a range of assessment and treatment activities conducted directly with clients seeking psychological services.~~

~~(6) At least twenty five (25) percent of the trainee's time is in direct client contact (minimum 375 hours).~~

~~(7) The internship includes a minimum of two (2) hours per week of regularly scheduled, formal, face to face individual supervision. There must also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, group supervision.~~

~~(8) Training is postclerkship, postpracticum and postexternship level.~~

~~(9) The internship has a written statement or brochure which describes the goals and content of the internship, stated clear expectations for quality and quantity of trainee's work and which is made available to prospective interns.~~

~~(10) The internship experience (minimum 2000 hours) is completed within twenty four (24) months.~~

~~Section 5. Those persons applying for licensure with the designation "health service provider" in the specialty area of school psychology, shall have completed one (1) year of supervised professional experience defined as follows:~~

~~(1) The experience occurs within an organized training program which provides a sequence of experiences, including practical and field experiences.~~

~~(2) The training program, typically called an internship, provides training in a range of assessment and intervention activities conducted with and for children and youth needing school psychological services.~~

~~(3) The internship agency has a clearly designated staff member who is responsible for the integrity and quality of the internship program, but who does not necessarily provide the supervision.~~

~~(4) Internship supervision is provided by a professional psychologist who is currently licensed by State/Provincial Board of Examiners in Psychology. The supervisor is a staff member of the internship agency or an affiliate of that unit who carried responsibility for cases being supervised, and when necessary, can change procedures and techniques for the intern and provide input to the agency staff. The affiliate may be provided by the school (agency), the intern, or the sending graduate program. When internship supervision is provided by an affiliate of that agency, a regular member of the agency staff must be responsible for providing administrative review.~~

~~(5) The internship includes an average of at least two (2) hours per week of regularly scheduled, formal, face to face individual supervision with the specific intent of dealing with school psychological services rendered directly by the intern. The mentor must provide an average of one (1) hour a week of supervision but may delegate other supervision to appropriate members of the psychological service unit.~~

~~(6) In addition to individual supervision there is an additional average of at least two (2) hours per week in scheduled learning activities such as: case conferences involving a case in which the intern is actively involved, seminars dealing with professional issues, in service training. These activities may be in conjunction with professionals other than school psychologists.~~

~~(7) Supervision and education will account for at least ten (10) percent (150 hours) of the intern's time. Some of the activities may occur at times other than the "regular" work day.~~

~~(8) The total internship experience may occur in more than one (1) setting but must include a minimum of 1500 hours and must be completed within twenty four (24) months.~~

~~(9) At least twenty five (25) percent (375 hours) of the trainee's time is in direct client contact.~~

~~(10) The intern may spend up to twenty five (25) percent (375 hours) of the time in research activity.~~

~~(11) The intern shall have scheduled and unscheduled opportunities to interact with interns, school psychologists, and/or other psychologists. It is desirable for the internship agency to have two (2) or more such persons on the staff, but small agencies may meet this criterion by planning meetings with appropriate personnel in the area.~~

~~(12) The intern shall have the opportunity to interact professionally with persons from other disciplines and other agencies.~~

~~(13) The trainee has a title such as "intern," "resident," "fellow," or other designation of trainee status.~~

~~(14) The internship agency, preparing institution, and intern have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.~~

~~Section 6. For psychologists licensed in the specialty areas of clinical, counseling, or school psychology prior to the adoption of this administrative regulation, the board shall issue a stamp designating "health service provider" at the regular renewal time of each license. The designating seal may be obtained at an earlier date by paying a fee of ten (10) dollars to the state board.~~

~~Section 7. Applicants wishing to obtain the designation "health service provider" whose license was granted prior to the adoption of this administrative regulation, in specialty areas other than clinical, counseling, or school psychology may apply for a review of their record by the board as to whether their supervised experience meets the criteria specified by the board. A nonrefundable fee of fifty (50) dollars must accompany the application for review.~~]

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:215. Nonresident status.

RELATES TO: KRS 319.015
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: KRS **319.015(8)** [~~319.017(7)~~] allows a nonresident psychologist temporarily employed in the state to render psychological services for no more than thirty (30) days every two (2) years. This administrative regulation establishes the requirements for this practice.

Section 1. [~~(1)~~] Upon registration with the board, a licensee or certificate holder from another state may render psychological services in this state for not more than thirty (30) days every two (2) years.

Section 2. [~~(2)~~] **Upon the completion of the thirty (30) day period,** the nonresident licensee or certificate holder shall submit a written report to the board of each date on which psychological services were rendered in this state, and the location of the site of those services.

Section 3. [~~(3)~~] For purposes of this **administrative regulation** [~~section~~], the provision of psychological services on a given date, regardless of the period of time of those services, shall constitute one (1) day.

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended)

201 KAR 26:230. Examinations.

RELATES TO: KRS 319.050, 319.058, 319.064
STATUTORY AUTHORITY: KRS 319.032
NECESSITY AND FUNCTION: KRS 319.032 requires administrative regulations governing the examination of applicants for licensure and certification. This administrative regulation outlines requirements concerning examinations.

Section 1. General Requirements. (1) The board shall [~~will~~] publish pertinent instructions and establish the examination schedule which shall [~~will~~] include **the**:

(a) [~~the~~] Place;

(b) [~~the~~] Time; and

(c) [~~the~~] Final date by which the board shall [~~must~~] have received the applicant's materials.

(2) An applicant for examination shall [~~must~~] submit a complete application and pay the required fee to the board in a timely manner. Once the application has been approved by the board, the [~~an~~] applicant shall [~~will~~] be scheduled to take the examination at the next regularly scheduled date.

(3) If an applicant fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee.

(4) If an applicant fails to appear for or to complete the examination without a valid reason, the applicant shall [~~will~~] forfeit all fees paid.

(5) If an applicant fails to appear for a second scheduled examination without presenting a valid reason in writing such as illness or death in the immediate family, the application shall [~~will~~] be terminated on the date of the examination, and the applicant shall [~~will~~] be denied licensure or [~~/~~] certification on the basis of failure of the examination by default. The applicant may not practice psychology or use the title "psychologist."

Section 2. Examination for Licensure. (1) An applicant for licensure shall submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP) developed by the Professional Examination Service and owned by the Association of State and Provincial Psychology Boards. The applicant shall obtain a score equal to passage of seventy (70) percent of the test items.

(2) An applicant for licensure who has been approved to sit for the objective examination (EPPP) and whose supervisory arrangement has been approved by the board shall [~~will~~] be considered to be functioning under a temporary license until all requirements for licensure have been completed. [~~the results of the next regularly scheduled examination are known.~~]

(3) If an applicant for licensure fails the objective examination, the candidate may, with payment of the required fee, be rescheduled to take the examination at its next regularly scheduled date.

(a) The candidate shall continue to function under the supervision of the board-approved supervisor.

(b) The candidate may not be scheduled for the oral examination until the objective examination (EPPP) has been successfully passed and 1,800 hours of supervised experience have been approved by the board.

(c) The candidate shall continue to function under the supervision of the approved supervisor until all examinations are successfully completed.

(4) [~~(2)~~] If an applicant for licensure fails the oral examination, the board may, upon the development of a remediation plan acceptable

to the board, reissue the temporary license to function under supervision until the results of the next examination are known. Under no circumstances shall [~~can~~] a temporary license be renewed by the board more than two (2) times.

(5) [~~(3)~~] If an applicant for licensure fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary license to function under supervision.

(6) [~~(4)~~] If an applicant for licensure fails to appear for or to complete the examination without a valid reason, the applicant shall [~~will~~] forfeit all fees paid. [~~Moreover,~~] The approved application shall [~~will~~] no longer constitute a temporary license and the applicant for licensure may not practice psychology, or use the title "psychologist."

[~~(5) An applicant for licensure shall submit to an examination composed of the Examination for Professional Practice in Psychology developed by the Professional Examination Service and owned by the American Association of State Psychology Boards. The applicant must obtain a score equal to or greater than one (1) standard deviation below the national mean score for all doctoral candidates.~~]

(7) [~~(6)~~] An applicant for licensure shall submit to a structured oral examination administered by two (2) licensed psychologists, at least [~~one (1) of whom is a member of the board and~~] one (1) of whom is licensed in the candidate's specialty area.

(a) This examination shall [~~will~~] cover ethical principles, professional practice in the candidate's specialty area and Kentucky Mental Health Law.

(b) Each examiner shall [~~will~~] independently rate the applicant's performance.

(c) The applicant shall [~~must~~] demonstrate an acceptable level of knowledge in [~~of~~] each of the three (3) areas in order to pass the examination.

(d) **An applicant who receives a pass rating from at least two (2) examiners shall have successfully passed the oral examination.** [~~Both examiners shall be required to [must] rate the applicant as having passed in order for the applicant to have passed.~~]

(8) If the applicant fails the first oral examination, the applicant may reapply with a remediation plan.

(a) Upon completion of the remediation plan approved by the board, the applicant shall [~~will~~] be administered an oral examination [~~examined~~] by a second team composed in the same manner as the first team.

(b) If the second oral examination is failed, the applicant may reapply with a remediation plan.

(c) Upon completion of the approved remediation plan, the applicant shall be administered an examination by a team of the licensed members of the board and appointed examiners as needed.

(d) A majority of the examining team shall rate the applicant as having passed in each of the three (3) areas in order to pass the examination.

(9) [~~(7)~~] If the applicant [~~person who has been admitted to the examination~~] for licensure fails [~~but who failed~~] to pass the examination, and wishes to apply for certification, a completed application for certification and the appropriate fee, if required, shall [~~must~~] be submitted with the proposed area of competency and supervision indicated. The board shall [~~will~~] accept the applicant's previous examination results to satisfy [~~if the original test scores of each portion required satisfies~~] the certification requirements as to criteria level and area of competency.

[~~Section 3. Examination for Certification as a Certified Psychologist. (1) An applicant for certification as a certified psychologist who has been approved to sit for the examination and whose supervisory arrangement has been approved by the board will be considered to be functioning under a temporary certificate until the results of the next regularly scheduled examination are known.~~

~~(2) If an applicant for certification fails the examination, the board may, upon the development of a remediation plan acceptable to the board, reissue the temporary certificate to function under supervision until the results of the next regularly scheduled examination are known. Under no circumstances can a temporary certificate be renewed by the board more than two (2) times.~~

~~(3) If an applicant for certification fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary certificate to function under supervision.~~

~~(4) If an applicant for certification fails to appear for or to complete the examination without a valid reason, the applicant will forfeit all fees paid. Moreover, the approved application will no longer constitute a temporary certificate and the applicant for certification may not practice psychology, or use the title "psychologist."~~

~~(5) An applicant for certification as a certified psychologist shall submit to an examination composed of the Examination for Professional Practice in Psychology developed by the Professional Examination Service and owned by the American Association of State Psychology Boards. The applicant must obtain a score equal to or greater than one (1) standard deviation below the national mean score for all doctoral candidates.~~

~~(6) An applicant for certification as a certified psychologist shall submit to a structured oral examination administered by two (2) psychologists one (1) of whom is a certified psychologist or certified psychological associate, and one (1) of whom must be credentialed in the candidate's specialty area. This examination will cover ethical principles, professional practice in the candidate's specialty area, and Kentucky Mental Health Law. Each examiner will independently rate the applicant's performance. The applicant must demonstrate an acceptable level of knowledge of each of the three (3) areas in order to pass the examination. Both examiners must rate the applicant as having passed in order for the applicant to have passed. If the applicant fails the oral examination, the applicant may reapply with a remediation plan. Upon completion of the remediation plan approved by the board, the applicant will be examined by a second team composed in the same manner as the first team.~~]

Section 3. [~~4.~~] Examination for Certification as a Psychological Associate. (1) An applicant for certification as a psychologist associate shall submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP) developed by the Professional Examination Service and owned by the Association of State and Provincial Psychology Boards. The applicant shall obtain a score equal to or greater than passage of sixty (60) percent of the test items.

(2) An applicant for certification as a psychological associate who has been approved to sit for examination and whose supervisory arrangement has been approved by the board shall [~~will~~] be considered to be functioning under a temporary certificate until the results of the next regularly scheduled examination are known.

(3) [~~(2)~~] If an applicant for certification fails the examination, the board may, upon the development of a remediation plan acceptable to the board, reissue the temporary certificate to function under supervision until the results of the next regularly scheduled examination are known. Under no circumstances shall [~~can~~] a temporary certificate be renewed by the board more than two (2) times.

(4) [~~(3)~~] If an applicant for certification fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary certificate to function under supervision.

(5) [(4)] If an applicant for certification fails to appear for or to complete the examination without a valid reason, the applicant shall [will] forfeit all fees paid. [Moreover,] The approved application shall [will] no longer constitute a temporary certificate and the applicant for certification **shall [may]** not practice psychology, or use the title "psychologist" or "psychological associate".

[(5) An applicant for certification as a certified psychologist shall submit to an examination composed of the Examination for Professional Practice in Psychology developed by the Professional Examination Service and owned by the American Association of State Psychology Boards. The applicant must obtain a score equal to or greater than one (1) standard deviation below the national mean score for all nondoctoral candidates.]

CHARLES H. MORGAN, Board Chairman
APPROVED BY AGENCY: August 13, 1993
FILED WITH LRC: August 13, 1993 at 11 a.m.

TOURISM CABINET
Department of Fish and Wildlife Resources
(As Amended)

301 KAR 1:200. Seasons and limits for angling.

RELATES TO: KRS 150.010, 150.470, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.170, 150.470
NECESSITY AND FUNCTION: In order to insure the continuance of viable and desirable populations of fish, it is necessary to govern the size and numbers anglers can harvest. This amendment is necessary to establish a nine (9) inch size limit on crappie at Carr Fork and Rough River Lakes, to reduce the size limit on crappie at Barren Lake to nine (9) inches, to establish a fifteen (15) inch size limit on largemouth bass at Shanty Hollow and Marion County Lakes, to remove the size limit on largemouth bass at Mauzy Lake, to reduce the creel limit to two (2) and set a twenty-four (24) inch size limit on striped bass in Cumberland Lake to bring the fishing regulations at Dale Hollow Lake in compliance with Tennessee's regulations, and to match the fishing regulations, on the Ohio River with those of Indiana, Illinois, and Ohio. [angling regulations for Goose, Island and South Lakes (Peabody WMA).]

Section 1. The statewide creel limits, size limits and possession limits for taking fish by angling shall be as follows, except as specified in Section 3 of this regulation and as provided in 301 KAR 1:180:

Species	Size Limit Inches	Daily Creel Limit	Possession Limit
Black bass:*			
Largemouth	12	6	12
Smallmouth	12	Singly	Singly
Kentucky (spotted)	None	or in	or in
Coosa	12	Aggregate	Aggregate
Rock bass (goggle eye or redeye)	None	15	30
Walleye and their hybrids	15	10	20
Sauger	None	10	20
Muskellunge and their hybrids	30	2	2
Chain pickerel	None	5	10
White bass and yellow bass	None	30	60
Striped bass (rockfish) and their hybrids	15	5	5
Crappie	None	30	60
Rainbow trout & brown trout	None	8 No more than 3 may be brown trout	8
Brook trout	10	2	2

*For size limit purposes, any black bass, with the exception of the smallmouth, with a patch of teeth on its tongue is considered to be a Kentucky bass.

Section 2. Seasons for all species is year around.

Section 3. The following special limits apply. All other angling limits and seasons apply as set forth in Sections 1 and 2 of this regulation.

(1) The impounded waters of Grayson Lake. The size limit on largemouth bass and smallmouth bass is fifteen (15) inches. There are no daily creel or possession limits on crappie.

(2) The impounded and flowing waters of Dix River and its tributaries upstream from Herrington Lake Dam:

	Size Limit Inches	Daily Creel Limit	Possession Limit
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(3) Dix River from Herrington Lake Dam downstream a distance of two (2) miles. The size limit for brown trout is fifteen (15) inches. Fishing is permitted only with artificial lures or flies.

(4) The impounded waters of Taylorsville Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches. The daily creel and possession limits for crappie are fifteen (15) and thirty (30) respectively. The size limit and daily creel/possession limit for hybrid striped bass, white bass and yellow bass are fifteen (15) inches and five (5) singly or in aggregate, respectively.

(5) The impounded waters of Kentucky and Barkley Lakes, including the connecting canal. The size limit for largemouth bass and smallmouth bass is fourteen (14) inches, except that the daily limit may include no more than one (1) and the possession limit no more than two (2) less than fourteen (14) inches in length. The size limit for crappie is ten (10) inches.

(6) The impounded waters of Cave Run, Yatesville, Paintsville, Carr Fork, Buckhorn and Dewey Lakes. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches.

(7) The impounded and flowing waters of Barren River and its tributaries upstream from Barren River Lake Dam.

	Size Limit Inches	Daily Creel Limit	Possession Limit
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer. The size limit for crappie is nine (9) [ten (10)] inches. The size limit for largemouth and smallmouth bass is fifteen (15) inches except that the daily creel limit may include no more than one (1) and the possession limit no

more than two (2) less than fifteen (15) inches.

(8) The impounded waters of Cumberland Lake. The size limit for largemouth and smallmouth bass is fifteen (15) inches. The size, creel and possession limits for striped bass (rockfish) are twenty-four (24) inches, two (2), and two (2), [~~three (3) and three (3)~~] respectively. The size limit for crappie is ten (10) inches.

(9) In the following brook trout streams fishing is permitted only with artificial flies or lures with a single hook.

(a) Shillalah Creek, Bell County (outside boundary of Cumberland Gap National Park);

(b) Martins Fork and tributaries in Harlan County from Left Fork upstream 2.3 miles to the Cumberland Gap National Historical Park boundary;

(c) Bad Branch, Letcher County;

(d) Poor Fork and tributaries in Letcher County from the headwaters downstream to the first crossing of Highway 392;

(e) Parched Corn Creek, Wolfe County.

(10) The impounded waters of Carter Caves Lake. The size limit for largemouth bass is twenty (20) inches. The daily creel and possession limits for largemouth bass are one (1) and one (1) respectively. Fishing is permitted only during daylight hours.

(11) The impounded waters of Lake Reba. The size limit for largemouth and smallmouth bass is fifteen (15) inches.

(12) The impounded waters of Lincoln Homestead State Park Lake:

Species	Size Limit Inches	Daily/Possession Limit
Largemouth bass	15	3
Bluegill and redear sunfish (singly or in aggregate)	over 7	10
	under 7	No Limit
Channel catfish	None	3

Fishing is permitted during daylight hours only.

(13) Ohio River:

Species	Size Limit Inches	Daily Creel Limit
Walleye, sauger & their hybrids	None	10 singly or in aggregate

White bass, yellow bass, striped bass and their hybrids: no more than four (4) fish of a daily limit of thirty (30) may be greater than fifteen (15) inches in length. [~~The daily creel limit for crappie is sixty (60), the daily creel limit for white bass and yellow bass is sixty (60), (singly or in aggregate).~~]

(14) The impounded waters of Nolin, Rough River, and Green River Lakes. The size limit for crappie is nine (9) inches.

(15) The impounded waters of Shanty Hollow and Marion County lakes. There is a fifteen (15) inch [~~no~~] size limit on black bass.

(16) The impounded waters of Leary Lake:

Species	Size Limit Inches	Daily Creel Limit
Largemouth bass	15	1
Bluegill	None	12
Channel catfish	None	2

Fishing is permitted during daylight hours only.

(17) The impounded waters of Lake Malone. The size limit on black bass is twelve (12) inches except that the daily creel limit may include no more than two (2) and the possession limit no more than four (4) black bass less than twelve (12) inches in length.

(18) The impounded waters of Elmer Davis Lake. Slot limit -black bass less than twelve (12) inches or more than sixteen (16) inches in length may be kept. Black bass between twelve (12) and sixteen (16) inches in length shall be released.

(19) Upper and lower Game Farm Lakes.

Species	Size Limit Inches	Daily Creel Limit
Black bass	15	2
Channel catfish	None	3

(20) The removal of grass carp from lakes owned and managed by the Kentucky Department of Fish and Wildlife Resources is prohibited.

(21) The impounded waters of Guist Creek Lake. The size limit and daily creel/possession limit for hybrid striped bass, white bass and yellow bass are fifteen (15) inches and five (5) singly or in aggregate, respectively.

(22) The impounded waters of Fishtrap Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches. The size limit and daily creel/possession limit for hybrid striped bass, white bass and yellow bass are fifteen (15) inches and five (5) singly or in aggregate, respectively.

(23) The Tennessee River from Kentucky Lake Dam downstream to the confluence with the Ohio River and the Cumberland River from Barkley Lake Dam downstream to the confluence with the Ohio River. The daily creel/possession limit for striped bass is three (3).

(24) Elkhorn Creek (Franklin County) from the confluence of the North and South Forks downstream to the Kentucky River. Slot limit - smallmouth bass and largemouth bass less than twelve (12) inches or more than sixteen (16) inches in length may be kept. Smallmouth bass and largemouth bass between twelve (12) and sixteen (16) inches in length shall be released. The daily creel limit of six (6) may include no more than two (2) bass greater than sixteen (16) inches in length.

(25) The impounded waters of Carr Fork Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches. The size limit for crappie is nine (9) inches.

[~~(25) The impounded waters of Goose, Island, and South Lakes (Peabody WMA).~~

~~Species~~	~~Creel Limit~~	~~Size Limit~~
~~Largemouth bass~~	~~1~~	~~20"~~
~~Bluegill~~	~~15~~	~~None~~
~~Redbreast sunfish~~	~~15~~	~~None~~
~~Channel catfish~~	~~2~~	~~15"~~
~~Walleye/hybrids~~	~~1~~	~~15"~~
~~Crappie~~	~~10~~	~~None~~

~~Fishing season is from July 1 through October 15 annually. Fishing allowed during daylight hours only. No frog hunting allowed.~~]

(26) The impounded waters of Mauzy Lake. There is no size limit on largemouth bass.

(27) The impounded waters of Dale Hollow Lake:

Species	Size Limit Inches	Daily Creel Limit
Smallmouth bass	18	2
Walleye	16	10
Sauger	14	15 [~~10~~]
Muskellunge	30	1

The seasons and limits for rainbow trout and lake trout are as follows: April 1 - October 31: daily limit of seven (7), of which no more than two (2) may be lake trout. November 1 - March 31: daily limit of two

(2), twenty-two (22) inch size limit.

Section 4. Measure all fish from the end of the lower jaw to the tip of the tail with fish laid flat on rule, mouth closed and tail lobes squeezed together. All fish caught that are smaller than those prescribed minimum lengths shall be returned immediately to the waters from which they were taken in the best physical condition possible. Under no circumstances may a fisherman remove the head or the tail or part thereof of any of the above- named fish while in the field and before he has completed fishing for the day.

Section 5. The amendments to this administrative regulation shall not be enforced until March 1, 1994.

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: August 9, 1993
FILED WITH LRC: August 10, 1993 at 9 a.m.

TOURISM CABINET
Department of Fish and Wildlife Resources
(As Amended)

301 KAR 2:171. Deer hunting seasons.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.170, 150.175
NECESSITY AND FUNCTION: This administrative regulation pertains to deer hunting in specified counties and on wildlife management areas (WMAs). This administrative regulation is necessary to set deer hunting season dates, to specify the counties and management areas open to deer hunting and to prescribe the methods by which deer may be legally taken. The function of this administrative regulation is to provide for the prudent taking of deer within reasonable limits, and to insure a permanent and continuing supply of deer for present and future residents of the state. This amendment [~~administrative regulation~~] is necessary to change the requirement for landowners to check in their deer. [~~adjust for zones, dates, weapons, and limits in the deer seasons.~~]

Section 1. Definitions. As used in this administrative regulation, unless the context otherwise requires:

(1) "Adult" means an individual at least eighteen (18) years of age.

(2) "Antlered deer" means any deer that has one (1) antler at least four (4) inches in length, measured from the skin to the tip of the antler.

(3) "Antlerless deer" means does and any buck that has both antlers less than four (4) inches long, measured from the skin to the tips of the antlers.

(4) "Archery equipment" means long bows, recurve bows and compound bows incapable of holding an arrow at full or partial draw without aid from the archer.

(5) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(6) "Breech-loading or modern gun" means any rifle, handgun or shotgun in which the cartridge or shotshell is placed into the gun at the rear of the barrel.

(7) "Center-fire" means a cartridge that fires by the firing pin striking a primer in the center of the end of the cartridge case.

(8) "Crossbow equipment" means any device designed to hold an arrow (or bolt) at full or partial draw without aid from the archer.

(9) "Deer control tags" means those tags issued by the department to landowners for distribution to licensed or license exempt deer hunters during the season and used in the control of deer causing damage to private property or farm crops.

(10) "Firearms" means all breech and muzzle-loading rifles, shotguns and handguns.

(11) "Muzzle-loading gun" means any rifle, shotgun or handgun in which the bullet or projectile, is placed in the gun from the discharging end of the barrel.

(12) "Private inholdings" means any privately-owned properties completely surrounded by wildlife management area lands controlled by the Department of Fish and Wildlife Resources.

(13) "Shotshell" means multiple-projectile or pelleted ammunition.

(14) "Slug" means single-projectile ammunition.

(15) "WMA tags" means those permits issued by the department to hunters to tag deer taken during WMA hunts.

Section 2. County Zone Assignments. The following counties are open to deer hunting during the periods specified in Section 4 of this administrative regulation. County zone assignments shall apply to the entire deer hunting season.

(1) Zone No. 1: Crittenden, Hancock, Jefferson, Livingston, and Oldham.

(2) Zone No. 2: Boone, Gallatin, Hopkins, Muhlenberg, Nelson, Ohio, and Webster.

(3) Zone No. 3: Allen, Anderson, Ballard, Boyle, Bracken, Breckinridge, Bullitt, Campbell, Carroll, Christian, Fulton, Grant, Graves, Grayson, Hardin, Henderson, Kenton, Logan, Lyon, Marion, Meade, Shelby, Todd, Trigg, Trimble, and Woodford.

(4) Zone No. 4: Adair, Barren, Butler, Caldwell, Calloway, Carlisle, Casey, Cumberland, Daviess, Franklin, Green, Harrison, Henry, Hickman, Larue, McCracken, McLean, Mercer, Monroe, Owen, Pendleton, Robertson, Scott, Simpson, Spencer, Taylor, Union, Warren, and Washington.

(5) Zone No. 5: Boyd, Carter, Clinton, Edmonson, Elliott, Greenup, Hart, Lawrence, Marshall, Mason, Metcalfe and Nicholas.

(6) Zone No. 6: Bath, Clark, Fleming, Garrard, Lewis, Lincoln, Madison, Martin, McCreary, Menifee, Morgan, Pulaski, Rowan, Russell, Wayne, and Whitley.

(7) Zone No. 7: Bell, Bourbon, Breathitt, Clay, Estill, Fayette, Floyd, Harlan, Jackson, Jessamine, Johnson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Montgomery, Owsley, Perry, Powell, Rockcastle, and Wolfe.

Section 3. Counties and Areas Closed to Deer Hunting. (1) Counties: Pike.

(2) Wildlife management areas: Daviess County Gun Club in Daviess County, Fishtrap WMA in Pike County, Robinson Forest WMA in Breathitt, Perry, and Knott counties, and Swan Lake WMA in Ballard County.

(3) Deer hunting shall be prohibited within the boundaries of all national parks.

Section 4. Deer Hunting Dates and Tag Restrictions. (1) Archery and crossbow dates and restrictions.

(a) Archery equipment shall be used for deer hunting October 1 through January 15, except during modern gun, muzzle-loading gun or crossbow season when archery equipment may be used. Crossbow equipment may be used the fourth Tuesday in November for ten (10) consecutive days, and during periods open to muzzle-loading gun or modern gun use only. Except as specified in paragraph (b) of this subsection, in Zones 1-6, the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer only. In Zone 7, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid.

(b) Persons using archery or crossbow equipment during periods when modern guns are also permitted for deer hunting shall abide by the tag restrictions for modern gun season in effect for that period.

Likewise, persons using archery or crossbow equipment during periods when muzzle-loading guns are also permitted for deer shall abide by the tag restrictions for muzzle-loading gun seasons in effect for that period.

(2) Muzzle-loading gun dates and restrictions.

(a) Muzzle-loading guns may be used for deer hunting the third Saturday in October for two (2) consecutive days and the second Saturday in December for seven (7) consecutive days. During these periods, in Zones 1-5 the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer only. In Zones 6-7, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid during these periods.

(b) Persons using muzzle-loading guns during the period when modern guns may also be used for deer hunting shall abide by the tag restrictions for modern gun season in effect for that period.

(3) Modern gun dates and restrictions.

(a) Modern guns specified in Section 5 of this administrative regulation may be used for deer hunting the second Saturday in November for ten (10) consecutive days, except in Zone 7 as specified below. This shall be the only period when modern guns shall be permitted for deer, except as permitted during muzzle-loader or modern gun quota hunts on wildlife management areas as specified in Section 9 of this administrative regulation.

(b) In Zone 1 the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer during the entire ten (10) day period.

(c) In Zone 2, during the first five (5) days the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer. During the last five (5) days, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid.

(d) In Zone 3, during the first two (2) days the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer. During the last eight (8) days, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid.

(e) In Zone 4, during the first eight (8) [~~nine (9)~~] days the white tag shall be valid for antlered deer only, and the yellow tag shall be invalid. The last two (2) days the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer.

(f) In Zones 5 and 6, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid for the entire ten (10) day period.

(g) In Zone 7, the white tag shall be valid only for the first five (5) days and only for antlered deer. The yellow tag shall be invalid during this period.

(h) During this ten (10) day period, any legal deer hunting equipment may be used, including archery, crossbow, muzzle-loading and modern guns, and all hunters shall abide by the tag and other restrictions for modern gun hunting. Persons using archery or crossbow equipment during the last five (5) days of this ten (10) day period in Zone 7 shall abide by tag restrictions for archery hunting specified in Section 4(1)(a) of this administrative regulation.

Section 5. Equipment Requirements and Restrictions. (1) Only the following gun and archery equipment used as described shall be permitted for taking deer during the periods specified in Section 4 of this administrative regulation:

(a) Breech-loading or modern guns: centerfire rifles and handguns; shotguns up to ten (10) gauge maximum used with slug ammunition only. Muzzle-loading guns: rifles .40 caliber or larger and handguns .44 caliber or larger; shotguns up to ten (10) gauge maximum used with slug ammunition only.

(b) Archery: compound bows, longbows, recurve bows and crossbows may be used. Arrows or crossbow bolts shall not be fitted with barbed broadhead points. Broadhead points shall be at least seven-eights (7/8) inch wide. Crossbows shall have a working safety device.

(2) The following gun and archery equipment and ammunition shall be prohibited for taking deer:

(a) Equipment: any fully automatic firearm, or firearm capable of firing more than one (1) round with one (1) trigger pull; semiautomatic and pump rifles or shotguns with a magazine capacity exceeding ten (10) rounds; longbows, recurve and compound bows fitted with any device capable of holding an arrow at full or partial draw without aid of the hunter; and chemically treated arrows, bolts or broadheads, or any type of chemical attachment.

(b) Ammunition: any caliber or cartridge that does not meet the requirements stated in this section, any fully jacketed ammunition, tracer bullet ammunition or any type of shotshell.

Section 6. License and Permit Requirements, Hunting Method Exemptions and Bag Limit. (1) License requirements:

(a) All resident and nonresident deer hunters except those exempted by KRS 150.170 shall possess a valid annual hunting license and deer permit. A temporary five (5) day hunting license shall not be used in conjunction with the deer permit. Deer permits shall be signed by the holder before hunting.

(b) Persons age sixteen (16) and above required to possess a hunting license and deer permit shall use only one (1) two (2) tag deer permit per license year. Persons who are in possession of a valid junior hunting license may use a maximum of two (2) individual junior deer hunting permits or one (1) two (2) tag permit. The tag accompanying a junior deer hunting permit shall be used as either the yellow or white tag according to the tag restrictions of the season in the zone where it is used. Persons losing their deer permit may purchase another one after having filed an affidavit with the licensing agent stating the fact of loss. Use of any portion of the deer permit by someone other than the person whose name is signed on the permit shall not be permitted, except as specified in administrative regulation 301 KAR 2:211.

(2) Hunting methods exemptions for handicapped hunters. Persons with physical handicaps that make it impossible for them to hunt by conventional methods may apply by letter to the commissioner of the department for a hunting methods exemption. The application letter shall be accompanied by a physician's statement that the applicant is handicapped to such a degree that the exemption is necessary in order for the applicant to hunt. The commissioner may authorize any reasonable exception that would permit a handicapped person to hunt when he could not otherwise do so because of his handicap. Specific exemptions to be allowed shall be described in the letter of authorization and shall be retained in the possession of the applicant while hunting. Hunting methods exemptions shall expire at the end of the license year.

(3) Season limit: an individual may take a maximum of two (2) deer per license year, only one (1) of which may be antlered, with the following exceptions only:

(a) Hunters who are drawn for a quota hunt and/or issued a WMA tag may take deer in addition to the limit; and

(b) Hunters using deer control tags issued to landowners for taking antlerless deer may take a maximum of two (2) antlerless deer in addition to the statewide limit and only as specified in administrative regulation 301 KAR 2:211.

Section 7. Hunter Requirements, Shooting Hours, and Taking of Other Species. (1) Persons under sixteen (16) shall not hunt deer with a gun unless they are accompanied by an adult who shall be able to take immediate control of the juvenile's gun at all times while the juvenile is hunting.

(2) Hunters may be in the woods or stands before daylight, but shall not take, or attempt to take deer except during daylight hours.

(3) Coyotes and wild hogs may be taken during deer season by legal deer hunters only. Wild hogs shall be checked in at an official check station.

(4) Deer shall not be taken with the aid of dogs, or any domestic animal, or from any type of vehicle or boat.

(5) A deer shall not be taken while the deer is swimming.

(6) Any person possessing a deer shall leave the head attached to the body until the deer has been officially checked, as specified in Section 8 of this administrative regulation.

(7) Hunter orange garments shall be worn by all deer hunters while hunting on any location or property where any deer gun season is permitted by administrative regulation. Garments shall be worn as outer coverings on at least the head, chest and back. They shall be of a solid, unbroken pattern. Any mesh weave opening shall not exceed one-fourth (1/4) inch by any measurement. Garments may display a small section of another color. Camouflage pattern hunter orange garments do not meet these requirements.

(8) On department-controlled wildlife management areas, Westvaco Public Hunting Areas, the Daniel Boone National Forest, Reelfoot National Wildlife Refuge and the Big South Fork National Recreation Area, the use of any nails, spikes, screw-in device, wire or tree climbers shall be prohibited for attaching tree stands or climbing trees. Only portable stands and climbing devices that do not injure trees shall be permitted. Portable stands shall not be placed in trees more than two (2) weeks before opening day of each hunting period and shall be removed within one (1) week following the last day of each hunting period. All portable stands shall be plainly marked with the owner's name and address. Existing permanent tree stands shall not be used.

Section 8. Deer Tagging and Checking Procedures, Transportation and Processing Requirements. All deer taken in Kentucky shall be tagged and officially checked as specified below:

(1) Tagging.

(a) Before moving the deer carcass, the hunter shall attach a valid, adhesive-backed portion of the deer permit, deer control tag or WMA tag to the carcass. This tag shall be attached so that it cannot be removed without destroying the tag or mutilating the carcass. Tags shall remain attached to the carcass until processed.

(b) Following the same requirements stated above in paragraph (a) of this subsection, hunters, except resident landowners, their dependents, and tenants residing and working on the landowner's property, not required to possess a deer permit shall identify their harvested deer by providing their own cards or tags to attach to the deer carcass. Hunters shall write "White Tag" and "Yellow Tag" on two (2) separate cards along with their name and address. After a deer is taken, the hunter shall fill in on the card(s) the date and location (county) where the deer was taken, and attach the appropriate card to the deer before moving the carcass. These two (2) cards shall be used according to the zone and tag restrictions specified in Section 4 of this administrative regulation, in lieu of the deer tag. Resident landowners, their dependents, and tenants residing and working on the landowner's property, shall not be required to place an identifying tag on deer taken on their property unless the deer is removed from their property and taken to another location.

(c) Deer taken in Kentucky shall not be transported outside state boundaries until officially checked. Proof of legal harvest shall accompany any deer, or parts of deer transported into Kentucky.

(d) Any deer entered in trophy deer listings for Kentucky shall be legally harvested within state boundaries.

(e) Deer hides may be sold to licensed fur buyers and licensed fur processors.

(f) All individuals, lockers and plants that process deer shall keep accurate records that include the hunter's name, address and date received for each deer in their possession. Each deer shall also bear a tag provided by the operator/processor stating the above information until the deer is processed. Processors shall not accept deer carcasses without proper owner identification as described.

(2) Checking deer.

(a) All harvested deer, except those taken by resident landowners, their dependents, and tenants residing and working on the landowner's property, shall be officially checked by 9 a.m. on the day after the deer is taken. The entire, or field-dressed carcass shall be taken to the nearest open check station. Check station operators, state conservation officers, or other authorized employees of the department may officially check deer.

(b) Deer shall be checked in by the person who harvested the deer.

(c) Hunters shall fill out, or provide the information required to check station operators to complete an official game check card for each harvested deer. The completed game check card shall be submitted to the check station operator, officer or authorized employee. The hunter's copy of the game check card shall be kept in the hunter's possession until the deer is processed. Parts of deer separated for mounting shall bear the completed taxidermy portion of the hunter's copy of the game check card.

Section 9. Exceptions to Deer Hunting Administrative Regulations for Wildlife Management Areas. All administrative regulations in effect for deer hunting shall apply to wildlife management areas (WMAs), unless otherwise noted in this section. WMAs listed in this section have specific season dates or other additional requirements for deer hunting. When specific periods or season dates are listed for a WMA, deer hunting shall be permitted only on those dates and hunters shall only use the equipment specified. Periods open for the use of muzzleloading guns for deer shall not be in effect on the WMAs listed in this section, unless otherwise noted. On WMAs where a quota hunt is scheduled, no other gun deer hunting shall be permitted, unless otherwise noted in the individual area listing.

(1) Limits: an individual shall take no more than one (1) deer from each of the areas listed in this section, except that two (2) may be taken, as specified from West Kentucky and Higginson-Henry WMAs.

(2) Quota hunt requirements, restrictions and application procedures.

(a) Advance application is required for all quota hunts. Applications shall be made only on Managed Deer Hunt Application form, dated June, 1993, which is hereby incorporated by reference. Copies shall be available to the public, including copying and inspection, by contacting the Wildlife Division offices at #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, except holidays, or by contacting local conservation officers or hunting license vendors. Only one (1) hunter shall apply per form and a maximum of four (4) hunters may apply as a party. Hunters sixteen (16) years old and older may apply to only one (1) quota hunt. Hunters at least ten (10) years old, but not yet sixteen (16) by the scheduled hunt date may apply for only one (1) quota hunt and one (1) youth hunt in addition to the Ballard WMA youth hunt. Multiple applications to one (1) area or failure to meet any of the application requirements described above shall result in disqualification of the applicant. Completed applications shall be stamped, self-addressed and postmarked no later than August 31 unless another date is announced by the commissioner. The application deadline shall be extended by the commissioner when availability of forms is delayed.

(b) Only quota hunt applicants who are drawn and issued a permit shall hunt on quota hunt dates. Quota hunters shall hunt only on the dates assigned and in the areas assigned.

(c) During all quota hunts, only persons possessing a valid quota hunt permit shall be permitted to enter a WMA, except to use established public roads, or other areas designated open by signs. Owners of private inholdings or their guests may travel within the owner's lands, but shall not enter the WMA except as described above.

(d) During a quota hunt or firearm hunt, any legal deer hunting equipment may be used. Hunts listed as archery hunts are restricted to legal archery equipment only. All quota hunters shall check in before and check out at the completion of the hunt.

(e) On the following WMAs, all deer hunters shall check in and check out for all hunts: Clay, Central Kentucky, Dewey Lake, Grayson

Lake, Higginson-Henry, Kleber, Paintsville Lake, Pennyrile Forest, Redbird, Tradewater, West Kentucky, Yatesville, Yellowbank WMAs, and for the Barren River Lake WMA youth hunt.

(f) Hunters shall present the signature portion of a valid deer permit, a valid quota hunt permit, show proof of identity and Social Security number when checking in for a quota hunt. No one can substitute for the person whose name appears on the quota hunt permit.

(g) Participants in all quota hunts shall comply with the hunter orange clothing requirements as specified in Section 7(7) of this administrative regulation. When deer hunting on a WMA during periods when only archery equipment is permitted for taking deer on the WMA, the hunter orange clothing requirement shall not apply.

(h) Deer taken during quota hunts shall not count as part of the season limit. Hunters shall use WMA tags, provided by the department, for tagging deer harvested during a quota hunt. WMA tags shall be valid only during the dates and on the WMA for which the tag was issued. Hunters shall take only the type of deer indicated on the WMA tag, if specified.

(i) Owners of private inholdings or their guests may hunt on the owner's lands without following the application procedure specified in Section 9(2)(a), (b) and (c) of this administrative regulation, but shall follow all other quota hunt requirements. Private inholdings shall only be open during the periods listed for the WMA in which they lie, and hunters shall follow all administrative regulations in effect during those periods.

(j) Participants in quota youth hunts shall comply with all hunter education requirements as specified in administrative regulation 301 KAR 2:185 and shall present a valid hunter education course completion card when checking in on the day of the hunt.

(k) Individuals drawn for a quota hunt on Ballard, Dewey Lake, Higginson-Henry, Kleber, Taylorsville Lake and Yellowbank WMAs shall not be eligible to apply to the same area quota hunt for the next three (3) seasons.

(3) Ballard WMA in Ballard County (except that portion south of Terrell Landing Road) quota youth hunt for deer as specified on permit, fourth Saturday in October for two (2) consecutive days and the fifth Saturday in October for (2) consecutive days.

(4) Barren River WMA in Allen and Barren counties.

(a) Quota youth hunt: any deer, second Saturday in October for two (2) consecutive days.

(b) Modern gun, archery and muzzle-loading gun hunting shall conform to statewide administrative regulations.

(5) Beaver Creek WMA in McCreary and Pulaski counties, and Mill Creek WMA in Jackson County.

(a) Archery hunt: antlered deer only, October 15 through the Friday preceding the second Saturday in November and the Monday following the quota hunt through December 31.

(b) Quota hunt: antlered deer only, first Saturday in December for two (2) consecutive days.

(6) Cane Creek WMA in Laurel County.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November and the Monday following the first Sunday in December through December 31.

(b) Gun hunt: antlered deer only, second Saturday in November.

(7) Central Kentucky WMA in Madison County.

(a) Archery hunt: any deer, December 18 through January 15.

(b) No gun deer hunting allowed.

(8) Clay WMA in Nicholas County. Archery hunt: antlered deer only, October 15 through the Friday preceding the second Saturday in November.

(9) Dewey Lake WMA in Floyd County.

(a) Archery hunt: antlered deer only, October 1 through October 14, November 1 through 5, November 8 through 12, November 18 through December 3, and December 6 through 31; any deer, October 15 through October 31.

(b) Quota hunt: antlered deer only, first Saturday in December for two (2) consecutive days.

(c) Youth quota hunt: any deer, first Saturday in November for two (2) consecutive days.

(10) Grayson Lake WMA in Carter and Elliott counties.

(a) Youth quota hunt: any deer, first Saturday in November for two (2) consecutive days and the first Saturday in December for two (2) consecutive days. Only on that portion west of Route 1496, and east of the line delineated by the following: Bruin Creek, the Bruin Creek Fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork. This is the only firearm deer hunting permitted on the area.

(b) Archery and crossbow hunt: any deer, except on the portion west of Route 1496, and east of the line delineated by the following: Bruin Creek, the Bruin Creek Fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork. October 1 through December 31.

(11) Higginson-Henry WMA in Union County.

(a) Quota hunt for deer as specified on permit, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: only antlerless deer may be taken during the period October 1 through 15. Any deer may be taken with the white tag, or an antlerless deer may be taken with the yellow tag during the period October 16 through December 31.

(12) Kleber WMA in Owen and Franklin Counties.

(a) Quota hunt: any deer, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: any deer, third Saturday in October through December 31.

(13) Lapland WMA in Meade County.

(a) Quota hunt: any deer, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: any deer, October 1 through December 31.

(14) Paintsville Lake WMA in Morgan and Johnson Counties.

(a) Quota hunt: antlered deer only, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: antlered deer only, October 1 through November 12, November 23 through December 3 and December 6 through 31.

(15) Pennyrile WMA in Caldwell, Christian, and Hopkins Counties, and Tradewater WMA in Hopkins County.

(a) Quota hunt: antlered deer only, the first Saturday in December for two (2) consecutive days.

(b) Limits: one (1) antlered deer only.

(c) Archery hunting: conforms to statewide administrative regulations except that only antlered deer shall be taken.

(16) Pioneer Weapons WMA in Bath and Menifee Counties.

(a) Legal muzzle-loading gun only; crossbows may be used during the entire archery season.

(b) Muzzle-loading gun hunting shall conform to statewide administrative regulations.

(17) Redbird WMA in Clay and Leslie Counties.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November and the Monday following the first Sunday in December through December 31.

(b) Gun hunt: antlered deer only, two (2) consecutive days beginning the second Saturday in November.

(18) Taylorsville Lake WMA in Anderson and Spencer Counties.

(a) Archery hunt: any deer, October 1 through December 31.

(b) Quota hunt: any deer, first Saturday in November for two (2) consecutive days.

(19) West Kentucky WMA in McCracken County.

(a) Archery hunts: any deer, October 1 through 28, **November 1 through** November 18, November 22 through 25, December 6 through 9 and December 13 through January 15 on all tracts except posted zones.

(b) Posted zones: designated posted zones shall be opened to archery hunts on December 13 through January 15.

(c) Quota hunt 1: any deer, third Saturday in November for two (2) consecutive days.

(d) Quota hunt 2: any deer, second Saturday in December for two (2) consecutive days.

(e) Youth quota hunt: any deer, last Saturday in October for two (2) consecutive days.

(f) All gun hunters are limited to muzzle or breech-loading shotguns only.

(g) No firearms permitted on any posted zone at any time.

(h) Crossbow hunt: beginning November 1 and continuing for fourteen (14) consecutive days.

(i) Limits: two (2) deer, one (1) of which shall be antlerless and tagged with the yellow or white tag, the other deer may be antlered or antlerless and tagged with a WMA tag issued on the area. Only one (1) WMA tag shall be issued to an individual. A bowhunter who has taken a deer on this WMA with a WMA tag shall not hunt in the quota hunt.

(20) White City WMA in Hopkins County.

(a) Archery hunt: October 1 through December 31.

(b) Quota hunt 1: the second Saturday in November through the following Wednesday.

(c) Quota hunt 2: the Thursday following the second Saturday in November through the following Monday.

(d) Limit: one (1) deer.

(21) Yellowbank WMA in Breckinridge County.

(a) Quota hunt: any deer, first Saturday in November for two (2) consecutive days.

(b) Archery hunt: antlered deer only October 1 through 14 and any deer, October 15 through December 31.

Section 10. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: August 9, 1993
FILED WITH LRC: August 10, 1993 at 9 a.m.

TOURISM CABINET
Department of Fish and Wildlife Resources
(As Amended)

301 KAR 3:030. Year-round season for some birds and animals.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.330, 150.360, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025, 150.170, 150.360

NECESSITY AND FUNCTION: This administrative regulation pertains to the open season for unprotected species of wild birds and wild animals. [~~Since all wildlife is protected unless declared unprotected,~~] This administrative regulation is necessary to establish the species that can be hunted year-round, and to insure that only those species [~~declared~~] unprotected (except crow) may be taken by the use of hand, or mouth, mechanically or electronically operated calling or attracting devices. The function of this administrative regulation is to furnish sport and recreation while utilizing wildlife species that sometimes create a nuisance or a health hazard. This administrative regulation enacts a closure for hunting some species in early November. The purpose of this amendment is to remove **crows from the list of unprotected species of wild birds and wild animals listed in this administrative regulation.** [~~hunting restrictions imposed by this administrative regulation from November 1 to midnight on the day of deer gun season closure so that the issue may be handled in other species specific season administrative regulations.~~]

Section 1. The following species of wild birds and wild animals may be taken, pursued, possessed or transported all year except as stated in Section 3 of this administrative regulation, by any person possessing a valid hunting license: coyote, woodchuck, [~~crow,~~] English sparrow and starling.

Section 2. Unprotected wild animals. All species of moles, mice, rats, shrews, terrestrial invertebrates, snake and lizards, except those which may be protected as rare or endangered species under the provisions of 301 KAR 3:061, are unprotected and may be taken without possessing a hunting license. All other wild birds and wild animals are protected except during open season and as specified by other administrative regulations.

Section 3. Closed season. There shall be a closed season on all species of wild birds and wild animals, protected or unprotected, unless opened by other administrative regulations, from November 1 to midnight on the day of the closure of statewide deer gun season, except that coyotes may be taken during this period by deer hunters, only as specified in administrative regulations 301 KAR 2:047, 301 KAR 2:111 and 301 KAR 2:170. This does not prohibit tenants residing on the land, nor landowners from killing wildlife which is causing damage to persons or property on their land.

Section 4. Except as otherwise provided by administrative regulation, only those birds and animals listed in Section 1 of this administrative regulation may be taken by the use of hand or mouth calling or attracting devices, or mechanically or electronically operated calling or attracting devices during daylight hours only.

Section 5. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: June 15, 1993
FILED WITH LRC: July 29, 1993 at 2 p.m.

COMPILER'S NOTE: The following administrative regulation was amended at the October 4, 1993, meeting of the Administrative Regulation Review Subcommittee. However, this administrative regulation was deferred at the promulgating agency's request to the November 1, 1993, meeting.

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

401 KAR 65:010. Vehicle emission control programs.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-710 to 224.20-765, 57 FR 52987-53014, November 5, 1992, 40 CFR Part 51, Part 86, Subparts B, D, and N, Appendix B to Subpart S, U.S. EPA Technical Guidance, High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications, May 1993, 42 USC 7401 through 7671q

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-735

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe

administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides the requirements for vehicle emission control programs in the Commonwealth.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given them in 401 KAR 65:001.

(1) "Antitampering and antimisfueling program" means an emission control program that provides for inspection of vehicles to detect removal or destruction of factory-installed emission control equipment or devices and use of improper fuels in vehicles.

(2) "Antitampering and antimisfueling inspection" means an inspection conducted pursuant to Section 6(2) of this administrative regulation to detect the presence of tampering and the use of leaded gasoline.

(3) "Automobile or truck" means a vehicle with at least four (4) wheels registered in the Commonwealth having a gross vehicle weight (GVW) of 18,000 pounds or less and licensed to operate upon the public highways for the purpose of transporting persons or property.

(4) "Basic vehicle inspection and maintenance program" or "basic program" means an emission control program implemented in a program area that requires vehicles subject to this administrative regulation to receive the **biennial** [~~annual~~] testing required in Section 6(1) through (4) and (6) of this administrative regulation, as applicable, to demonstrate compliance with the standards of Section 5(1) and (3) of this administrative regulation.

(5) "Certificate of registration" or "registration" means the document issued by county clerks pursuant to KRS Chapter 186 indicating that the owner or operator has properly registered the vehicle, or a document issued for that purpose from another state, territory, or country.

(6) "Certification period" means the period for which a compliance or exemption certificate (other than a permanent exemption certificate issued pursuant to Section 4(1) of this administrative regulation) is valid.

(7) "Compliance certificate" is governed by the definition in KRS 224.20-710(1).

(8) "Contractor" means an independent contractor as governed by the definition in KRS 224.20-710(2).

(9) "Control system" is governed by the definition in KRS 224.20-710(3).

(10) "Dynamometer" means a device for measuring the horsepower of a motor vehicle engine.

(11) "Enhanced vehicle inspection and maintenance (I/M) program" or "enhanced program" means an emission control program implemented in a program area that requires vehicles subject to this administrative regulation to receive the **biennial** [~~annual~~] testing required in Section 6(1) through (6) of this administrative regulation, as applicable, to demonstrate compliance with the standards of Section 5(2) and (3) of this administrative regulation.

(12) "Evaporative emission control system" means an unvented fuel cap, motor vehicle fuel tank, vapor vent hoses, and evaporative canister.

(13) "Evaporative system integrity standard" means the minimum allowable level of pounds per square inch sustainable pressure for a given period of time, pursuant to Section 5(2)(b) of this administrative regulation.

(14) "Evaporative system purge standard" means the minimum allowable rate of gasoline vapor flow from the evaporative canister measured in liters per minute, pursuant to Section 5(2)(b) of this administrative regulation.

(15) "Exemption certificate" is governed by the definition in KRS 224.20-710(4).

(16) "Exhaust emission standard" or "emission standard" means:

(a) For all automobiles in a basic program area and for 1980 and older model year vehicles in an enhanced program area, the maximum allowable levels during a test of carbon monoxide, hydrocarbons, and the sum of carbon monoxide and carbon dioxide percentages appropriate for the age and type of vehicle tested, pursuant to Section 5(1)(a) and (2)(a)1 of this administrative regulation; and

(b) For 1981 and newer model year vehicles in an enhanced program area, the maximum allowable grams per mile of carbon monoxide, hydrocarbons, and oxides of nitrogen, for the applicable vehicle type, model year, and pollutant, pursuant to Section 5(2)(a)2 of this administrative regulation.

(17) "Fleet" means a group of vehicles owned, leased, or operated by a person who has the responsibility of obtaining registration for the vehicles.

(18) "Fleet operator" means the person who has the responsibility of obtaining registration for fleet vehicles.

(19) "Functional standard" means the evaporative system integrity standard (pressure standard) and the evaporative system purge standard.

(20) "Gross vehicle weight" or "GVW" means the combined manufacturer's weight of a vehicle and its maximum load to be carried.

(21) "Inspection station" is governed by the definition in KRS 224.20-710(5).

(22) "Measurable improvement" means any improvement toward achieving the emission or functional standards [~~a decrease in the emissions recorded during a retest~~] when compared to the measured results [~~emissions~~] obtained in the initial test.

(23) "Opacity" means the degree to which a motor vehicle's tailpipe exhaust gas plume obstructs the transmission of visible light, as measured by a full-flow, direct reading, continuous reading light extinction opacity meter, pursuant to Section 6(6) of this administrative regulation.

(24) "Opacity standard" means the maximum allowable opacity during an opacity test for the obstruction of visible light appropriate for a diesel vehicle, pursuant to Section 5(3) of this administrative regulation.

(25) "Operator" means a person who owns, leases, or operates a vehicle.

(26) "Owner" is governed by the definition in KRS 186.010(7).

(27) "Person" is governed by the definition in KRS 224.01-010(17).

(28) "Program area" means the county or the contiguous counties which are designated nonattainment for ozone (except marginal) or carbon monoxide pursuant to 401 KAR 51:010, in which a vehicle inspection and maintenance program has been established, pursuant to Section 13 of this administrative regulation.

(29) "Retest" means any test performed after repair.

(30) "Tampering" means removing, disconnecting [~~reducing the effectiveness~~], or rendering inoperative or ineffective the catalytic converter, unvented fuel cap, air pump system, fuel inlet restrictor, exhaust gas recirculation (EGR) valve, positive crank case ventilation (PCV) system, or evaporative system, except to replace the device with a device which is equivalent in design and function to that which was originally installed on the vehicle and which has been approved by an independent, state, or federal laboratory recognized by the U.S. EPA.

(31) "Test equipment" means the analyzers and diagnostic equipment used to test a vehicle's compliance with the emission and functional standards of Section 5 of this administrative regulation, which are approved by the U. S. EPA pursuant to the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, which is incorporated by reference in Section 14 of this administrative regulation.

(32) "Test" or "testing" means the use of test equipment and the application of techniques and methods, approved by the cabinet pursuant to Section 6 of this administrative regulation, to determine

compliance with the allowable exhaust emission standards, the functional standards, and the antitampering and antimisfueling standards, pursuant to Section 5 of this administrative regulation.

(33) "Testing period" means the period of time during which a vehicle is scheduled to be tested to receive a compliance certificate or exemption certificate **and based on the vehicle identification number, as described in Section 3(1)(a) of this administrative regulation**. This period consists of a three (3) month period that commences ninety (90) days prior to the expiration date of the vehicle's **[~~current~~]** certificate of registration. The cabinet shall publish notices of the testing periods pursuant to Section 3(2) of this administrative regulation. (34) "Transient exhaust emissions test" means the analysis of vehicle exhaust emissions during a series of accelerations and decelerations while a vehicle's power axle is mounted on a dynamometer with the vehicle's engine and transmission engaged, pursuant to the test procedures in Section 6(5) of this administrative regulation.

(35) "Vehicle" is governed by the definition in KRS 224.20-710(6).

(36) "Vehicle emission control program" is governed by the definition in KRS 224.20-710(7).

(37) "Vehicle identification number" or "VIN" means the number assigned to the vehicle by the vehicle's manufacturer.

(38) "Vehicle repair facility" means a repair facility which is open to the general public for the repair of automobiles or other vehicles, is legally licensed to be in business, has a published telephone number, and has a federal employer's identification number (FEID number) or Kentucky business tax number if there is no FEID number.

(39) "Vehicle inspection and repair form" means the form issued to the owner or operator of a vehicle when the vehicle is presented for inspection, pursuant to Section 9(2) of this administrative regulation.

Section 2. Applicability. (1) The owner or operator of a 1968 or newer model year vehicle shall not renew a certificate of registration for that vehicle in a county located in a program area unless a current certificate of compliance, issued pursuant to Section 9(1) of this administrative regulation, or a current exemption certificate issued pursuant to Section 4 of this administrative regulation, is presented to the county clerk. This administrative regulation shall apply to:

(a) Owners or operators, including fleet operators, of vehicles that are registered in a county that has been designated nonattainment for ozone (except marginal) or carbon monoxide, pursuant to 401 KAR 51:010; and

(b) Owners or operators of vehicles owned exclusively by a county; city; urban-county; board of education; emergency and ambulance vehicles operated by nonprofit corporations organized by the local, state, or federal government; and vehicles owned exclusively by a nonprofit volunteer fire department, volunteer fire prevention unit, or volunteer fire protection unit, when the vehicles are assigned to a person or office located in a program area.

(2) The provisions of this administrative regulation which relate to basic program requirements shall apply to the county or counties in which the cabinet has implemented a basic inspection and maintenance program.

(3) The provisions of this administrative regulation which relate to enhanced program requirements shall apply to the county or counties in which the cabinet has implemented an enhanced inspection and maintenance program.

(4) The provisions for tampering shall become applicable:

(a) On the date the vehicle emission control program commences testing vehicles in those program areas that had an antitampering and antimisfueling program in effect before January 31, 1991; and

(b) **Beginning two (2) years after** **[~~One (1) year from the date that~~]** a vehicle emission control program commences testing vehicles in other program areas.

(5) The contractor who enters an agreement with the cabinet to operate an emission inspection station shall be subject to the applicable requirements of this administrative regulation.

(6) Personnel of a permitted inspection station shall be subject to the requirements of Section 12 of this administrative regulation.

(7) Vehicles registered in a nonattainment county governed by a vehicle inspection and maintenance program implemented by a local air pollution control agency established pursuant to KRS Chapter 77 shall be exempt from this administrative regulation.

Section 3. Inspection Frequency and Notification. (1) Inspection frequency.

(a) Owners or operators of vehicles subject to this administrative regulation shall present their vehicles **biennially** for testing **[~~annually~~]** at a permitted inspection station located in the program area **according to the following schedule based on the vehicle identification number:**

1. A vehicle identification number (VIN) ending with an even number or any letter A-L shall be tested in even-numbered years; and

2. A VIN ending with an odd number or any letter M-Z shall be tested in odd-numbered years.

(b) A vehicle shall not be tested to receive a compliance certificate pursuant to Section 9(1) of this administrative regulation, or shall not receive an exemption certificate pursuant to Section 4 of this administrative regulation, prior to the vehicle's testing period, except as provided in Section 4(2) and (3) of this administrative regulation.

(c) If a vehicle is inspected after the vehicle's testing period to receive a compliance or exemption certificate, the owner or operator shall pay the additional fee provided in Section 8(5) of this administrative regulation.

(d) The owner or operator shall pay the applicable fees, pursuant to Section 8 of this administrative regulation, when each vehicle is presented for testing. A compliance certificate, exemption certificate, or vehicle inspection and repair form shall not be issued until all applicable fees are paid, except as provided in paragraph (f) of this subsection.

(e) An owner or operator of a vehicle that has been issued an exemption certificate by the cabinet or contractor; shall be exempt from paragraph (a) of this subsection for the period of time indicated on the exemption certificate, pursuant to Section 4 of this administrative regulation.

(f) Federal, state and local agencies and public or private corporations with vehicles bearing official license plates, assigned to an office or individual in the program area, shall identify a contact person and shall submit, in writing, to the cabinet an initial listing of all assigned vehicles as of January 1 of each year. The listing shall be submitted to the contractor by January 31 of each year and shall include for each vehicle, at a minimum, the vehicle make, model year, VIN, license plate number, and a requested testing period. The contractor shall notify the contact person responsible for approval of changes to the requested testing period by February 15 of each year. The vehicles shall be subject to applicable emission and functional standards and the antitampering and antimisfueling standard of Section 5 of this administrative regulation, to the applicable testing requirements of Section 6 of this administrative regulation, and to the fees provided in Section 8 of this administrative regulation. Fees shall be paid at the time of testing or in a schedule acceptable to the contractor and the cabinet.

(2) Notification.

(a) The cabinet shall notify owners of the testing period assigned to their vehicles by mailing a notice to each owner's address as listed with the Kentucky Transportation Cabinet and shall publish a legal notice or classified advertisement at least one (1) day each month in the newspaper with the largest circulation that is distributed daily in the program area.

(b) The mailed notice shall advise owners that, pursuant to KRS 224.20-720(2), the county clerk shall not renew a vehicle's certificate

of registration without a compliance certificate or an exemption certificate issued by a permitted inspection station located in the program area, and shall notify owners that a vehicle shall be rejected from the inspection station if tampering has occurred.

(c) In addition to the information required in paragraph (b) [~~(c)~~] of this subsection, the notice in the newspaper shall also advise the public of their obligation to have each vehicle tested prior to having the vehicle's certificate of registration renewed and shall specify the testing period for vehicles with certificates of registration due for renewal in the next three (3) months.

(d) Failure of the owner or operator to receive a notice shall not excuse the owner or operator from complying with this administrative regulation.

Section 4. Exemption Certificates. A person shall not issue or use an exemption certificate in violation of this administrative regulation. The following types of exemption certificates shall be issued by the contractor or the cabinet pursuant to the procedures in this section:

(1) Permanent exemption certificate.

(a) The owners or operators of vehicles equipped to operate exclusively on fuels other than gasoline or diesel fuel shall present the vehicle for inspection by the contractor during the initial testing period.

(b) If the cabinet confirms that the vehicle is not equipped to operate with gasoline or diesel fuel, a permanent exemption certificate shall be issued.

(c) The owner or operator of a vehicle, for which a permanent exemption certificate has been issued, shall not operate the vehicle if it is altered so that it may operate using gasoline or diesel fuel, without presenting the vehicle for testing at a permitted inspection station within thirty (30) days after the vehicle has been altered.

(2) Temporary exemption certificate.

(a) A temporary exemption certificate shall be issued by the cabinet if the owner or operator demonstrates and affirms to the cabinet, pursuant to subsection (4) of this section, that the vehicle will not be available for testing during the testing period. The owner or operator of a vehicle shall not seek a temporary exemption certificate to avoid testing which would otherwise be required.

(b) The owner or operator shall notify the cabinet when the vehicle will be available for testing and provide the VIN, proof of ownership, and the driver's license of the owner.

(c) The temporary exemption certificate shall expire thirty (30) days after the date the owner or operator indicates that the vehicle will be available for testing, except that the cabinet may extend the temporary exemption certificate upon further demonstration and affirmation by the owner or operator that the vehicle remains unavailable for testing. A temporary exemption certificate shall not be valid beyond the last day of the certification year in which it was issued.

(d) Prior to the expiration of a temporary exemption certificate, the owner or operator shall present the vehicle and the current temporary exemption certificate to a permitted vehicle inspection station when the vehicle is available for testing, and shall pay the test fee specified in Section 8(1) of this administrative regulation and the additional fee specified in Section 8(5) of this administrative regulation.

(e) The owner or operator shall obtain a compliance certificate or a repair cost exemption certificate, as applicable, before the temporary certificate expires. Failure of the owner or operator to obtain a compliance certificate or exemption certificate prior to the expiration of the temporary exemption certificate shall result in the cabinet's denial of another temporary exemption certificate and shall subject the owner or operator to penalties for failure to comply with KRS 224.20-710 to 224.20-765.

(3) Certification period exemptions.

(a) An exemption certificate shall be issued by the cabinet if the owner or operator demonstrates and affirms to the satisfaction of the cabinet, pursuant to subsection (4) of this section, that the vehicle will not be operated in the program area for more than thirty (30) days during a certification period.

(b) The owner or operator shall present to the cabinet the documentation demonstrating that the vehicle will not be operated in the program area, the VIN, proof of ownership, the driver's license number or Social Security number of the owner, and the location of the vehicle during the certification period. The owner or operator shall pay the exemption certificate fee specified in Section 8(1) of this administrative regulation.

(c) An exemption certificate shall be issued by the cabinet for a given certification period if the owner or operator demonstrates to the satisfaction of the cabinet that the vehicle has a valid compliance or exemption certificate issued by an equivalent emission control program approved by the U.S. EPA as part of a state implementation plan. The certificate shall be valid for the period that the certificate would have been valid if it had been issued pursuant to this administrative regulation. The owner or operator shall pay the exemption certificate fee specified in Section 8 of this administrative regulation.

(4) Acceptable proof for temporary and certification period exemptions.

(a) Requests for a temporary or certification period exemption shall be in the form of an affidavit signed by the owner or operator, stating the reason and the length of time the vehicle will be located out of the program area, or otherwise unavailable for testing, and shall include the address where the vehicle will be located during the period.

(b) Military personnel who are on active duty and who will be stationed 250 miles or more from a program area during a certification period may be granted an exemption if the cabinet receives a copy of the military orders or letter from their commanding officer or executive officer verifying that the assignment is 250 miles or more from the program area and that the assignment will continue during the period for which the exemption is requested.

(c) Owners or operators of vehicles subject to this administrative regulation who are registered as full-time students at a college, university, or other school, which is 250 miles or more from a program area, may be granted an exemption if the school's registrar verifies in writing the student's school address and the period of enrollment.

(d) Owners or operators of vehicles subject to this administrative regulation may request temporary or certification period exemption certificates by mail provided the owner or operator and vehicle meet the applicable requirements of this subsection. The request must be received no less than twenty (20) working days prior to the vehicle registration expiration date.

(5) Repair cost exemption certificates. The contractor may issue a repair cost exemption certificate, valid for the stated certification period, to the owner or operator of a vehicle subject to this administrative regulation if the following criteria have been met:

(a) The vehicle has achieved at least a measurable improvement in the amount of emissions for each pollutant or opacity standard for which the vehicle was failed, as measured from the first exhaust emission test; and

(b) The owner or operator of the vehicle which failed the retest has spent at least the following amounts for repairs on the applicable model year vehicle in attempting to have the vehicle pass a retest in the applicable program area:

1. For 1980 or older model years, the owner or operator has spent at least seventy-five (75) dollars;

2. For 1981 and newer model years, the owner or operator has spent at least $200;

3. For vehicles covered by 42 USC 7541(b), the owner or operator has spent at least $200[~~, including the manufacturer's or dealer's warranty~~].

4. In a basic or enhanced program area, the owner or operator of a diesel vehicle has spent at least seventy-five (75) dollars.

(c) The costs applied toward a cost exemption certificate shall be only for repairs based on appropriate diagnostics to correct problems

related to an emission test failure, and shall not include costs to replace or repair components as a result of tampering. The cost of repairs to correct leaking, defective, or detached exhaust systems shall not be included in receiving a repair cost exemption certificate. [~~Costs for repairs that are covered under a manufacturer's or dealer's warranty shall be included in determining if a repair cost exemption certificate shall be issued.~~]

(d) Labor costs shall not be applied toward a cost exemption certificate for repairs performed on a vehicle by the owner or operator of that vehicle except as provided in Section 7(2)(f) of this administrative regulation.

(e) [~~(d)~~] An owner or operator may appeal the denial of a repair cost exemption certificate pursuant to the provisions of Section 11 of this administrative regulation.

Section 5. Standards of Performance for Vehicles. (1) Basic program area. The owner or operator of a vehicle subject to the requirements of a basic program area shall be issued a compliance certificate, pursuant to Section 9(1) of this administrative regulation, if the vehicle meets the applicable emission, functional, and antitampering and antimisfueling standards of this subsection and the applicable testing requirements of Section 6 of this administrative regulation.

(a) Exhaust emissions standard. The maximum allowable levels of carbon monoxide (CO) and hydrocarbons (HC), as measured by the idle exhaust emissions test, pursuant to Section 6(3) of this administrative regulation, for the applicable vehicle type, model year, pollutant, and gross vehicle weight (GVW) shall be as listed in the following table:

Vehicle Model Year	Vehicles Registered as Automobiles	* Vehicles having GVW of 6,000 lbs or less	Vehicles with GVW greater than 6,000 lbs but equal to 10,000 lbs or less	Vehicles with GVW greater than 10,000 lbs but equal to 18,000 lbs or less
	HC (ppm) CO (%)	HC (ppm) CO (%)	HC (ppm) CO (%)	HC (ppm) CO (%)
1968	950 8.5	1300 8.0	1500 9.0	1500 9.0
1969	900 8.5	1200 8.0	1100 8.0	1300 8.5
1970	850 8.4	1100 8.0	1100 8.0	1300 8.5
1971	850 8.1	1000 8.0	1000 8.0	1200 8.5
1972	800 8.0	1000 7.8	950 7.5	1000 7.0
1973	800 7.8	1000 7.8	950 7.5	1000 7.0
1974	800 7.6	950 7.8	950 7.5	1000 7.0
1975	700 7.5	900 7.0	950 7.5	1000 7.0
1976	700 6.5	700 7.0	900 7.5	1000 7.0
1977	650 6.3	700 7.0	850 7.5	900 6.5
1978	600 5.5	700 6.3	700 6.0	900 6.5
1979	600 4.5	450 5.5	650 5.5	900 6.5
1980	250 2.5	450 4.0	550 5.0	900 6.5
1981	220 1.2	350 1.7	450 4.0	500 3.5
1982	220 1.2	220 1.2	400 2.5	400 3.0
1983	220 1.2	220 1.2	350 2.0	400 3.0
1984	220 1.2	220 1.2	220 1.5	250 1.5
1985 & newer	220 1.2	220 1.2	220 1.2	250 1.5

* Other than vehicles registered as automobiles.

(b) Evaporative system integrity standard (pressure standard). For 1981 and newer model gasoline vehicles, the pressure standard for the evaporative emission control system shall be a minimum sustainable pressure of eight (8) inches of water for a maximum period of two (2) minutes, as measured by the evaporative system integrity test, pursuant to Section 6(4) of this administrative regulation.

(c) Antitampering and antimisfueling standard. Vehicles shall be inspected by inspection station or cabinet personnel for tampering and misfueling, pursuant to Section 6(2) of this administrative regulation. A vehicle which shows evidence of tampering or misfueling shall be determined as not achieving this standard.

(2) Enhanced program area. The owner or operator of a vehicle subject to the requirements of an enhanced program area shall be issued a compliance certificate, pursuant to Section 9(1) of this administrative regulation, if the vehicle meets the emission, functional, and antitampering and antimisfueling standards of this subsection and the applicable testing requirements of Section 6 of this administrative regulation.

(a) Exhaust emissions standard.

1. For 1980 and older model year vehicles, the maximum allowable levels of carbon monoxide (CO) and hydrocarbons (HC), as measured by the idle exhaust emissions test, pursuant to Section 6(3) of this administrative regulation, for the applicable vehicle type, model year, pollutant, and gross vehicle weight (GVW) shall be as listed in the table in subsection (1)(a) of this section.

2. For 1981 and newer model year vehicles, the maximum allowable grams per mile (gpm) of carbon monoxide, hydrocarbons, and oxides of nitrogen, as measured by the transient exhaust emissions test, pursuant to Section 6(5) of this administrative regulation, for the applicable vehicle type, model year, and pollutant shall be as listed in Section 85.2205(a) of the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, which is incorporated by reference in Section 14 of this administrative regulation.

(b) Evaporative system purge standard. For 1981 and newer model year vehicles, the purge standard for the evaporation emission control system shall be a minimum flow of one (1.0) standard liter at the conclusion of the transient exhaust emissions test, as measured by the test equipment, pursuant to Section 6(5)(a) of this administrative regulation.

(c) Evaporative system integrity standard (pressure standard). For

1981 and newer model gasoline vehicles, the pressure standard for the evaporative emission control system shall be a minimum sustainable pressure of eight (8) inches of water for a maximum period of two (2) minutes, as measured by the evaporative system integrity test, pursuant to Section 6(4) of this administrative regulation.

(d) Antitampering and Antimisfueling standard. Vehicles shall be inspected by inspection station or cabinet personnel for tampering and misfueling, pursuant to Section 6(2) of this administrative regulation. A vehicle which shows evidence of tampering or misfueling shall be determined as not achieving the standard.

(3) Emission standard for diesel vehicles for basic and enhanced program areas. A diesel vehicle shall not emit visible emissions in excess of ten (10) percent opacity for ten (10) or more consecutive seconds, as measured by the test equipment pursuant to Section 6(6) of this administrative regulation, when tested at idle engine speed.

(4) Cause for rejection of vehicles. In a basic or an enhanced program area, a vehicle shall be rejected from the inspection station if:

(a) The inspection station or cabinet personnel are unable to determine readily that the vehicle presented at the inspection station is the vehicle identified in the VIN, certificate of registration, or license tag; or

(b) The vehicle, its contents, load, passengers, or operator causes, or has the appearance of causing, an unsafe condition at the inspection station. The test shall not be performed until the condition is corrected. The conditions for rejection shall include, but shall not be limited to, the following:

1. Leaking fuel;

2. The leaking of potentially toxic or hazardous materials, other than normal drive-train fluid;

3. Excessive noise;

4. Operator incapacity;

5. Operator or passenger misconduct;

6. The vehicle tire cords are visible;

7. The vehicle has a space-saver spare tire mounted on the drive axle;

8. The vehicle is pulling a detachable trailer or load;

9. The vehicle stalls repeatedly;

10. The vehicle has leaking, defective, or detached exhaust systems;

11. The vehicle has exhaust tailpipes altered from those of the original manufacturer of the vehicle so that proper access by the test equipment required in Section 6 of this administrative regulation is not possible; or

12. The inspection would cause inspection station personnel to be in an unsafe position, as determined by the contractor. Inspection station personnel shall document all rejections and the reasons for the rejection.

Section 6. Test Procedures for Vehicles. (1) Operator procedures for gasoline vehicles. The operator shall operate the vehicle for testing pursuant to the conditions specified in this section and at the direction of inspection station personnel as follows:

(a) Unless otherwise directed, the operator shall remain in the vehicle while the vehicle is in the test lane.

(b) During testing, the engine shall be at normal operating temperatures and shall not be overheating (as indicated by a gauge or warning light or boiling radiator), with all accessories turned off.

(c) Vehicles shall be approximately level during testing.

(d) If the engine stalls during testing, the test shall be restarted.

(2) Antitampering and antimisfueling inspection.

(a) The inspection station personnel shall perform an antitampering and antimisfueling inspection on all 1975 [~~1980~~] and newer model year vehicles presented to the inspection station for compliance with KRS 224.20-710 to 224.20-765. The procedure shall consist of a visual inspection for the presence of tampering and tail pipe lead deposits indicating the use of leaded fuel.

(b) [~~(a)~~] If tampering or misfueling is found, the owner or operator shall be so informed and shall be issued a vehicle emission repair form. Tampered or misfueled vehicles shall not complete the applicable exhaust emission and function test procedures until the vehicle has been repaired.

1. Missing or damaged components shall be repaired, regardless of expense. The cost of repair or replacement of these components is not subject to a repair cost exemption certificate provided in Section 4(5) of this administrative regulation.

2. Upon repair or replacement of tampered, inoperable, missing or malfunctioning components (except for an unvented fuel cap), the owner or operator shall present the vehicle for inspection and the completed vehicle inspection and repair form, signed by a mechanic of a vehicle repair facility, demonstrating that the components have been repaired or replaced and are in proper operating condition.

[~~(b) Tampered or misfueled vehicles shall complete the applicable exhaust emission and functional procedures of this section.~~]

(3) Idle exhaust emission test procedure for gasoline vehicles. The idle exhaust emissions test shall measure vehicle exhaust gas emissions for carbon monoxide (CO), carbon dioxide (CO_2), and hydrocarbons (HC) and shall be performed pursuant to 40 CFR 51, Subpart S, as promulgated in the Federal Register, of November 5, 1992 (57 FR 52987) which is incorporated by reference in Section 14 of this administrative regulation, and the following:

(a) Analyzers shall be warmed up, in stabilized operating condition, and adjusted according to manufacturer's specifications.

(b) If the vehicle is capable of being operated with gasoline or other fuels, the test shall be conducted using gasoline.

(c) Multiple exhaust vehicles shall be tested by sampling all exhaust points simultaneously or by other methods approved by the cabinet.

(d) Inspection station personnel shall attach the tachometer. With the engine operating at idle speed, the emergency brake on, and the transmission in "neutral" for vehicles with manual transmissions or "park" for vehicles with automatic transmissions, the sampling probe of the gas analytical system shall be inserted at least ten (10) inches into the tail pipe. If the probe cannot be inserted at least ten (10) inches, exhaust pipe extension boots shall be used.

(e) First chance to pass. The initial idle mode shall have a maximum duration of ninety (90) seconds and a minimum duration of thirty (30) seconds.

1. The analysis shall begin after an initial time delay of ten (10) seconds. If, within thirty (30) seconds the hydrocarbon reading is equal to or less than 100 parts per million and the carbon monoxide reading is five-tenths (0.5) percent or less, the vehicle shall pass the test. If these readings are not obtained within the first thirty (30) seconds, the test shall be continued for up to an additional sixty (60) seconds. If at any time during the sixty (60) second period, the readings for both hydrocarbons and carbon monoxide meet the emission standards for the applicable vehicle model year and GVW, the vehicle shall pass the test.

2. If at any time during the test the carbon monoxide plus carbon dioxide concentration falls below six (6) percent, the test shall be voided.

(f) Second chance to pass. If the vehicle does not pass the procedure in paragraph (e) of this subsection, the test probe shall be removed, the test timer shall be reset to zero, and a second chance test shall be performed after using one (1) of the following preconditioning procedures:

1. The power axle of the vehicle shall be mounted on a dynamometer. The mode timer shall initiate when the dynamometer speed is within the limits specified for the vehicle engine size. The mode shall continue for a minimum of thirty (30) seconds. The dynamometer test schedule for engine preconditioning prior to a second-chance idle test shall be within the following limits:

Engine Size	Roll Speed	Normal Loading

4 or fewer cylinders	22 - 25 mph	2.8 - 4.1 brake horsepower
5 - 6 cylinders	29 - 32 mph	6.8 - 8.4 brake horsepower
7 or more cylinders	32 - 35 mph	8.4 - 10.8 brake horsepower

2. Full-time four (4) wheel drive vehicles shall be preconditioned with the engine speed at 2500 revolutions per minute (2500 rpm) plus or minus 300 revolutions per minute (±300 rpm) for thirty (3 0) seconds with the transmission in either "park" or "neutral."

3. Immediately following the preconditioning mode and when the vehicle's wheels are no longer moving, the mode timer shall be started and run for a period not to exceed ninety (90) seconds. The test probe shall be reinserted and the procedures described in paragraph (f) of this subsection shall be repeated.

4. If any pair of readings shows passing scores for both hydrocarbons and carbon monoxide, the vehicle shall pass the test. If all readings exceed the hydrocarbon limit or the carbon monoxide limit, or both, the vehicle shall fail the test. The operator shall be informed of the results, and the repairs recommended to correct the system deficiencies shall be included on the vehicle emission repair form.

(4) Evaporative system integrity test (pressure test).

(a) An evaporative system integrity test shall be performed on all 1981 and newer model gasoline powered vehicles presented for the purpose of compliance with this administrative regulation as follows:

(b) Inspection station personnel shall direct the operator of the motor vehicle to shut off the vehicle's engine. The operator shall allow inspection station personnel access to the motor vehicle engine compartment by releasing the hood latch or other method.

(c) Inspection station personnel shall disconnect all components and lines leading from the fuel tank at the junction of the evaporative canister. All lines and components, other than the main vent line, shall be sealed and made air tight. Vehicles with evaporative canisters that are inaccessible to inspection station or cabinet personnel, due to factory design of the vehicle, shall have the pressure test portion of this administrative regulation waived by the cabinet. A missing or damaged evaporative canister shall result in failure of the pressure test.

(d) The main vent line shall be pressurized to fourteen (14) inches of water, not to exceed twenty-six (26) inches of water system pressure, with commercial grade nitrogen. After the pressure is stabilized, the main vent line shall be sealed and the system pressure monitored for a maximum of two (2) minutes. An evaporative system that maintains a constant internal pressure equal to or greater than eight (8) inches of water for a duration of two (2) minutes shall be deemed acceptable.

(e) At the end of the two (2) minute monitoring period the unvented fuel cap shall be removed the monitoring equipment shall be observed for a decrease of internal pressure.

(f) Inspection station personnel shall:

1. Remove all monitoring equipment from the main vent line;

2. Remove all seals from all other components and lines disconnected from the evaporative canister; and

3. Reconnect the system in the configuration in which the vehicle was presented for inspection.

(g) Upon successful completion of paragraphs (d) and (e) of this subsection, the vehicle shall pass the test.

(h) If any of the following occurs, the vehicle shall fail the test. The operator shall be informed of the results, and the repairs recommended to correct the system deficiencies shall be included on the vehicle emission repair form.

1. An internal system pressure of fourteen (14) inches of water is not obtained;

2. The internal system pressure drops below eight (8) inches of water at any time during the two (2) minute monitoring period; or

3. Upon removal of the unvented fuel cap, a decrease in internal pressure is not observed.

(i) The cost of repairs performed on the evaporative emission control system, that are not a result of tampering, may be applied to a repair cost exemption certificate, pursuant to Section 4(5) of this administrative regulation.

(5) Transient exhaust emissions test and evaporative emission purge test of gasoline vehicles. The transient exhaust emissions test and evaporative emission purge test shall be performed pursuant to the procedures prescribed in Sections 85.2205 and 85.2221 of the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, and the following: (The U.S. EPA Technical Guidance is incorporated by reference in Section 14 of this administrative regulation.)

(a) Evaporative emission purge test. Inspection station personnel shall direct the operator of the motor vehicle to shut off the vehicle's engine. The operator shall allow inspection station personnel access to the motor vehicle engine compartment by releasing the hood latch or other method.

1. Inspection station personnel shall connect a flow measurement device where the purge line intersects with the canister. The flow measurement device shall measure the flow of gasoline vapor (in standard liters) during the transient exhaust emissions test procedure.

2. A vehicle shall fail the evaporative emission purge procedure if the flow of gasoline vapor is less than one (1) liter at the completion of the transient exhaust emissions test.

3. Vehicles with evaporative canisters that are inaccessible to inspection station or cabinet personnel, due to factory design of the vehicle, shall have the evaporative emission purge test portion of this administrative regulation waived by the cabinet. A missing or damaged evaporative canister shall result in failure of the purge test.

(b) Transient exhaust emissions test. The operator of the vehicle shall surrender control of the vehicle to inspection station or cabinet personnel to conduct the transient exhaust emissions test procedure.

1. The vehicle engine shall be restarted and the power axle of the vehicle shall be mounted on a dynamometer. The dynamometer rolls shall be rotated until the vehicle laterally stabilizes on the dynamometer.

2. Restraining devices shall be applied to the vehicle to minimize lateral and forward movement of the vehicle.

3. An external engine cooling fan shall be positioned to direct air to the vehicle cooling system.

4. The exhaust collection system shall be positioned to ensure capture of the entire exhaust stream from the tailpipe during the transient driving cycle.

5. The dynamometer power absorption and inertia weight settings shall be selected from the U.S. EPA-supplied

table based upon the vehicle type and number of cylinders or cubic inch displacement of the engine. Vehicles not listed in the table shall be tested using the default power absorption and inertia settings provided in the table in Section 85.2221(5) of the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, which has been incorporated by reference in Section 14 of this administrative regulation.

6. Transient driving cycle. The vehicle shall be driven over the cycle specified in the table in Section 85.2221(e)(1), of the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, which has been incorporated by reference in Section 14 of this administrative regulation.

7. Inspection station or cabinet personnel shall follow a trace (an electronic, visual depiction) of the time/speed relationship of the transient driving cycle. The trace shall be of sufficient magnification and detail to allow accurate tracking and anticipate upcoming speed changes. The trace shall also clearly indicate gear shifts as specified in subparagraph 8 of this paragraph.

8. Shift schedule for manual transmissions. Inspection station or cabinet personnel shall shift gears of vehicles according to the schedule in Section 85.2221(e)(3) of the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, which has been incorporated by reference in Section 14 of this administrative regulation. Gear shifts shall occur at the points in the driving cycle where the specified speeds are obtained except for the shift at 119.0 seconds, which shall occur at the specified time.

9. Inspection station or cabinet personnel shall idle the vehicle for ten (10) seconds as the exhaust analysis equipment samples the ambient air.

10. The lane control computer shall signal the inspection station personnel to initiate the driving cycle. The drive cycle shall have a duration of approximately four (4) minutes.

11. The test equipment shall collect samples of the mass of each pollutant for each second of the following sampling mode and phase schedules:

a. Composite Analysis Schedule

MODE	CYCLE PORTION
1	0 to 60 seconds
2	61 to 119 seconds
3	120 to 174 seconds
4	175 to 239 seconds; and

b. Second-by-second mass analysis schedule

PHASE	CYCLE PORTION
1	0 to 93 seconds
2	94 to 239 seconds

12. If at the completion of the driving cycle, the composite emission analysis in subparagraph 1 of this paragraph exceeds the enhanced emission standards for a pollutant in Section 5(2) of this administrative regulation, the second-by-second emission analysis results of Phase 2 in subparagraph 11b of this paragraph shall be compared to those standards. If the composite emission level for a pollutant is below the enhanced emission standard in Section 5(2) of this administrative regulation, or if the Phase 2 emission level is below the enhanced emission standard, the vehicle shall pass the test for that pollutant.

(c) The owner or operator of a vehicle that fails to meet the emission standard, pursuant to Section 5(2)(a) of this administrative regulation, for any specified pollutant or the evaporate emission purge standard, pursuant to Section 5(2)(c) of this administrative regulation, shall be so informed and the repairs recommended to correct the deficiency shall be included on the vehicle inspection and repair form.

(d) Equivalent methods which have been approved by the cabinet and the U.S. EPA for the Transient Exhaust Emissions Test and Evaporative Emission Purge Test of Gasoline Vehicles may be substituted for the procedures prescribed in this section.

(6) Test procedures for diesel vehicles. The operator of a diesel vehicle shall allow the vehicle to be operated for testing pursuant to the conditions specified Section 6(1) of this administrative regulation and the following:

(a) Diesel-powered vehicles shall be inspected with an opacity meter that is a full-flow, direct reading, continuous reading light extinction type using a collimated light source and photo-electric cell, accurate to within plus or minus five (5) percent.

(b) Separate measurements shall be made on each exhaust outlet on diesel vehicles equipped with multiple exhaust outlets. The reading taken from the outlet giving the highest reading shall be used for comparison with the standard for the vehicle being tested.

(c) A diesel vehicle shall meet the opacity standard specified in Section 5(3) of this administrative regulation to pass the test. If the vehicle fails the test, the operator shall be so informed and the repairs required to correct the deficiency shall be included on the vehicle inspection and repair form.

Section 7. Testing of Fleet Vehicles. (1) The owner or operator of a fleet operating a fleet inspection station to test vehicles that are in that fleet shall comply with this section.

(a) A fleet inspection station shall not be operated without a fleet inspection permit issued by the cabinet.

1. The fleet owner or operator shall submit a complete application for a permit to the cabinet, using Form DEP-V001, Permit Application to Operate a Fleet Vehicle Inspection Station, which has been incorporated by reference in Section 14 of this administrative regulation.

2. The permit shall be valid for one (1) year and may be renewed by the cabinet. For renewal of the permit, the fleet operator shall submit to the cabinet an updated fleet inspection station application form at least forty-five (45), but no more than sixty (60) days, prior to the permit's expiration.

3. The fee for a fleet inspection station permit or permit renewal shall be $200, pursuant to Section 8(6)(d) of this administrative regulation.

(2) The fleet operator shall:

(a) Submit to the cabinet a schedule for the testing of the fleet vehicles and payment of the inspection fees, pursuant to Section 8(7)(a) through (c) of this administrative regulation;

(b) Test the vehicles in the fleet according to the

schedule in the fleet inspection permit. The schedule shall contain the following information:

1 The number of vehicles to be tested;

2. The VINs of the vehicles to be tested;

3. The months the vehicles will be tested; and

4. The operating hours and location of the fleet inspection station;

(c) Use the forms and compliance certificates issued by the cabinet;

(d) Issue exemption certificates pursuant to Section 4 of this administrative regulation;

(e) Use test equipment and procedures approved by the cabinet pursuant to Sections 5 and 6 of this administrative regulation and assure that the test equipment provides a recordkeeping mechanism to record the results of all tests;

(f) Maintain records of all operations associated with the testing of the fleet vehicles, including but not limited to the repairs to fleet vehicles that failed the test;

(g) Make available to the cabinet and the contractor the results of the tests performed by the fleet inspection station;

(h) Provide a procedure for integrating the results of the tests performed by the fleet operator into the recordkeeping system of the contractor who operates the vehicle emission control program in the program area where the fleet is located;

(i) Perform the daily and hourly quality assurance procedures that are prescribed in the contract between the cabinet and the contractor, each day the analyzers are in operation, and allow the cabinet^ or the contractor to perform the other quality assurance activities as prescribed in the contract; and

(j) Maintain an in-house program for the maintenance of vehicles.

(3) A fleet operator may enter into an agreement with the contractor who holds the contract for testing vehicles within the program area where the fleet is located, for testing the fleet vehicles by the contractor outside public testing hours or at mobile inspection stations. The agreement shall not be implemented unless it has been approved by the cabinet.

Section 8. Fees. (1) The fee for testing a vehicle shall be based upon the contract that is awarded and the cabinet's costs of implementing the vehicle emission control program in the program area, unless other fees are also applicable. The fee shall be paid each year that an owner or operator is required to obtain a compliance or exemption certificate.

(2) Unless the vehicle is tested at a fleet inspection station or pursuant to an agreement with the contractor, the fee shall be collected before the testing commences or before an exemption certificate is issued. If the vehicle fails the first test, the first retest shall be provided at no cost if the appropriate vehicle inspection and repair form is satisfactorily completed and returned. Each test performed in addition to the first test and first retest shall be subject to the additional fee specified in subsection (5) of this section. The owner or operator shall submit the properly completed vehicle inspection and repair form for the last failed test at the time of the new test.

(3) The fee for having a vehicle tested before or after its testing period shall be five (5) dollars.

(4) The fee for the issuance of a duplicate compliance certificate or exemption certificate, pursuant to Section 10 of this administrative regulation, shall be five (5) dollars.

(5) The fee for issuing an exemption certificate shall be equal to the cost of the test. A fee shall not be charged for the issuance of a permanent exemption certificate.

(6) The additional fee for the issuance of a compliance certificate or exemption certificate, the year after a temporary exemption certificate was issued to an owner or operator, who did not present the vehicle for testing prior to the expiration of the temporary exemption certificate, shall be twenty-five (25) dollars.

(7) Fees for testing fleet vehicles.

(a) The fee for a compliance or exemption certificate for a fleet vehicle which is tested at a fleet inspection station shall be no less than the fee established by the contract between the cabinet and the contractor.

(b) The fee for a compliance or exemption certificate for a fleet vehicle which is tested by the contractor under an agreement implemented pursuant to subsection (3) of this section, shall be no less than the fee established by the contract between the cabinet and the contractor. The contractor may charge an additional fee which shall not exceed the contractor's additional cost of testing the fleet.

(c) The fees for compliance or exemption certificates issued to fleet vehicles may be paid on a weekly or monthly basis, or as otherwise approved by the cabinet or agreed to by the contractor and the fleet operator, as applicable.

(d) The fee for renewal of a fleet inspection station shall be $200.

Section 9. Forms and Certificates. The contractor shall use only forms, compliance certificates, and other materials that are approved by the cabinet. The following documents may be issued to the owner or operator according to this administrative regulation.

(1) Compliance certificate. The operator of each vehicle which meets the applicable emission, functional, and antitampering and antimisfueling standards specified in Section 5 of this administrative regulation, complies with the testing requirements of Section 6 of this administrative regulation, and has paid the applicable fee specified in Section 8 of this administrative regulation shall be issued a compliance certificate. [~~Compliance or repair cost exemption certificates issued by the contractor for fleet vehicles, or issued pursuant to a test by a mobile station, shall be issued within one (1) month of the vehicle's being eligible for the certificate, and after payment of the certification fee pursuant to Section 8 of this administrative regulation.~~] The compliance certificate shall contain at least the following information:

(a) Inspection station identification;

(b) Date and time of test;

(c) Identification number of the inspector;

(d) Vehicle license number;

(e) VIN, vehicle model year, and vehicle make;

(f) Applicable emission standards;

(g) Emission test results (hydrocarbon, carbon monoxide, sum of carbon monoxide and carbon dioxide percentage, and if applicable, oxides of nitrogen);

(h) Applicable pressure standards;

(i) Evaporative integrity test results (minimum sustained pressure);

(j) Applicable evaporative system purge standards;

(k) Evaporative system purge test results (minimum flow);

(l) Whether the test results are from the first test, first retest, or subsequent retest; and

(m) A unique, encoded test identification number.

(2) Vehicle inspection and repair forms.

(a) A vehicle inspection and repair form shall be issued to the operator of each vehicle which fails a test. The contractor shall indicate the recommended repairs to be performed. The vehicle inspection and repair form is incorporated by reference in Section 14 of this administrative regulation. The form shall be completed and returned to the inspection station personnel at the time of the retest. The owner shall indicate the following items on the vehicle inspection and repair form with supporting documentation:

1. Proof that repairs were performed and repair costs were incurred which were reasonable. Repairs made earlier than thirty (30) days prior to the first test failure for the current testing period shall not be included; and

2. A list of the repairs in sufficient detail for the contractor to determine that the repairs are related to the type of failure shown on the vehicle inspection and repair form.

(b) The person performing repairs on a vehicle shall indicate on the repair form the repairs performed and the itemized costs. The person shall affirm that all the repairs, checks, and adjustments were properly performed in accordance with requirements on the form by signing and printing his name and the date of repairs on the vehicle inspection and repair form. If the repairs were performed by a mechanic at a vehicle repair facility, the repair facility's name, federal employer's identification number (FEID number), or Kentucky business tax number if there is no FEID number, repair date, and business telephone number shall be included on the vehicle inspection and repair form. In the appeals process, if the cabinet determines that the work claimed to have been completed was not done or was not in accordance with stipulations on the vehicle inspection and repair form, the cabinet may withhold issuance of a repair cost exemption certificate, and the owner or operator may be subject to penalties under KRS 224.20-765.

Section 10. Duplicate Certificates. The cabinet may issue a duplicate compliance, exemption, temporary exemption, or repair cost exemption certificate if the original certificate is lost. The owner shall notify the cabinet as soon as possible after the loss is noticed. The fee for a duplicate certificate shall be as prescribed in Section 8(4) of this administrative regulation.

Section 11. Appeals. (1) An owner or operator may appeal the denial of a repair cost exemption certificate if the following conditions have been met:

(a) The owner or operator has spent at least the amount specified in Section 4(5)(b) of this administrative regulation and no measurable improvement in emissions was achieved; or

(b) The owner or operator has spent less than the amount specified in Section 4(5)(b) of this administrative regulation and a mechanic employed at a repair facility affirms that no additional repairs can be performed that would improve the vehicle's emissions or that additional repairs would result in a total repair cost greater than the amount specified in Section 4(5)(b) of this administrative regulation for the vehicle age.

(2) The owner or operator shall present the vehicle to the cabinet and the vehicle shall undergo a comprehensive diagnostics check by the cabinet. Vehicles shall also be subject to an inspection for tampering and misfueling, pursuant to Section 6(2) of this administrative regulation.

(3) The cabinet may require that other repairs in this subsection be performed, if the diagnostics check in subsection (2) of this section verifies that the repairs are necessary and may result in an improvement in the vehicle's emissions. Repairs that the cabinet may require include, but are not limited to: replace the air filter; replace the positive crankcase ventilation valve; replace the evaporative canister; replace the NO_x sensor; adjust the air-to-fuel mixture; adjust the idle speed; adjust or repair the choke; repair float, power valves, needles, seats, and jets; repair vacuum hoses; replace spark plugs; replace plug wires; replace distributor, rotor cap, or points; adjust dwell or timing; replace oxygen sensor; or repair or replace the exhaust gas recirculation valve, carburetor, fuel injector, catalytic converter, electronic control module computer, or secondary air system, if the repair or replacement is covered under a manufacturer's or dealer warranty. The cabinet may issue a repair cost exemption certificate to vehicles that comply with this section if all the required repairs have been performed and the vehicle does not meet the emission and functional standards in Section 5 of this administrative regulation.

(4) Requests for an appeal of a denial of a cost repair waiver shall be made in writing and delivered to the contractor's inspection station manager or other contractor designee who shall promptly forward the request to the cabinet and a cabinet test date shall be scheduled and performed.

Section 12. Inspection Station Personnel Requirements. (1) All inspection station personnel shall successfully complete a training course approved by the cabinet. The training course shall include at least the following components:

(a) Causes and affects of air pollution;

(b) The purposes, functions, and goals of the vehicle emission inspection program;

(c) KRS 224.20-710 to 224.20-765 and this administrative regulation;

(d) Technical details of the test procedures and the rationale for their design;

(e) Emission control device function, configuration, and inspection;

(f) Test equipment operation, calibration, and maintenance;

(g) Quality control procedures and their purpose;

(h) Methods of providing courteous, fair, and efficient service to the public; and

(i) Safety and health issues related to the inspection process.

(2) Successful completion of the training course shall be determined by a written examination with a score of eighty (80) percent or more and successful performance of a complete unassisted vehicle inspection demonstrating proper procedures.

(3) The cabinet shall certify all contractor personnel that successfully complete the requirements of subsection (2) of this section. The certification shall expire two (2) years from the date of issuance. Contractor personnel whose certifications have expired are prohibited from inspecting vehicles until they complete the training requirements in this section and are recertified.

(4) Inspection station personnel shall wear identification tags visible to the public.

(5) Neither the contractor nor any employee of the contractor shall engage in the business of manufacturing, selling, maintaining, or repairing vehicles. The contractor may maintain or repair his own vehicles.

Section 13. Vehicle Emission Control Program Areas, Established. (1) The cabinet shall establish a basic vehicle emission control program in counties in which the entire county has been designated moderate ozone nonattainment in 401 KAR 51:010.

(2) The cabinet shall establish an enhanced vehicle emission control program in counties in which the entire county has been designated a serious, severe, or an extreme ozone nonattainment area and in counties in which the entire county was designated an urban ozone nonattainment area prior to the Clean Air Act Amendments of 1990.

(3) The vehicle emission control programs established pursuant to this administrative regulation shall continue upon redesignation of the program areas to attainment for ozone in 401 KAR 51:010.

Section 14. Incorporation by Reference. (1) The following forms required for vehicle emission control programs are hereby incorporat-

ed by reference:

(a) Form DEP V001, Permit Application to Operate a Fleet Vehicle Inspection Station, July 15, 1993; and

(b) Form DEP-V002, Vehicle Inspection and Repair Form.

(2) The following guidance documents which contain test methods and equipment specifications to be used by the contractor are hereby incorporated by reference:

(a) U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993;

(b) 40 CFR 51, Subpart S, as promulgated in the "Federal Register" of November 5, 1992, (57 FR 52987).

(3) Copies of the materials incorporated by reference in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

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

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

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

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

(e) Hazard Regional Office, 233 Birch Street, Suite 1, Hazard, Kentucky, 41701, (606) 439-2391;

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

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

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: September 14, 1993
FILED WITH LRC: September 14, 1993 at 11 a.m.

COMPILER'S NOTE: The following administrative regulation was amended by the promulgating agency and the Interim Joint Committee on Transportation, and became effective on October 5, 1993.

TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
DIVISION OF TRAFFIC
(As Amended)

603 KAR 3:080. Advertising devices.

RELATES TO: KRS 177.830 to 177.890, 23 USC 148, 23 CFR Part 750

STATUTORY AUTHORITY: KRS 177.860, 23 USC 148, 23 CFR Part 750

NECESSITY AND FUNCTION: KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway and federal-aid primary highways. This administrative regulation is the means used by the Department of Highways to establish those standards. In addition KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally-erected advertising devices which are not in compliance with current state law or administrative regulation. This administrative regulation sets forth standards for determining when the Department of Highways shall pay just compensation.

Section 1. Definitions. (1) "Advertising device" or "device" means as defined in KRS 177.830(5).

(2) "Abandoned" or "discontinued" means that for a period of one (1) year or more that the device:

(a) Has not displayed any advertising matter;

(b) Has displayed obsolete advertising matter; or

(c) Has needed substantial repairs.

(3) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage and process areas which are an integral part of and contiguous to the activity which takes place on the property. In an industrial park, the service road shall be considered within the activity boundary line for the industrial park as a separate entity.

(4) "Allowed" means legal to exist without a permit from the Department of Highways.

(5) "Billboard" or "off-premise advertising device" means a device that contains a message relating to an activity or product that is foreign to the site on which the device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(6) "Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(7) "Commercial or industrial activities" means as defined in KRS 177.830(9).

(8) "Commercial or industrial area" means, as it is applied to interstate and parkway highways only:

(a) The land use for the area as of September 21, 1959 was clearly established by state law as industrial or commercial; or

(b) The land use for the area was within an incorporated municipality as the boundaries existed on September 21, 1959 and is currently zoned for commercial or industrial use at the time of the application for an advertising device permit.

(9) "Commercial or industrial zone" means as defined in KRS 177.830(7).

(10) "Comprehensively zoned" means, as it is applied to FAP highways only, that each parcel of land under the jurisdiction of the zoning authority has been placed in some zoning classification.

(11) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(12) "Destroyed" means that the advertising device has sustained damage by any means in excess of sixty (60) percent of the depreciated replacement cost. The damage is such that to be structurally and visually acceptable, one (1) or more of the following remedies is essential:

(a) Adding guys or struts;

(b) Adding new supports or poles by splicing or attaching to existing supports;

(c) Adding separate new auxiliary supports or poles;

(d) Adding new or replacement peripheral or integral structural bracing or framing; or

(e) Adding new or replacement panels or facings.

(13) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish.

(14) "Federal-aid primary highway" or "FAP highway" means as defined in KRS 177.830(3).

(15) "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing the relationship.

(16) "Interstate highway" means as defined in KRS 177.830(2).

(17) "Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.

(18) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, each direction has its own main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(19) "Nonbillboard off-premise advertising device" means, as it is

applicable to FAP highways only, an advertising device not located on the property which it is advertising and limited to advertising for a church or civic club which includes any nationally, regionally or locally known religious or nonprofit organization.

(20) "Nonconforming advertising device" means an off-premise advertising device which was lawfully erected but does not comply with the provisions of state law or administrative regulation passed at a later date or which later fails to comply with state law or administrative regulation due to changed conditions similar to the following:

(a) Zoning changes;

(b) Highway relocation;

(c) Highway reclassification; or

(d) Changes in restrictions on size, spacing or distance.

(21) "Official sign" means a sign located within the highway right-of-way installed by or on behalf of the Department of Highways or other public agency having jurisdiction. Included in these signs are:

(a) Signs denoting the location of underground utilities;

(b) Signs required by federal, state or local governments to delineate boundaries of reservations, parks or districts;

(c) Street signs or traffic control signs; or

(d) Signs required by state law.

(22) "On-premise advertising device" means an advertising device that contains a message relating to an activity or the sale of a product within the boundaries of the property on which the device is located.

(23) "Parkway" means any highway in Kentucky originally constructed as a toll road whether or not a toll for the use of the highway is currently being collected. As it relates to advertising devices, parkways shall be considered the equivalent of interstate highways.

(24) "Permitted" means legal to exist only if a permit is issued from the Department of Highways.

(25) "Primary business or activity" means that the sale of one product or business activity which takes precedence over any or all other product sales or business activities.

(26) "Protected area" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet of the state-owned highway right-of-way of the interstate, parkway and FAP highways and those areas which are outside urban area boundary lines and beyond 660 feet from the right-of-way of all interstate, parkway and FAP highways within the Commonwealth. Where these highways terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected area" also means all of these areas inside the boundaries of the Commonwealth which are adjacent to the edge of the right-of-way of an interstate highway in an adjoining state.

(27) "Public service sign" means, as it is applicable to FAP highways only, a sign erected or located on a school bus shelter.

(28) "Public service message" means a message pertaining to an activity or service which is performed for the benefit of the public and not for profit or gain of a particular person, firm or corporation. This definition shall apply to signs on school bus shelters on FAP highways only.

(29) "Routine change of message" means, as it relates to a nonconforming advertising device, the message change on an advertising device is from one (1) advertised product or activity to another. This includes the lamination or preparation of panels inside a plant or factory for the changing of messages when this is the normal operating procedure of a company.

(30) "Routine maintenance" means, as it relates to a nonconforming advertising device:

(a) The maintenance of an advertising device which is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting, or manipulating to level or plumb the device;

(b) The routine change of message; and

(c) The fixing of existing panels or facings at a location other than that of the advertising device.

(d) Routine maintenance shall not mean:

1. Adding guys or struts for the stabilization of the device or substantially changing the device; or

2. Replacement of panels or facings or the addition of new panels or facings;

(31) "Traveled way" means the portion of a roadway dedicated to the movement of vehicles, exclusive of shoulders.

(32) "Turning roadway" means a connecting roadway for traffic, turning between two (2) intersecting legs of an interchange.

(33) "Unzoned commercial or industrial area" means as defined in KRS 177.830(8).

(34) "Urban area" means as defined in KRS 177.830(10).

(35) "Visible" means capable of being seen whether or not legible or identifiable without visual aid by a person of normal visual acuity and erected with the purpose of being seen from the traveled way.

Section 2. Signs on Highway Right-of-way. (1) Official signs allowed. An advertising device shall not be erected or maintained within or over the state-owned highway right-of-way except directional or other official signs or signals erected by or on behalf of the state or other public agency having jurisdiction.

(2) Types of official signs. The following official signs (with size limitations) may be allowed on state-owned highway right-of-way:

(a) Directional and other official devices including signs or devices placed by the Department of Highways;

(b) Signs or devices, limited in size to two (2) square feet, denoting the location of underground utilities; or

(c) Signs, limited in size to 150 square feet, erected by federal, state or local governments to delineate boundaries of reservations, parks or districts.

Section 3. General Conditions Relating to Advertising Devices. The requirements of this section shall apply to advertising devices on interstate, parkway and FAP highways.

(1) Advertising device allowed if not visible. An advertising device which is not visible from the main traveled way of the interstate, parkway or FAP highway shall be allowed in protected areas.

(2) Visible from more than one (1) highway. If an advertising device is visible from more than one (1) interstate, parkway or FAP highway on which control is exercised, the appropriate provisions of this administrative regulation or KRS Chapter 177 shall apply to each of these highways.

(3) Nonconforming advertising device may exist. An off-premise nonconforming advertising device may continue to exist until just compensation has been paid to the owner, only so long as it is:

(a) Not destroyed, abandoned or discontinued;

(b) Subjected to only routine maintenance;

(c) In conformance with local zoning or sign or building restrictions at the time of the erection; and

(d) In compliance with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

(e) Performance of other than routine maintenance on a nonconforming device shall cause it to lose its status and to be classified as illegal.

(4) Vandalized nonconforming device.

(a) The owner of a nonconforming advertising device destroyed by vandalism or other criminal or tortious act may apply to the Department of Highways to reerect the advertising device in kind.

(b) The application for the reerection of the advertising device shall contain the following:

1. Plans and pictures showing the proposed new structure to be as exact a duplicate of the destroyed nonconforming advertising device as possible;

2. Sufficient proof that the destruction was the result of vandalism or other criminal or tortious act;

3. Ownership of the advertising device;

4. Dimensions of the destroyed advertising device;

5. Material used in erection of the destroyed advertising device;

6. Durability of the new device;
7. Stanchion type; and
8. Current lease from land owner.

(c) The Department of Highways shall not issue a notice to reconstruct until all of these conditions have been met.

(d) The owner of the vandalized nonconforming advertising device shall not reerect the advertising device until a notice to reconstruct has been issued by the Department of Highways.

(5) Required measuring methods.

(a) To establish protected areas, distances from the edge of a state-owned highway right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the centerline of the highway for a distance of 660 feet inside urban area boundaries and to the horizon outside urban area boundary lines.

(b) To measure distances for the determination of spacing for advertising devices, a line shall be drawn perpendicular from each advertising device to the centerline of the highway to embrace the greatest longitude along the centerline of the highway.

(c)1. V-shaped or back-to-back type billboard advertising devices shall not be more than fifteen (15) feet apart at the nearest point between the two (2) billboards and shall be connected by bracing or a maintenance walkway.

2. The angle formed by the two (2) billboards shall not be greater than forty-five (45) degrees.

(d) The spacing between advertising devices shall be measured as described in KRS 177.863(2)(c).

(6) Criteria for off-premise advertising devices. The following criteria are applicable to any off-premise advertising device located in a protected area:

(a) An off-premise advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a);

(b) V-shaped or back-to-back billboard advertising devices shall be considered as specified in KRS 177.863(2)(b);

(c) A billboard advertising device may contain two (2) messages per direction of travel if the device does not exceed the maximum size stated in KRS 177.863(3)(a);

(d)1. The issuance of billboard permits as they relate to the required spacing between the billboards shall be determined on a "first-come, first-served" basis.

2. Proof of lease or ownership of a site shall accompany the application for a permit submitted to the Department of Highways pursuant to Section 6 of this administrative regulation.

3. An approved advertising device application shall only be valid for one (1) year. If the device has not been constructed in that year, the applicant shall apply for renewal of his approved application prior to erecting the advertising device.

(e) An on-premise advertising device shall not affect spacing requirements for billboard advertising.

(f) A billboard advertising device may only be illuminated by white lights.

(7) Criteria for on-premise advertising devices. The following criteria are applicable to all on-premise advertising devices located in a protected area:

(a) An on-premise advertising device shall have the maximum size specified in KRS 177.863(3)(a) if it is placed within fifty (50) feet of the advertised activity boundary lines.

(b) Only one (1) on-premise device may be located at a distance greater than fifty (50) feet from the activity boundary line.

(c) An on-premise advertising device shall not exceed twenty (20) feet in length, width or height or 150 square feet in area including border and trim but excluding supports if it is farther than fifty (50) feet from the activity boundary line.

(d)1. An on-premise advertising device shall not be located more than 400 feet, measured within the property boundary, from the advertised activity.

2. If using a corridor to reach the location of the device, the corridor shall be not less than 100 feet in width and shall be contiguous to an integral part of and of the same entitlement as the property on which the advertised activity is located.

3. Any other activity which is in any manner foreign to the advertised activity shall not be located on or have use of the corridor between the advertised activity and the location of the device.

4. An activity incidental to the primary activity advertised shall not be considered in taking measurements.

5. When taking measurements for the placement of an on-premise industrial park sign as described in paragraph (j) of this subsection, the access road into the industrial park shall be considered an integral part of the property on which the activity is taking place.

(e) There shall not be requirements for spacing between on-premise advertising devices.

(f) Only the following types of on-premise advertising devices shall be located so that they are visible from the main traveled way of an interstate, parkway or FAP highway:

1. Those indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located;
2. Those showing the name or type of business or profession conducted on the property on which the advertising device is located;
3. Information required or authorized by law to be posted or displayed on the property;
4. Those advertising the sale or leasing of the property upon which the advertising device is located;
5. Those setting forth the advertisement of an activity or sale of products on the property where the advertising device is located; or
6. Signs with a maximum area of eight (8) square feet noting credit card acceptance or trading stamps.

(g) An on-premise advertising device shall advertise only the activity or business conducted upon the property on which it is located.

(h) Brand names shall not be advertised in an on-premise advertising device when the sale of an item with the brand name is incidental to the primary activity or business.

(i) A marquee type on-premise advertising device, such as a device at a typical theater or cinema, may change messages from advertising one (1) legitimate on-premise activity to another. The message change shall not occur more than one (1) time per day.

(j) Industrial park type on-premise advertising devices which shall be limited in area to 150 square feet may contain only the following messages:

1. The name of the industrial park;
2. The city or county associated with the industrial park; or
3. The name of the individual business or industries located in the industrial park.

Section 4. Specific Requirements for Advertising Devices on Interstate and Parkway Highways. (1) Permit if visible. Except for a nonconforming advertising device, an advertising device which is located in a protected area and which is visible from the main traveled way of an interstate or parkway highway shall have an approved permit from the Transportation Cabinet, Department of Highways to be a legal advertising device. Advertising devices closer than fifty (50) feet to the edge of the main traveled way of any interstate or parkway highway shall not be issued a permit.

(2) Criteria for billboard advertising devices.

(a) Billboard advertising devices may be erected or maintained in a protected area of an interstate or parkway highway if the area is a commercial or industrial area and if the advertising device complies with the provisions of KRS Chapter 177 and this administrative regulation as well as applicable county or city zoning ordinances or administrative regulations.

(b) A billboard advertising device structure designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated

by a building, natural obstruction or roadway in such manner that only one (1) off-premise advertising device located within the 500 feet is visible from the interstate or parkway highway at any one time.

(3) Prohibited advertising devices. The erection or existence of the following advertising devices shall not be permitted or allowed in protected areas:

(a) An advertising device which is advertising an activity that is illegal under state or federal law;

(b) An obsolete advertising device;

(c) An advertising device that is not clean and in good repair;

(d) An advertising device that is not securely affixed to a substantial structure;

(e) An advertising device illuminated by other than white lights;

(f) An advertising device which attempts or appears to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or traffic control device;

(g) An advertising device which prevents the driver of a vehicle from having a clear and unobstructed view of official signs or approaching or merging traffic;

(h) An advertising device which contains, includes or is illuminated by any flashing, intermittent or moving lights, except on-premise devices providing public service information including time, date, temperature or weather;

(i) An advertising device which uses lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway, or unless it is of a low intensity or a low brilliance so as not to cause glare or not to impair the vision of the driver of any motor vehicle or to otherwise interfere with any driver's operation of a motor vehicle;

(j) An advertising device which moves or has any animated or moving parts;

(k) An advertising device erected or maintained upon trees or painted or drawn upon rocks or other natural features;

(l) An advertising device exceeding 1,250 square feet in area, including border and trim but excluding supports;

(m) An advertising device erected upon or overhanging the right-of-way of any highway; or

(n) An advertising device which interferes with any official sign, signal or traffic control device.

Section 5. Specific Requirements for Advertising Devices on Federal-aid Primary Highways. (1) Billboard advertising devices on FAP highways. Billboard advertising devices may be permitted in protected areas of FAP highways if they are located in unzoned commercial or industrial areas or commercial or industrial zones and if the devices comply with applicable state, county or city zoning ordinances or administrative regulations.

(a)1. It shall be legal to have a permitted billboard advertising device in an unzoned commercial and industrial area of an FAP highway as long as there is a commercial or industrial activity in the area.

2. Upon the termination or abandonment of the business or industry on which the unzoned commercial or industrial area was based, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) Except for a nonconforming advertising device, a billboard advertising device which is visible from the main traveled way of a FAP highway and in a protected area shall have an approved permit from the Department of Highways.

(c) An unzoned commercial or industrial area shall not be created when a commercial or industrial activity is located more than 300 feet from the right-of-way of the FAP highway.

(d)1. Minimum spacing between billboard advertising devices in unzoned commercial or industrial areas shall be 300 feet unless separated by a building, roadway or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

2. The minimum spacing requirement shall be reduced to 100 feet within incorporated municipalities which do not have comprehensive zoning.

(e) Minimum spacing between billboard advertising devices in any comprehensively zoned commercial or industrial area shall be 100 feet unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

(2) Establishing limits of an unzoned commercial or industrial area.

(a) In measuring distances for the determination of an unzoned commercial or industrial area near FAP highways, two (2) lines shall be drawn from the activity boundary line perpendicular to the centerline of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway.

(b) Measurements for establishing unzoned commercial or industrial areas shall begin at the outside edge of the activity boundary lines and shall be measured 700 feet in each direction.

(3) Nonbillboard off-premise advertising devices on FAP highways permitted.

(a) The owner of a nonbillboard off-premise advertising device shall apply for a permit in accordance with the procedures set forth in Section 6 of this administrative regulation. A metal tag corresponding to the permit shall not be issued by the Department of Highways.

(b) A nonbillboard off-premise advertising device shall not be permitted on or over the state-owned right-of-way of any FAP highway.

(c) Only one (1) nonbillboard off-premise advertising device relating to a particular church or civic organization may be erected in each direction of travel on any one (1) FAP highway.

(d) Spacing between two (2) nonbillboard off-premise advertising devices shall be 100 feet.

(e) A nonbillboard off-premise advertising device shall not affect the spacing requirements for billboards.

(f) Church or civic club type nonbillboard advertising devices which shall be limited in area to eight (8) square feet may contain only the following messages:

1. Name and address of the church or civic club;

2. Location and time of meetings, and a directional arrow; or

3. Special events such as Vacation Bible School, revival, etc. These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet in area.

(4) Public service sign criteria. Public service signs may be allowed if they conform to the following requirements:

(a) The maximum size for a public service sign shall be thirty-two (32) square feet in area including border and trim.

(b)1. The public service sign shall contain a message of benefit to the public which occupies not less than fifty (50) percent of the area of the sign.

2. The remainder of the sign may identify the donor, sponsor or contributor of the school bus shelter.

3. The sign shall not contain any other message.

(c) Only one (1) public service sign on each school bus shelter shall face in any one (1) direction.

Section 6. Required Permits for Advertising Devices. (1) Permit required.

(a) Except for a nonconforming advertising device, a permit shall be required from the Department of Highways for any off-premise advertising device located in a protected area of an interstate, parkway or FAP highway route.

(b) A permit shall be required for each on-premise advertising device on interstate and parkway highway routes.

(c) Compliance with the provisions of this administrative regulation

is required for on-premise advertising devices on FAP routes.

(d) By January 1, 1994 each permitted off-premise advertising device shall have a metal tag supplied by the department attached to the device.

(2) Application for an advertising device permit.

(a) Application for an advertising device permit shall be made on form TC 99-31 as revised in **September, 1993** [~~December, 1992~~]. The application form, completed in triplicate, shall be submitted to the jurisdictional highway district office of the proposed advertising device. The application form is hereby incorporated by reference as a part of this administrative regulation.

(b) The application for an advertising device permit shall be accompanied by the following:

1. Vicinity map;
2. Applicant's plot plan;
3. Location, milepoint and sign plans for the advertising device;
4. A copy of all applicable local permits;
5. A copy of the lease, if applicable; and
6. If the request is for an on-premise advertising device, the application shall include a detailed description of the exact wording of the message to be conveyed on the device. This information may be furnished either by photograph or drawing.

(c) The applicant shall submit three (3) copies of all required documentation.

(d) Copies of this application form may be viewed, copied or obtained from the Department of Highways, Division of Traffic, First Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number of the Division of Traffic is (502)564-3020. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday except state holidays.

Section 7. Illegal or Unpermitted Advertising Devices. (1) Unpermitted advertising devices. The jurisdictional chief district engineer or his representative shall notify the owner of an unpermitted or illegal advertising device by registered letter that the advertising device is in violation of Kentucky's advertising device laws or administrative regulation under the following conditions:

(a) The advertising device which is not located on state-owned highway right-of-way has not been issued a permit; or

(b) The advertising device which is not located on state-owned highway right-of-way for which a permit has been issued is found in violation of state law or this administrative regulation.

(2) Content of notice.

(a)1. If the advertising device appears to be eligible for a permit, the owner shall be given a period of ten (10) days from the date of notification by registered letter, to make application for a permit.

2. If by the end of the ten (10) days the owner does not submit a completed application to the Department of Highways, the owner shall be sent a new notice allowing him a period of thirty (30) days from the date of the second notice to remove the device.

(b) If an advertising device previously issued a permit is changed after the device received approval from the Department of Highways, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making the adjustments or corrections necessary to bring the advertising device into compliance with state law or administrative regulation.

(c) If a permit is not necessary for a particular advertising device but the advertising device is not in compliance with KRS Chapter 177 or this administrative regulation, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making any necessary adjustments or corrections to the advertising device.

(d) An advertising device which is ineligible for a permit or otherwise in violation of KRS Chapter 177 or this administrative regulation shall be declared to be a public nuisance and the advertising device shall be removed by the permittee or owner of the advertising within thirty (30) days after written notification that the advertising device is in violation.

(e) If after the thirty (30) days the noncompliant advertising device remains, the Department of Highways shall take legal action to have the noncompliant advertising device removed or otherwise brought into compliance.

Section 8. Just Compensation for the Removal of an Advertising Device. (1) Buying rights, title, etc. When the Transportation Cabinet determines that it is necessary to remove either a legal or nonconforming advertising device, just compensation shall be paid for the following:

(a) The taking from the owner of the advertising device all right, title, leasehold and interest in the advertising device; or

(b) The taking from the owner of the real property on which the advertising device is located or the right to erect and maintain the advertising device thereon.

(2) Just compensation procedures.

(a) Payment of just compensation shall be determined by an appraisal or value finding.

(b) A nonconforming advertising device shall not qualify for just compensation if:

1. It is destroyed, abandoned, or discontinued;
2. It receives more than routine maintenance; or
3. It does not comply with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

Section 9. Scenic Byways. (1) On any highway designated by the Transportation Cabinet or the Federal Highway Administration as a scenic byway including the Great River Road, additional outdoor advertising devices shall not be erected, allowed or permitted after the date of the designation of the highway as scenic, regardless of the highway classification.

(2) The Great River Road segments are the following:

(a) KY 94 from the Tennessee state line in Fulton County to KY 239 in Hickman County;

(b) KY 239 from KY 94 in Hickman County to KY 123 in Carlisle County;

(c) KY 123 from KY 239 to KY 1022 in Carlisle County;

(d) KY 1022 from KY 123 to US 51 in Carlisle County; and

(e) US 51 in Carlisle County to the Illinois state line.

Section 10. Repeal of Regulation. (1) 603 KAR 3:060, Advertising devices on interstate, parkway and federal-aid primary highways is repealed.

JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: June 15, 1993
FILED WITH LRC: June 15, 1993 at noon

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Bureau of Learning Results Services
(As Amended)

703 KAR 3:060. Procedures for determining rewards and sanctions.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.6455
NECESSITY AND FUNCTION: KRS 158.6455 gives the State Board for Elementary and Secondary Education the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and for certified staff who are not assigned to a school in a local school district. Successful schools

shall be defined in terms of student achievement of the goals set forth in KRS 158.6455, and these goals were adopted by the State Board for Elementary and Secondary Education on December 19, 1991, pursuant to KRS 158.6451. Finally, successful schools shall be defined with reference to the statewide assessment program set forth in KRS 158.6453.

Section 1. Definitions. (1) "School" means the administrative unit of grades for which a school-based council may be established by 1996 pursuant to KRS 160.345.

(2) "School district" means the administrative unit of schools under the jurisdiction of a board of education pursuant to KRS 160.160.

(3) "Accountability index" means the statistic which is the average of the cognitive and noncognitive indices for a school or school district.

(4) "Baseline" means the accountability index score which describes the school or school district's percentage of successful students at the beginning of each biennium.

(5) "Threshold" means the accountability index score which describes the amount of growth required for a school or school district for the biennium.

(6) "Year two (2) accountability index" means the accountability index a school or school district obtains in the second year of the biennium.

(7) "Maximum reward amount" means the percentage of salary set by the General Assembly pursuant to KRS 158.6455. "Maximum reward amount" also may be called "Reward level 51 amount."

(8) "Minimum reward amount" is half of "maximum reward amount." "Minimum reward amount" also may be called "Reward level 1 amount."

(9) "Declines by five (5) percent or more" means obtains an average accountability index for the biennium of five (5) or more points below its baseline for that biennium and obtains a year two (2) accountability index below its threshold goal for the biennium.

(10) "Declines by less than five (5) percent" means obtains an average accountability index for the biennium of less than five (5) points below its baseline for that biennium and obtains a year two (2) accountability index below the threshold goal for the biennium.

(11) "Maintains the previous percentage of successful students" means obtains an average accountability index for the biennium not less than its baseline nor equal to or greater than its threshold for that biennium **and obtains a year two (2) accountability index below its threshold goal for the biennium**.

Section 2. When a school does not have an accountability grade (grades four (4), eight (8) or twelve (12)), that school shall be combined with the school having an accountability grade its students would subsequently attend.

Section 3. When a school has more than one (1) accountability grade, the school's accountability index shall be the weighted average of the accountability indices for each accountability grade in the school.

Section 4. A school district's accountability index shall be the weighted average of its schools' accountability indices.

Section 5. Certified staff in a school or school district shall earn the minimum reward amount when the school or school district's average accountability index for the biennium exceeds its threshold by one (1) point and when at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher.

Section 6. Certified staff in a school or school district shall earn the maximum reward amount when the school or school district's average accountability index for the biennium exceeds its threshold by one (1) point plus the difference between the threshold and the baseline and when at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher.

Section 7. Fifty-one (51) reward levels are established as follows:

Reward Level	Example	Reward Criteria	Amount
One	38	One point above threshold	50% of maximum
Two	38.14	One point above threshold plus 2% of differences between threshold and baseline	51% of maximum
Three	38.28	One point above threshold plus 4% of the difference between threshold and baseline	52% of maximum
Four	38.42	One point above threshold plus 6% of the difference between threshold and baseline	53% of maximum
↓	↓	↓	↓
Fifty-one	45	One point above threshold plus 100% of the difference between threshold and baseline goal	100% of maximum

Section 8. Sanctions shall be applied to schools and school districts pursuant to KRS 158.6455(3)-(7) and the definitions provided in Section 1(9), (10), and (11) of this administrative regulation.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 14, 1993
FILED WITH LRC: July 15, 1993 at 10 a.m.

SCHOOL FACILITIES CONSTRUCTION COMMISSION
(As Amended)

750 KAR 2:010. Education technology funding program guidelines.

RELATES TO: KRS Chapter 157
STATUTORY AUTHORITY: KRS 157.650-157.665
NECESSITY AND FUNCTION: The School Facilities Construction Commission is to promote a partnership between the state and local public school districts to help meet the educational technology needs of Kentucky's students. The General Assembly has appropriated funds for administrative support and for offers of assistance to local public school districts. This administrative regulation describes procedures and the guidelines the School Facilities Construction

Commission will utilize in determining the eligibility and level of participation for each local public school district, for making offers of assistance to school districts, for verifying local public school district funding matches, and for the accumulation of credits by local public school districts that maintain their eligibility.

~~[Section 1. Eligibility. (1) The School Facilities Construction Commission (the "Commission") shall use the statement of need as certified by the State Board for Elementary and Secondary Education (the "State Board") in determining eligibility and the required rate of participation for each local public school district.~~

~~(2) All local public school districts shall have an approved technology plan by July 1, 1993. Each district's plan shall contain a description of unmet technology needs of the district.]~~

~~[Section 2. Rate of Participation. The rate of state participation shall be certified by the state board to the commission. State funds shall be transferred to the local districts based upon a certification and approval of the commission, subject to the approval of the Secretary of Finance and Administration. The amount of assistance available for each local school public district shall be determined by the formula contained in KRS 157.660(1).]~~

Section **1.** ~~[3.]~~ Sources of Local Matching Funds. Local public school districts may match the state offer of assistance from their general fund; from the proceeds of revenue bonds or notes issued on behalf of a district to purchase technology equipment supported by the district's general fund and which are to be retired within three (3) years from the date of issuance; vendor or third party lender leases; **from grants from private sources,** or from interest earned by a district on any school building construction account, provided that such interest is not already committed for expenditure on the construction project.

Section **2.** ~~[4.]~~ Offers of Assistance. (1) Funds available within the Education Technology Escrow Account shall be distributed to local school districts for installation of the Kentucky Education Technology System ("KETS") through the cooperative program established by KRS 157.650 to 157.665, and as provided by Section 2 of this administrative regulation. Subject to approval by the Secretary of the Finance and Administration Cabinet, approximately one-half (1/2) of available funds shall be allocated to local school districts each year during the 1992-94 biennium.

(2) Upon certification of the rate of participation to the commission, the commission's executive director shall notify each eligible district in writing of the amount the district is entitled to receive, and the conditions the district must meet, if it accepts the offer of assistance. Conditions districts must meet to be eligible for assistance are: the district has an unmet technology need as defined in KRS 157.615(15), or an obligation to pay for technology acquired before April 2, 1992; commitment by the district of local school funds equal to the amount of state assistance available to the district under the formula in KRS 157.660(1); and except as provided by KRS 157.655(2), during the 1992-94 biennium, expenditure of state and local technology funds in the priority order listed in the district's technology plan as approved by the state board; and, the sequence of events and deadlines to be met by the local school district in fulfilling its educational technology needs.

Section **3.** ~~[5.]~~ Acceptance of Offers of Assistance. (1) The local board of education shall notify the commission in writing whether it accepts an offer of assistance within sixty (60) days after receipt of the offer of assistance. The local board's response shall indicate how much of the amount of the offer that the district plans to accept. If a school district does not have local matching funds available when the commission's offer of assistance is received, the district may accumulate credits for up to three (3) years from the date of the offer of assistance. If a district does not respond within sixty (60) days after receipt of the offer of assistance it shall be deemed to have rejected the offer of assistance and the amount of the offer shall be redistributed to remaining eligible districts. Upon written request received from a district within the original sixty (60) day period, a single thirty (30) day extension in responding to an offer of assistance may be granted by the executive director.

(2) Local school district shall provide to the commission copies of their boards' minutes reflecting acceptance of offers of assistance. Except as provided in subsection (3) of this section, upon acceptance of offers of assistance, each local school district shall establish in the district's depository bank an "Education Technology Matching Funds Restricted Account", which shall bear interest on the balances in the account. All interest received on the accounts shall be applied to meet educational technology needs in the school district. The districts shall provide the commission with a copy of a bank deposit ticket verifying deposit of the local matching funds in the account.

(3) If a district receives a grant or grants from private sources to serve as the local matching funds, and as a condition of the grant the grant funds are deposited in a trust or similar bank account, the district may submit to the commission a copy of a bank statement showing that the local matching funds are available for expenditure from such account, in lieu of opening an Education Technology Restricted Fund Account.

Section **4.** ~~[6.]~~ Bond Issuance Procedures. The commission shall provide technical advice with reference to the issuance of bonds, or entering into lease agreements to meet district technology needs, to all local school districts who request such advice.

JOE WALTERS, Chairman
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 13, 1993 at 9 a.m.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(As Amended)

803 KAR 2:200. Confined space entry.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: Pursuant to the authority granted to the Kentucky Occupational Safety and Health Standards Board by 338.051 and 338.061, the following administrative regulation is adopted. The function of this administrative regulation is to set forth minimum safety and health requirements for those employees who must enter confined spaces for the purposes of performing their duties in the course of their employment.

Section **1.** ~~[2.]~~ Definitions. (1) "Confined space" **means** a space having the following characteristics:

(a) Limited means for exit and entry; and

(b) Ventilation of the space is lacking or inadequate, allowing for the potential accumulation of toxic air contaminants, flammable or explosive agents, ~~[and/]~~or depletion of oxygen.

(2) "Emergency entry" **means** entry into a confined space necessitated by a sudden and unexpected condition requiring immediate action.

(3) "Toxic air contaminants" **means** those substances listed in Subpart Z of 29 CFR 1910 as adopted by 803 KAR 2:020; and, whenever a substance is not listed in Subpart Z, those substances with exposure limits listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances."

(4) "Lower explosive limit (LEL)" **means** the minimum concentration of gas or vapor below which propagation of flame does not occur on contact with a source of ignition.

(5) "Zero mechanical state (ZMS)" **means** the mechanical state of a machine or equipment in which:

(a) Every power source that can produce a machine or equipment member movement has been locked/tagged out as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(b) Pressurized fluid (air, oil, or other) power lockoffs (shutoff valves), if used, will block pressure from the power source and will reduce pressure on the machine or equipment side port of that valve by venting to atmosphere or draining to tank;

(c) All accumulators and air surge tanks are reduced to atmospheric pressure or are treated as power sources to be locked/tagged out, as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(d) The mechanical potential energy of all portions of the machine or equipment is at its lowest practical value so that the opening of the pipe(s), tube(s), hose(s), or actuation of any valve or lever will not produce a movement which could cause injury;

(e) Pressurized fluid (air, oil, or other) trapped in the machine or equipment lines, cylinders, or other components is not capable of producing a machine motion upon actuation of any valve or lever;

(f) The kinetic energy of the machine or equipment members is at its lowest practical value;

(g) Loose or freely movable machine or equipment members are secured against accidental movement; and

(h) A workpiece or material support, retained or controlled by the machine or equipment, shall be considered as part of the machine or equipment if the workpiece or material can move or can cause machine or equipment movement.

(6) "Agricultural production operation" **means** establishments engaged primarily in the production of crops [~~and/~~]or livestock.

Section **2.** [~~1.~~] Application and Scope. (1) This regulation applies only to those confined spaces, as defined in Section **1(1)** [~~2(1)~~] of this administrative regulation, which are not specifically covered by other administrative regulations adopted by this chapter, such as:

(a) [~~803 KAR 2:020,~~] General industry standards, 29 CFR 1910;

(b) [~~803 KAR 2:027,~~] Maritime standards, 29 CFR 1915-1919; and

(c) [~~803 KAR 2:030,~~] Construction industry standards, 29 CFR 1926.

(2) This administrative regulation does not apply to agricultural production operations.

(3) This administrative regulation does not apply to employers in general industry who are covered by 29 CFR 1910.146, "Permit-required Confined Spaces", as adopted by 803 KAR 2:309.

(4) This administrative regulation does not preempt any specific applicable regulation.

Section 3. Confined Space Entry: Nonemergency and Nonrescue. Except as provided in Section 4 of this administrative regulation, entry into a confined space shall not be made unless the following procedures have been accomplished:

(1) All pipes, lines, or other connections which may carry harmful agents into the confined space have been disconnected or blocked by some means which assures complete closure. In continuous systems, such as but not limited to sewers or utility tunnels, where complete isolation is not possible, written safety procedures to ensure employees' safety and health shall be developed and administered.

(2) Fixed mechanical devices [~~and/~~]or equipment that are capable of causing injury shall be placed at zero mechanical state (ZMS). The electrical equipment, excluding lighting, shall be locked out [~~and/~~]or tagged out in accordance with National Fire Protection Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982.

(3) The internal atmosphere of the confined space shall be tested for oxygen content, flammable or explosive agents, [~~and/~~]or any toxic air contaminant(s) of which an employer, who is or should be reasonably familiar with the practices, procedures, and methods of operation in the industry, has or should have knowledge. If the oxygen content is less than nineteen and five-tenths (19.5) percent (148 mm Hg), or if the flammable or exposure agents are detected in excess of twenty-five (25) percent of the lower explosive limit (LEL), or if the toxic air contaminant(s) are present in levels which exceed allowable limits as set forth in 29 CFR 1910, Subpart Z as adopted by 803 KAR 2:020, and whenever a substance is not listed in Subpart Z, the exposure levels listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances," the following provisions apply:

(a) The confined space shall be ventilated until the unsafe condition(s) are eliminated, and the ventilation shall be continued as long as there is a possibility of recurrence of the unsafe condition(s) while the confined space is occupied by employee(s).

(b) If oxygen deficiency [~~and/~~]or toxic air contaminant level(s) cannot be eliminated by ventilation, or as an alternative to ventilation, employee(s) may be allowed to enter a confined space only with appropriate respiratory protection. Respirator usage shall be in accordance with the requirements of 29 CFR 1910.134 as adopted by 803 KAR 2:020. Respiratory protection shall be provided and maintained at no cost to employee(s). If a self-contained respirator is used, the wearer shall not be permitted to remain within the confined space, when the primary air system is depleted or being replaced. The reserve air supply shall be used only for escape purposes. Employee(s) shall be allowed to enter a confined space containing explosive or flammable agents exceeding twenty-five (25) percent lower explosive limits (LEL), only during emergency or rescue operations.

(4) Provisions shall be made for constant communications: visual, voice and/or other means, between employee(s) within the confined space and an employee in the immediate vicinity outside the confined space.

(5) Provision shall be made for rescue procedures, including rescue equipment and rescue training, as outlined in Section 4 of this administrative regulation.

(6) Ladders or other safe means shall be used to enter and exit confined spaces exceeding four (4) feet in depth.

Section 4. Confined Space Entry: Emergency and Rescue (1) The employer shall establish a written procedure for emergency and rescue methods and operations covering all confined space entries. The procedure shall include at a minimum:

(a) An assessment of the hazard(s);

(b) Personnel required to perform the rescue or emergency entry;

(c) Precautions to be taken while in the confined space;

(d) Personal protective equipment to be used;

(e) Rescue equipment such as but not limited to respirators, life lines, safety belts, safety harnesses, wristlets, hoisting equipment when an employee must be lifted vertically, and other equipment; and

(f) Tools and other equipment to be used.

(2) The employer shall establish a training program to instruct affected employees in the procedures and practices for emergency and rescue confined space entry. The training shall be repeated annually or more often as needed. The employer shall maintain records of the most recent training program conducted. The records shall include the date(s) of the training program, the instructor(s) of the training program, and the employee(s) to whom the training was given.

(3) The employer shall assure that personnel with rescue training, basic first aid, and CPR, in the vicinity of the confined space are readily available to render emergency assistance as may be required.

CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 13, 1993 at 10 a.m.

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

901 KAR 5:080. Delayed registration of deaths.

RELATES TO: KRS Chapter 213
STATUTORY AUTHORITY: KRS 194.050, 211.090, 213.091
NECESSITY AND FUNCTION: KRS Chapter 213 relating to Vital Statistics authorizes the Cabinet for Human Resources to register a delayed certificate of death. The purpose of this administrative regulation is to provide a uniform procedure for registering deaths which were not reported at the time of death in accordance with KRS 213.091 [~~213.110(3)~~].

Section 1. Delayed Registration of Deaths. The registration of a death after the time prescribed by KRS 213.091 [~~213.110(3)~~] shall be registered on the standard certificate of death form in the manner prescribed below:

(1) If the attending physician[~~, medical examiner~~] or coroner at the time of death and the attending funeral director or person who acted as such are available to complete [~~and sign~~] the certificate of death, it shall [~~may~~] be completed, [~~without additional evidence and~~] filed with the State Registrar of Vital Statistics[~~. However, certificates of death filed with the State Registrar of Vital Statistics one (1) year or more after the date of death shall be signed by the attending physician, medical examiner or coroner and the funeral director or person acting as such~~] and shall be accompanied by one (1) item of documentary evidence as specified in subsection (3) [~~(4)~~] of this section.

(2) In the absence of the attending physician[~~, medical examiner~~] or coroner and the funeral director or person who acted as such, the certificate may be filed by the next of kin of the deceased and shall be accompanied by:

(a) An affidavit of the person filing the certificate swearing to the accuracy of the information on the certificate; and

(b) Two (2) documents which identify the deceased and the date and place of death.

(3) [~~In the case of presumptive death, a certified copy of a court order finding that such death has occurred and the date and place of such death shall be received by the State Registrar of Vital Statistics before a death certificate can be filed.~~

~~(4)~~] In all cases, the State Registrar of Vital Statistics may require additional documentary evidence to prove the facts of death **such as** [~~. Items of documentary evidence may be, but are not limited to,~~] the obituary from a newspaper, [~~or~~] records from a funeral home showing services rendered decedent, or a medical record.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 14, 1993
FILED WITH LRC: August 12, 1993 at 11 a.m.

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

901 KAR 5:090. Burial[~~, transportation~~] and disinterment of dead bodies.

RELATES TO: KRS Chapter 213
STATUTORY AUTHORITY: KRS 194.050, 211.090, 213.076 [~~213.100, 213.110~~]
NECESSITY AND FUNCTION: KRS Chapter 213, relating to vital statistics, authorizes the Cabinet for Human Resources to regulate the [~~transportation,~~] disposal, and disinterment of dead bodies. The purpose of this administrative regulation is to establish uniform requirements for the [~~transportation,~~] interment, disinterment and reburial of dead bodies in Kentucky.

Section 1. [~~Burial Transit Permits (Provisional Report of Death). (1) In accordance with KRS 213.100 and 213.110, the funeral director, or person acting as such, shall procure a burial transit permit from the local registrar of vital statistics of the county where death occurred, prior to removal or disposition of the body. The permit shall grant permission for the transportation and burial or other disposition of the body. In the event the body is to be shipped by common carrier the local registrar shall issue the permit in duplicate and a copy shall accompany the body.~~

~~(2) A burial transit permit issued by the appropriate authority of another state accompanying a body shipped into Kentucky and a local burial permit issued by the local registrar shall be deemed permission for burial in this state. Such permit shall be signed by the sexton or other authorized official of the cemetery after burial and shall be filed with the local registrar of the county in which burial occurs.~~

~~(3) In the event a body is to be cremated, the funeral director, or person acting as such, shall so inform the local registrar of the county where death occurred, who shall obtain the approval of the coroner on the burial transit permit as a condition precedent to issuing it as required by KRS 213.125. The funeral director, or person acting as such, shall deliver a copy of the permit bearing the coroner's approval to the crematorium. The person in charge of the crematorium shall sign the permit in the space provided for the sexton's signature after the body is cremated and shall file the permit with the local registrar for the county in which the death occurred. No permit shall be required for the transportation or disposal of the cremated remains.~~

~~Section 2.~~] Interment. (1) Where the disposition of the body is by burial and the outer container for the body is made of concrete, metal, fiber glass, or other impervious material and it is hermetically sealed, all parts of such container shall be buried to a depth of at least two (2) feet below the level of the natural surface of the ground. All other burials shall be at least three (3) feet below the level of the natural surface of the ground measured from all parts of the outer container.

(2) Where impenetrable rock is encountered the local health department may, upon proper application, grant a variance to the depth of burial requirements of this administrative regulation.

(3) The depth of burial requirements of this administrative regulation do not apply where interment is in a mausoleum.

Section 2. [~~3.~~] Disinterment. (1) When one (1) or more bodies are to be disinterred for reburial in the same cemetery, a disinterment reinterment permit shall be procured upon proper application from the local registrar.

(2) When one (1) or more bodies are to be disinterred for reburial in a different cemetery or for other disposal, an application for a disinterment-reinterment permit shall be made to the State Registrar of Vital Statistics. The application shall contain the following information:

(a) Name of deceased, if known;
(b) Date of death;
(c) Original grave site;
(d) Proposed grave site;
(e) Approximate date of removal;
(f) Name of the person or firm who will remove the body or bodies;
(g) A statement by the applicant that he has obtained [~~made, or will make, a reasonable effort to contact and obtain~~] written permission from all members of the same class of the next-of-kin or an order from a court of competent jurisdiction for the removal of the remains; and
(h) A statement by the applicant that he is familiar with and will abide by all applicable laws **and administrative** regulations[~~, and policies~~] relating to the establishment and abandonment of cemeteries and the custody, handling, and disposal of human remains.

Section 3. [~~4.~~] Reburial. (1) All disinterred human remains intended for reburial, and all other contents of the grave, shall be enclosed in a container constructed of strong material and of sufficient size to hold the remains without altering their shape or size. **If** [~~In the event~~] the human remains are not thoroughly decomposed, the container shall be sealed to prevent the escape of liquids or gas.
(2) The depth of burial requirements of Section 1 [~~2~~] of this administrative regulation shall apply to all reburials except that human remains which are thoroughly decomposed need be reburied only to such a depth so that no part of the container is less than two (2) feet below the natural surface of the ground.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 14, 1993
FILED WITH LRC: August 12, 1993 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

DEPARTMENT OF PERSONNEL
(Amended After Hearing)

101 KAR 2:100. Leave regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.1976, 344.030, PL 103-3

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110, 18A.155, 344.030, PL 103-3

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. The Family and Medical Leave Act of 1993 (PL 103-3) as implemented by 29 CFR Part 825 requires the granting of family leave. This regulation is necessary to comply with these statutory requirements.

Section 1. Annual Leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, and each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

A full-time employee must have worked more than half of the workdays in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.

(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year, or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(10) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in paragraph (2) of this section, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency. The effective date of the separation shall be the last workday.

(11) An employee who has been dismissed for cause or who has

failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 2(2) of this regulation.

(12) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant or require the use of accrued sick leave with pay when an employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform the essential functions of his[~~/her~~] duties with or without reasonable accommodation. When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. **The employee shall inform the employer that reasonable accommodation is necessary and shall provide upon request supporting documentation from a certified professional.** [~~It shall be the responsibility of the employee to advise the appointing authority of accommodations that may be necessary and to provide supporting medical evidence.~~] [~~; if there is no such position available, the regulations pertaining to layoff apply.~~] An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority only if the appointing authority has been unable to place the employee in a vacant, budgeted position, with the same agency, for which the employee qualifies. The employee shall be given priority consideration for such vacant position, if he is capable of performing its essential functions with or without reasonable accommodation. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee in within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

(10) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(11) Employees shall be credited for accumulated sick leave

when separated by proper resignation, layoff, retirement, or when granted leave without pay. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon appointment and placed to their credit.

(12) In cases of absence due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, Workers' Compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that Workers Compensation Benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Family Leave. (1) Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked **or been on paid leave** at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family leave without pay. On the first day of January of each year thereafter every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding calendar year shall qualify for twelve (12) weeks of family leave without pay. Unused family leave shall not be carried over from year to year.

(2)(a) A week of family leave is the amount of time an employee normally works each week.

(b) If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the family leave shall be used for calculating the employee's normal work week.

(c) If there has been a permanent or long-term change in the employee's schedule (for reasons other than family leave), the hours worked under the new schedule shall be used for calculating the employee's normal work week.

(3) An appointing authority shall grant family leave, upon the receipt of a completed application from an employee. The appointing authority shall require the employee to utilize accumulated sick, annual and compensatory leave prior to granting unpaid family leave, provided that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family leave shall be reduced by the amount of paid leave used. A completed application means the request form and the medical certification required by subsection (4) of this section. The employee shall make the application as far in advance of the start of the leave as reasonable. Family leave shall be granted:

(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child under an agreement with an agency of the Commonwealth or other state government. An appointing authority may require a couple in the employ of an agency to limit the total amount of family leave to twelve (12) weeks where leave is sought in connection with the birth, adoption or placement of a child;

(b) Within one (1) year of the birth of a child of the employee, adoption by the employee or placement with the employee of a foster child, for the care of such newborn, adopted, or foster child;

(c) To an employee to care for the employee's spouse, parent, child (including biological, adopted, step, or foster), or other family member of similarly close blood or legal relationship (who has resided with the employee for not less than thirty (30) days prior to application), if the spouse, child, parent or family member has a serious health condition. A child includes one who is over eighteen (18) years of age and who is incapable of self-care because of a mental or physical disability. A serious health condition is a condition which requires inpatient care or continuing treatment by a health provider which renders the employee incapable of performing the duties of the employee's position. Where inpatient care is not involved, the expected absence from work, or from school, or incapacity in performing other daily activities of a family member shall be for a period of more than three (3) days.

(d) An appointing authority shall grant family leave because of a serious health condition, of the employee, that makes the employee temporarily unable to perform the essential functions of his position.

(4)(a) The appointing authority shall require an employee granted family leave for a serious health condition to supply a certification, on a form prescribed by the commissioner, from a health care provider that includes a statement that the employee is needed to care for a family member, or, that the employee's presence would be beneficial to the family member. An employee requesting intermittent leave or leave on a reduced leave schedule due to serious health condition of the employee or family member shall be required to supply a certification from a licensed health care provider that such leave is medically necessary and the expected duration and schedule of such leave. A "health care provider" includes: doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, and nurse midwife, or certified Christian Science practitioner.

(b) If an employee submits a complete certification signed by the health care provider, the appointing authority shall not request additional information from the employee's health care provider. If the appointing authority has reason to doubt the validity of a medical certification the appointing authority may require the employee to obtain a second opinion at the agency's expense. The appointing authority shall designate the health care provider to furnish the second opinion. The designated health care provider shall not be employed on a regular basis by the agency.

(c) If the opinions of the employee's **health provider** and the designated health care provider differ, the appointing authority may request the employee to obtain certification from a third health care provider who is approved by the employee. This third opinion shall be final and binding. If the appointing authority does not act in good faith to attempt to reach an agreement on the third health care provider, the appointing authority shall be bound by the original certification. If the employee does not act in good faith to attempt to reach an agreement on the third health care provider, the employee shall be bound by the opinion of the second health care provider. An appointing authority may require recertification of the need for family leave every thirty (30) working days.

(5) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill family member or for the employee's own serious health condition, and the need for leave is reasonably based on planned medical treatment, the appointing authority may temporarily reassign the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.

(6) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave or shall have been on family leave during the previous month subject to the following conditions:

(a) Any combination of work days and paid leave and family leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively;

(c) When an employee is unable to work, and elects to use family leave as the sole qualification for the state contributions for life insurance and health benefits, he shall utilize his family leave days consecutively.

(d) An employee who has exhausted paid leave and family leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the work days in a month. If the employee is unable to work for more than half of the work days in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contribution and the employee contributions for such benefits.

(e) An employee who uses family leave as the sole qualification for the state contribution for life insurance and health benefits who fails to return to work for thirty (30) calendar days after the family leave is exhausted, shall reimburse the Commonwealth for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the Commonwealth if the reason the employee does not return is due to:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to family leave under this regulation.

2. Other circumstances beyond the employee's control. Examples of other circumstances beyond the employee's control are where a relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Examples of other circumstances which are not beyond the employee's control are where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care; or a parent's decision not to return to work to stay with a newborn child.

(f) An employee, on family leave, shall continue to be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made if by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make any employee contributions for life insurance and health benefits. If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.

(7) At the conclusion of the family leave, an employee shall be restored to the same job that the employee held before going on leave. The employee shall be returned to the same shift or equivalent schedule. If special qualifications are required for a position and said qualifications have lapsed during the employee's leave, the employee may be reassigned to different duties and given a reasonable opportunity to fulfill the requirements after returning to work.

Section 4. Sick Leave Sharing Procedures. (1) Definitions.

(a) "Employee" means an employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick Leave Sharing Program.

(b) "Immediate family" means the spouse, mother, father, son or daughter, or person of similarly close blood or legal relationship who has resided with the employee for not less than thirty (30) days prior to application.

(c) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which renders the employee completely incapable of performing the essential duties of his job. The ten (10) consecutive days of leave required for eligibility may be leave with or without pay. Sick leave sharing shall not be authorized for mere convenience or employee preference.

(2) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(3) Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(4) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.

(5) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(6) Donated sick leave shall be used on consecutive days except as provided by subsection (7) of this section. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(7) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors, on a pro rata basis unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(8) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, such leave shall not be available for use by the recipient.

(9) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(10) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.

Section 5. [~~3.~~] Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding [~~plaintiff~~]. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 6. [~~4.~~] Compensatory Leave. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of the Fair Labor Standards Act. An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis, subject to the provisions of the Fair Labor Standards Act and Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his compensatory

leave in the receiving agency.

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3) years of employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off when practicable. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "nonexempt" shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 7. [~~5.~~] Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 8. [~~6.~~] Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 9. [~~7.~~] Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

Section 10. [~~8.~~] Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

LOWELL W. CLARK, Commissioner
APPROVED BY AGENCY: October 14, 1993
FILED WITH LRC: October 14, 1993 at 9 a.m.

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

401 KAR 5:036. Groundwater protection plans.

RELATES TO: KRS 151.110, 151.232, Chapter 224
STATUTORY AUTHORITY: KRS 224.01-010, 224.10-100, 224.70-100, 224.70-110

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt administrative regulations to protect waters of the Commonwealth and to prevent pollution of waters of the Commonwealth. This administrative regulation establishes the requirement to prepare and to implement groundwater protection plans to ensure protection for all current and future uses of groundwater and to prevent groundwater pollution.

Section 1. Definitions. The following definitions describe terms used in this administrative regulation. Terms not defined below shall have the meanings given to them by KRS 224.01-010 or if not so defined, the meanings attributed by common use.

(1) "Abandoned well" means a well not currently in use and not intended for future use.

(2) "Agricultural production facility" means any tract of land except residences including all income-producing improvements: (a) Used for the production of livestock, livestock products, poultry, poultry products, or the growing of tobacco or other crops including timber;

(b) Devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government; or

(c) Commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.

(3) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water of the Commonwealth. Best management practices also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(4) "Bore hole" means a hole drilled into the soil for exploratory or sampling purposes.

(5) "Bulk quantities" means undivided quantities of any substance **equal to or** [of] greater than fifty-five (55) U. S. gallons liquid measure or 100 pounds net dry weight transported or held in an individual container.

(6) "Commercial" means services at stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding households and industries.

(7) "Conservation compliance plan" means a plan containing best management practices developed for persons engaged in agricultural production activities by the U. S. Department of Agriculture Soil Conservation Service, in conjunction with local conservation districts.

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

(9) "Core hole" means a hole drilled for the purpose of obtaining a rock sample.

(10) "Corrective action" means an activity or measure taken to remedy groundwater pollution.

(11) "Floor drain" means an opening in the floor used to collect spills, water, or other liquids.

(12) "Generic groundwater protection plan" means a groundwater protection plan that can be applied to activities conducted at different locations because the activities are substantially identical and because the potentials of the activities to pollute groundwater are substantially the same.

(13) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, or solution conduits.

(14) "Groundwater pollution" means water pollution as defined in KRS 224.01-010 of groundwaters of the Commonwealth.

(15) "Groundwater protection plan" means a document that establishes a series of practices designed to prevent groundwater pollution.

(16) "Hydrogeologic sensitivity" means an assessment of the potential ease and speed of vertical infiltration or recharge of a liquid through the soil and the unsaturated zones combined with assessments of the maximum potential flow rate and dispersion potential after entry into the principal or uppermost saturated zone.

(17) "Industrial" means manufacturing or industrial processes, including, but not limited to, the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment.

(18) "Karst" means the type of geologic terrain underlain by carbonate rocks where significant solution of the rock has occurred due to flowing groundwater.

(19) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(20) "Loading and unloading areas" means areas used for loading and unloading, and related handling of raw materials, intermediate substances, products, wastes, or recyclable materials. Loading and unloading areas include, but are not limited to, areas used to load and unload drums, trucks, and railcars.

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

(a) A conventional system consisting of sewage pretreatment unit, distribution box, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system, or wasteload to overcome the site limitations;

(c) An alternative system consisting of a sewage pretreatment unit, necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption systems or conventional, modified, or alternative design; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system or connection to a municipal sewer.

(22) "Pesticide" means:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; or

(c) Any substance or mixture of substances intended to be used as a spray adjuvant.

(23) "Privately-owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a publicly-owned treatment works.

(24) "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater and it is formed by the collapse of a conduit or the solution of bedrock.

(25) "Sinking stream" means a surface stream in a karst region that disappears underground usually through gradual seepage of flow along the channel bottom.

(26) "Storing" means the containing of materials, products, substances, wastes, or other pollutants on a temporary basis in such a manner as not to constitute disposal.

(27) "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, although it may be lined with manmade materials, which is designed to hold an accumulation of liquids or solids.

(28) "Timber" means trees produced and harvested as agricultural crops without the application of pesticides or fertilizers or with the application of pesticides or fertilizers if in accordance with a conservation compliance plan.

(29) "Water well" or "well" means any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or in part of an excavation is the removal of water for any purpose, including but not limited to culinary and household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes and industrial, irrigation, and dewatering purposes.

(30) "Wellhead protection area" means the surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field or spring or an area defined as a wellhead protection area in a county water supply plan.

(31) "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

Section 2. Scope and Applicability. (1) Scope. The goal of this administrative regulation is the prevention of groundwater pollution. This administrative regulation identifies certain activities for which groundwater protection plans shall be prepared and implemented. This administrative regulation also identifies certain activities for which groundwater protection plans are not required.

(2) Applicability.

(a) Persons engaging in agricultural production activities at agricultural production facilities shall prepare and implement a groundwater protection plan in accordance with the provisions of Section 5 of this administrative regulation. The agricultural production activities that are subject to this administrative regulation and the requirements for the preparation and implementation of groundwater protection plans for agricultural production activities are established in Section 5 of this administrative regulation which shall be the sole provisions of this administrative regulation applying to agricultural production activities.

(b) Except for agricultural production activities at agricultural production facilities and as provided in subsections (3) and (4) of this section, any person responsible for conducting any of the following activities shall prepare and implement a groundwater protection plan in accordance with the requirements of this administrative regulation:

1. Storing or related handling of pesticides or fertilizers for commercial purposes;

2. Storing or related handling of pesticides or fertilizers for the purpose of distribution to a retail sales outlet;

3. Applying of pesticides or fertilizers for commercial purposes;

4. Applying of fertilizers or pesticides for public right-of-way maintenance or institutional lawn care;

5. Land treatment or land disposal of a pollutant;

6. Storing, treating, disposing, or related handling of hazardous waste, solid waste, or special waste in landfills, incinerators, surface impoundments, tanks, drums or other containers, or in piles;

7. Commercial or industrial storing or related handling in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants held in tanks, drums or other containers, or in piles;

8. Transmission in pipelines of raw materials, intermediate substances or products, finished products, or other pollutants;

9. Installation or operation of on-site sewage disposal systems;

10. Storing or related handling of road oils, dust suppressants, or deicing agents at a central location;

11. Application or related handling of road oils, dust suppressants or deicing materials;

12. Mining and associated activities;

13. Installation, construction, operation, or abandonment of wells, bore holes, or core holes;

14. Collection or disposal of pollutants in an industrial or commercial facility through the use of floor drains which are not connected to on-site sewage disposal systems, closed-loop collection or recovery systems, or privately- or publicly-owned treatment works;

15. Impoundment or containment of pollutants in surface impoundments, lagoons, pits, or ditches; or

16. Commercial or industrial transfer, including loading and unloading, in bulk quantities of raw materials, intermediate substances or products, finished products, substances held for recycling, or other pollutants.

(3) General exclusion. Any person who conducts an activity identified in subsection (2) of this section shall not be required to prepare or to implement a groundwater protection plan for that activity if that person can demonstrate by substantial evidence based on the factors set forth in this subsection, the activity has no reasonable potential of altering the physical, thermal, chemical, biological, or radioactive properties of the groundwater in a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life, to the use of groundwater as present or future sources of public water supply or to the use of groundwater for recreational, commercial, industrial, agricultural, or other legitimate purposes. The demonstration shall at a minimum consider the following factors:

(a) Hydrogeologic sensitivity at or near the location of the activity;

(b) Quantity of the pollutants, including the cumulative potential to pollute from small discharges, spills, or releases which individually would not have the potential to pollute;

(c) Physical, chemical, and biological characteristics of the pollutants such as solubility, mobility, toxicity, concentration, and persistence;

(d) Use of the pollutants at the locations of the activities; and

(e) Present and potential uses of the groundwater.

(4) Specific exclusions. The provisions of this administrative regulation shall not apply to the following activities:

(a) Normal use or consumption of products sized and packaged for personal use by individuals;

(b) Retail marketing of products sized and packaged for personal use or consumption by individuals;

(c) Activities conducted entirely inside enclosed buildings if:

1. The building has a floor sufficient to prevent the release of pollutants to groundwater; and

2. There are no floor drains, or all floor drains within the building are connected to an on-site sewage disposal system, closed-loop collection or recovery system or a privately- or publicly-owned treatment works;

(d) Storing, related handling, or transmission in pipelines of pollutants that are gases at standard temperature and pressure;

(e) Storing municipal solid waste in a container located on property where the municipal solid waste is generated and which is used solely for the purpose of collection and temporary storage of that municipal solid waste prior to off-site disposal;

(f) Activities associated with sewer lines, or water lines;

(g) Storing water in ponds, lakes or reservoirs;

(h) Impounding storm water, silt, or sediment in surface impoundments;

(i) Application **[~~or related handling~~]** of chloride-based deicing materials used on roads or parking lots,

(j) Emergency response activities conducted in accordance with local, state, and federal law;

(k) **[~~On site~~]** Fire fighting activities; or

(l) Conveyance or related handling by motor vehicle, rolling stock, vessel, or aircraft.

(5) Relationship to other programs. Nothing in this administrative regulation shall abrogate the duty of a person to comply with the statutes and other administrative regulations administered by the cabinet, with the statutes and administrative regulations administered by other state and federal agencies, or with statutes and ordinances administered by a local government.

Section 3. Preparation of Groundwater Protection Plans. (1) General requirements. A groundwater protection plan establishes a series of practices to be followed by the person required to prepare and to implement it. The practices established by a groundwater protection plan shall be designed and implemented in a manner that will prevent groundwater pollution. This section describes the contents of site-specific and generic groundwater protection plans. Any person conducting an activity identified in Section 2(2) of this administrative regulation shall determine if an exclusion of Section 2(3) or (4) of this administrative regulation applies to that activity.

(2) Deadlines for preparation and implementation. Except for agricultural production activities subject to the provisions of Section 5 of this administrative regulation and activities excluded by Section 2(3) or (4) of this administrative regulation, any person required to prepare and to implement a groundwater protection plan pursuant to Section 2 of this administrative regulation, shall prepare and implement a site-specific or generic groundwater protection plan within one (1) year of the effective date of this administrative regulation, or upon commencement of the regulated activity, whichever is later.

(3) Elements of generic and site-specific groundwater protection plans. Both generic and site-specific groundwater protection plans shall contain the following:

(a) General information regarding the facility and its operation, including the name of the facility, the address of the facility, and the name of the person responsible for implementing the plan;

(b) Identification of all activities identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation;

(c) Identification of all practices chosen for the plan to protect groundwater from pollution;

(d) An implementation schedule for the practices selected for the plan;

(e) A description of and implementation schedule for employee training necessary to ensure implementation of the plan;

(f) An inspection schedule requiring regular inspections as needed to ensure that all practices established are in place and properly functioning;

(g) A certification by the person responsible for implementing the plan or a duly authorized representative that the plan complies with the requirements of this administrative regulation, and that the person responsible for implementing the plan has reviewed the terms of the plan and will implement its provisions.

(4) Selection of practices for groundwater protection. Any person required to prepare a groundwater protection plan pursuant to this section shall evaluate technological means for protection of groundwater from pollution that may result from activities addressed by the plan and shall select practices for the plan which protect groundwater from pollution. The groundwater protection practices chosen for a groundwater protection plan may include but are not limited to:

(a) Equipment design;

(b) Operational procedures;

(c) Preventive maintenance techniques;

(d) Construction techniques;

(e) Personnel training;

(f) Spill response capabilities;

(g) Alternative materials or processes;

(h) Implementation of new technology;

(i) Modification of facility or equipment;

(j) Spill prevention control and countermeasure plans;

(k) Best management practices;

(l) Hazardous waste contingency plans;

(m) Other plans prepared pursuant to other programs which protect groundwater from pollution;

(n) Run-off or infiltration control systems;

(o) Siting considerations; and

(p) Any other practice which will protect groundwater from pollution.

(5) Specific practices. In selecting practices to protect groundwater for the activities identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation any person preparing a groundwater protection plan shall consider the nature of the pollutant and the hydrogeologic characteristics at or near the location of the activity and shall comply with the provisions of this subsection in selecting those practices:

(a) Loading and unloading areas. Loading and unloading areas shall have spill prevention and control procedures and operation procedures designed to prevent groundwater pollution. Spill containment and cleanup equipment shall be readily accessible.

(b) On-site sewage disposal systems. No person shall install a new or replace an existing on-site sewage disposal system if a publicly- or privately-owned treatment works capable of treating the pollutants to be discharged is available.

(c) Floor drains. Any person using existing floor drains shall evaluate those floor drains to determine if they discharge to an on-site sewage disposal system, to a closed-loop collection or recovery system, or to privately- or publicly-owned treatment works. If drains are identified which do not discharge to an on-site sewage disposal system, a closed-loop collection or recovery system, or privately- or publicly-owned treatment works, that person shall terminate the discharge or connect it to an on-site sewage disposal system, a closed-loop collection or recovery system, or a privately- or publicly-owned treatment works. No person shall install a floor drain unless it is connected to an on-site sewage disposal system, closed-loop collection or recovery system, or privately- or publicly-owned treatment works.

(d) Tanks and sumps. Any person using a tank or sump shall prepare and implement good housekeeping practices, operating procedures, operator training, and spill response procedures. In addition, any person using a tank or sump shall consider leak control devices, secondary containment, integrity testing, mechanical inspections, and overfill protection devices. **Additional** [~~Secondary~~] containment is not required for sumps and tanks that are used solely to provide secondary containment.

(e) New surface impoundments, lagoons, pits or ditches. Any person who constructs a new surface impoundment, lagoon, pit or ditch which will contain a pollutant shall evaluate the site's hydrogeology and shall design and operate it to minimize discharges to soil. However, soils may be used to construct liners under appropriate conditions. All necessary and appropriate measures shall be taken to prevent groundwater pollution. The person shall consider the use of liners, secondary containment, leak detection devices, and other appropriate and effective control systems. **Additional** [~~Secondary~~] containment is not required for new surface impoundments, lagoons, pits, and ditches that are used solely to provide secondary containment.

(6) Exceptions to specific requirements.

(a) The provisions of subsection (5) of this section shall not apply to activities that are governed by other federal, state or regulatory programs that meet the requirements of subsection (7) of this section while the person conducting the activities remains in compliance with the other program.

(b) Variances from the provisions of subsection (5) of this section may be granted by the cabinet upon a showing of good cause, but in no event shall any person required to prepare a groundwater protection plan pursuant to this section take any actions contrary to

the provisions of subsection (5) of this section without prior written approval of the cabinet.

(7) Incorporation of requirements of other regulatory programs.

(a) Groundwater protection activities required by other federal, state, or local regulatory programs may be incorporated into a site-specific or generic groundwater protection plan by reference if the other regulatory program contains the following:

1. Management and design standards;

2. Mandatory monitoring for groundwater pollution or methods of detecting discharges, spills, or releases to groundwater; and

3. Specific corrective action criteria.

(b) The plan shall identify each activity covered by the other regulatory program. The person responsible for implementing the plan shall certify compliance with the other regulatory program. The provisions of the other program shall be the groundwater protection plan for purposes of this administrative regulation for the activities covered by the other regulatory program. If activities identified in Section 2(2) of this administrative regulation and not excluded in Section 2(3) or (4) of this administrative regulation are conducted which are not covered by the other regulatory program, the plan shall contain separate practices designed to protect groundwater from pollution for each activity not covered by the other regulatory program.

(8) Generic groundwater protection plans. A generic groundwater protection plan may govern all or part of a person's activities. A generic groundwater protection plan shall not be sufficient by itself if it does not address all activities conducted by the person that are identified in Section 2(2) of this administrative regulation and not excluded by Section 2(3) or (4) of this administrative regulation. A generic groundwater protection plan shall be prepared in accordance with subsections (1) through (7) of this section.

(a) A person responsible for preparing and implementing a groundwater protection plan required by this administrative regulation may apply one (1) provision of the plan to all substantially identical activities if factors identified in Section 2(3) of this administrative regulation do not cause substantial differences in the potential to pollute among locations. If substantial differences do exist, the plan shall provide separate site-specific or region-specific preventive measures, as necessary, for the activities.

(b) A person responsible for preparing a groundwater protection plan governed by this section may use a generic groundwater protection plan prepared by another person or group, including a trade organization, if:

1. The activities identified in the generic groundwater protection plan are substantially identical;

2. The factors identified in Section 2(3) of this administrative regulation do not cause substantial differences in the potentials to pollute among locations; and

3. The groundwater protection plan has been reviewed and approved by the cabinet.

(c) A generic groundwater protection plan may consist of requirements imposed by other regulatory programs designed to protect groundwater or programs offering technical assistance for groundwater protection if the cabinet has approved the requirements of the other program as a generic groundwater protection plan. Any person using a generic groundwater protection plan from another program pursuant to this paragraph as a part of, or all of, his plan shall certify in his plan that he is subject to the program and in compliance with its provisions. Any activities which are not addressed by the program shall be addressed separately in the groundwater protection plan.

(d) Any persons conducting an activity listed in this subsection who does not prepare a groundwater protection plan for that activity or does not use another approved generic groundwater protection plan for that activity shall implement the provisions of the generic groundwater protection plan prepared by the cabinet. The cabinet, in cooperation with other appropriate state agencies, shall prepare generic groundwater protection plans for:

1. Use of existing residential septic systems; and

2. Construction, operation, closure, and capping of water wells.

(e) A generic groundwater protection plan that has been approved by the cabinet may be incorporated by reference in a facility's groundwater protection plan; however, each person responsible for implementing the generic plan at a site shall maintain a copy of the plan at an appropriate, accessible location. Any person using a generic groundwater protection plan shall identify the activities governed by the plan and attach the identification to the copy of the generic plan.

(f) Any person preparing a new or revised generic groundwater protection plan to be approved by the cabinet shall submit that plan to the cabinet for approval. When that person submits that plan to the cabinet that person shall also place a notice in **a** statewide **newspaper and a trade publication likely to be read by those affected by the groundwater protection plan** [~~publications~~]. That notice shall provide for a thirty (30) day comment period and shall identify activities that are addressed by the proposed generic groundwater protection plan. The notice shall describe the procedure for review by the public of the plan and the procedures and time frames for providing comments. **The cabinet** [~~Notice~~] shall also **notify** [~~be given~~] by mail [~~to~~] anyone who has requested in writing to be placed on a mailing list for purposes of this administrative regulation.

Section 4. Implementation of Groundwater Protection Plans. (1) Record retention requirements.

(a) Any site-specific groundwater protection plan required by Sections 2 through 4 of this administrative regulation, and any documentation evidencing compliance with the provisions of the plan, shall be retained by the person responsible for implementing the plan, at the location of the activity if the location is normally attended at least eight (8) hours per day, or at the nearest office of that person's activity if the facility is not so attended.

(b) Any generic groundwater protection plan and any documentation evidencing compliance with the provisions of the plan, shall be retained by the person responsible for implementing the plan, in as many locations as necessary to ensure compliance. Individual homeowners are not required to maintain a copy of the generic groundwater protection plan for residential septic systems at their residences.

(c) Unless the cabinet approves another retention period for a person, all records evidencing compliance shall be maintained and available for review by the cabinet for a period of six (6) years after their preparation.

(2) Amendment of groundwater protection plans. Prior to conducting any new or modified activity, any person conducting that activity shall amend the groundwater protection plan, as necessary, to address the new or modified activity.

(3) Review and recertification of groundwater protection plans. Each groundwater protection plan shall be reviewed in its entirety every three (3) years, by the persons responsible for the plan, updated if necessary, and recertified. To the extent possible, the review shall include a reevaluation of the design and operation procedures for the pollution prevention practices previously selected for the plan to ensure that they are effective. (4) Submission of groundwater plans to cabinet.

(a) Upon written request of the cabinet, any person required to prepare a groundwater protection plan pursuant to this administrative regulation shall submit a copy of the plan to the cabinet within thirty (30) days.

(b) Upon written request of the cabinet, any person who has made a demonstration pursuant to Section 2(3) of this administrative regulation that a groundwater protection plan is not required for a specific activity shall submit a copy of that demonstration to the cabinet within thirty (30) days.

(5) Submission of additional information to the cabinet. Upon

review of a groundwater protection plan which has been submitted to the cabinet, the cabinet may require any person responsible for preparation or implementation of a plan to submit any of the following information that the cabinet deems necessary:

(a) For a site-specific groundwater protection plan, and for a generic groundwater protection plan in effect at a specific location, the location of all buildings, structures, roads, utilities, drainage pathways, and boundaries by using a narrative description or by using a map, diagram, or drawing;

(b) For a generic groundwater protection plan that applies to more than one (1) location, identification of the geographic region to which the generic groundwater protection plan applies, and an explanation as to why that region was selected and why one (1) plan is appropriate for all activities addressed by the plan for all sites within the region;

(c) For a generic groundwater protection plan that applies to more than one (1) location, to the extent possible, a description of the nature and number of activities, and their associated facilities, that are expected to be governed by the generic groundwater protection plan;

(d) Summary of reasonably available hydrogeologic information as follows:

1. Identification of location of sinkholes, sinking streams, springs, streams, lakes, ponds, and ditches;

2. Description of soil survey information;

3. Identification and location of currently usable wells, abandoned wells, and wellhead protection areas;

4. Identification of subsidence areas; and

5. Description of any other relevant hydrogeologic data known to the person preparing or implementing the groundwater protection plan; and

(e) Any other site-specific groundwater or geologic information, which is known and readily available to the person responsible for preparing or implementing the plan but not to the cabinet, that the cabinet deems necessary.

(6) Revisions to plans after cabinet review. If the cabinet reviews a groundwater protection plan and determines that it does not meet the requirements of this administrative regulation, the cabinet shall notify the person responsible for preparing or implementing the plan of the deficiency in the plan. That person shall revise the plan to correct the deficiencies identified by the cabinet and submit the revised plan to the cabinet for further review. Unless an extension of time is granted by the cabinet or the notice of deficiency is withdrawn by the cabinet, the person submitting the revised plan shall have thirty (30) days from issuance of the notice of the deficiencies to submit the revised plan. The cabinet shall review the revised plan and notify the person submitting the revised plan of its final determination.

(7) Public inspection of groundwater protection plans.

(a) Any person who desires to review a groundwater protection plan shall send a written request to the person required to prepare and to implement the groundwater protection plan.

(b) Any person who receives a written request to review the groundwater protection plan shall within ten (10) **working** days:

1. Send a written response to the person requesting to inspect the groundwater protection plan stating that the groundwater protection plan may be reviewed at:

a. The Division of Water in Frankfort;

b. A regional office of the Division of Water;

c. The facility; or

d. A local public library; or

2. Send a written response to the person requesting to inspect the groundwater protection plan, stating the reason that a groundwater protection plan was not required to be prepared.

(c) Any person who designates a review location for a groundwater protection plan shall send a copy of the groundwater protection plan to the location designated for review within ten (10) **working** days of receiving a written request to review the plan.

(8) Requirements upon transfer of property. Upon any subsequent transfer of a facility for which a groundwater protection plan has been prepared, the seller shall provide the purchaser with a copy of the most recent groundwater protection plan prepared for the facility pursuant to this administrative regulation.

Section 5. Groundwater Protection Plans for Agricultural Production Activities. (1) Notwithstanding any other section of this administrative regulation, any person engaged in agricultural production activities at an agricultural production facility shall prepare and implement a groundwater protection plan for those activities in accordance with the provisions of this section.

(2) Persons engaging in agricultural production activities for which conservation compliance plans are in effect on the effective date of this administrative regulation shall comply with those plans, which shall constitute their groundwater protection plans until a statewide agricultural groundwater protection plan is approved by the cabinet. Upon approval of the statewide agricultural groundwater protection plan by the cabinet, all persons engaging in agricultural production activities shall comply with the statewide agricultural groundwater protection plan unless a regional agricultural groundwater protection plan has been approved by the cabinet in response to region-specific groundwater problems. If a regional agricultural groundwater protection plan has been approved by the cabinet, all persons engaging in agricultural production activities within the identified region shall comply with the regional agricultural groundwater protection plan.

(3) All persons engaging in agricultural production activities for which no conservation compliance plan is in effect on the effective date of this administrative regulation shall comply with all best management practices recommended by the state Soil and Water Conservation Commission. Those best management practices shall constitute the groundwater protection plans for these agricultural production activities until the statewide agricultural groundwater protection plan is approved by the cabinet. Upon approval of the statewide agricultural groundwater protection plan, that plan shall constitute the groundwater protection plan for all persons engaging in agricultural production activities. If a regional agricultural groundwater protection plan has been approved by the cabinet, all persons engaging in agricultural production activities within the identified region shall comply with the regional agricultural groundwater protection plan.

(4) All agricultural groundwater protection plans shall be established by the Soil and Water Conservation Commission Peer Group in accordance with 402 KAR 2:030. The agricultural groundwater protection plans shall be effective for purposes of this administrative regulation upon approval by the cabinet.

(5) All agricultural groundwater protection plans shall provide for practices designed to prevent groundwater pollution that may result from the following agricultural production activities at agricultural production facilities:

(a) Handling or storage of animal waste;

(b) Handling, storing, or application of pesticides, fertilizers, or other agricultural chemicals;

(c) Installation, construction, operation, or abandonment of wells;

(d) Disposal of waste materials including wastewater;

(e) Management of feedlots;

(f) Storage or management of fuels or petroleum products;

(g) Management of karst features, including sinkholes;

(h) Containment of pollutants in impoundments, lagoons, pits or ditches; and

(i) Any other activity identified by the Soil and Water Conservation Commission Peer Group established by 402 KAR 2:030 as a potential cause of groundwater pollution.

(6) The statewide generic agricultural groundwater protection plan shall provide for known differences in hydrogeology throughout the state. In addition, all agricultural groundwater protection plans shall contain, as appropriate, nutrient management practices, animal waste management practices, pesticide and fertilizer management practices,

sediment control practices, and conservation tillage practices designed to prevent groundwater pollution for each category of agricultural production.

(7) If the cabinet determines that groundwater pollution has occurred in a region because of agricultural production activities conducted at agricultural facilities, a regional agricultural groundwater protection plan shall be prepared by the Soil and Water Conservation Commission Peer Group to address the agricultural production activities within the affected region. All persons engaging in agricultural production activities within the affected region shall comply with the provisions of the regional agricultural groundwater plan which has been approved by the cabinet.

(8) The cabinet shall provide written notice to the local conservation district, the Soil and Water Conservation Peer Group, and all persons engaging in agricultural production activities in an affected region of any documented groundwater pollution. The cabinet shall work with the conservation district, the peer group, and persons engaging in agricultural production activities in the affected region to develop an appropriate corrective action plan.

(9) A person engaging in agricultural production activities who is in a region where groundwater pollution has been found by the cabinet shall be presumed to be in compliance with this administrative regulation if that person has timely and properly implemented all practices required by the portions of the statewide agricultural groundwater protection plan which apply to that person's activities.

(10) The statewide agricultural groundwater protection plan shall be prepared and approved no later than two (2) years from the effective date of this administrative regulation. All persons engaging in agricultural production activities shall fully implement the provisions of the statewide agricultural groundwater protection plan no later than seven (7) years from the effective date of this administrative regulation. Persons who have timely initiated implementation of the statewide agricultural groundwater production plan may be given extensions of time, upon request, by the cabinet for completing implementation of the plan upon a demonstration of good cause.

(11) Persons engaging in agricultural production activities located within a region governed by an approved regional agricultural groundwater protection plan which has been prepared in response to groundwater pollution within the region shall immediately implement the regional agricultural groundwater protection plan and conform to the compliance schedule approved by the cabinet for the corrective action plan.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 12, 1993
FILED WITH LRC: October 13, 1993 at 10 a.m.

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

401 KAR 50:035. Permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.10-120, 401 KAR Chapters 50 through 65, 40 CFR Parts 52, 60, 70, 72, 73, 75, 77, 78, 42 USC 7401-7671q, July 21, 1993 Federal Register (57 FR 32250)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation **combines construction and operating permits into one (1) permit and** provides for the issuance of permits in the Commonwealth of Kentucky.

Section 1. Definitions. Except as otherwise provided in this section, terms used in this administrative regulation shall have the meaning given to them in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 42 USC 7651 through 7651o and 40 CFR Parts 72, 73, 75, 77, and 78. 40 CFR Parts 72, 73, 75, 77, and 78 are incorporated by reference in Section **11** [~~10~~] of this administrative regulation.

(2) "Act" means the Clean Air Act promulgated at 42 USC 7401 through 7671q, as amended by PL 101-549 (November 15, 1990).

(3) "Administrative permit amendment" means a revision to a permit that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of a person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source if the cabinet determines that no other change in the permit is necessary and if a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the cabinet;

~~[(e) Allows a source to voluntarily modify or replace its air pollution control equipment to provide an equivalent or more efficient control of air pollutants, if the source is not required to modify or replace the control equipment to comply with an administrative regulation or a permit condition.]~~

(e) [~~(f)~~] Incorporates into the permit the requirements from preconstruction review permits, if the preconstruction review meets procedural requirements substantially equivalent to those prescribed in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision, and compliance requirements substantially equivalent to those contained in Section 4(3) of this administrative regulation.

(4) "Affected source" means a source that includes one (1) or more affected units.

(5) "Affected states" means those states:

(a) That border Kentucky and whose air quality may be affected by the proposed issuance, revision, or renewal of a permit subject to the federally enforceable requirements of this administrative regulation; or

(b) That are within fifty (50) miles of the proposed permitted source.

(6) "Affected unit" means a unit that is subject to the acid rain program.

(7) "Applicable requirement" means **a federally enforceable requirement or a state-origin requirement or standard.** [~~any of the following:~~

~~(a) A federally enforceable requirement;~~

~~(b) A state-origin requirement or standard; or~~

~~(c) A permit requirement to use all available, practical, and reasonable methods to prevent and control air pollutants, if emission standards have not been prescribed in an administrative regulation.~~]

(8) "Complete application" means an application for a permit or permit revision that meets the requirements of Section 3(1)(b) of this administrative regulation.

(9) "Designated representative" means a responsible person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as

a matter of federal law, in all matters pertaining to the acid rain program. **For matters related to the acid rain portion of a permit,** the term "responsible official," as used in this administrative regulation or in administrative regulations implementing the acid rain program, means the "designated representative."

(10) "Draft permit" means the version of a permit which the cabinet offers for public participation and affected state review as prescribed in Sections 7 and 8 of this administrative regulation.

(11) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(12) "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038.

(13) "Emissions unit" means a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant. This term does not alter or affect the definition of the term "unit" as used in the acid rain program.

(14) "Existing source" means a source which has submitted a permit application that the cabinet has deemed complete prior to the effective date of this administrative regulation, or source that is authorized by the cabinet to operate on or before the effective date of this administrative regulation.

(15) "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision.

(16) "Federally enforceable requirement" means all of the following as they apply to emissions units at a source which is subject to 40 CFR Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:

(a) Standards or requirements in the State Implementation Plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 CFR Part 52;

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 USC 7401 thorough 7515 (Title I of the Act).

(c) A standard or other requirement promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7429 (Section 129 of the Act) **governing solid waste incineration.**

(d) **A standard or other requirement** **[**~~A national emission standard for hazardous air pollutants (NESHAP)~~**]** promulgated pursuant to 42 USC 7412 (Section 112 of the Act), including a requirement for accidental release prevention pursuant to 42 USC 7412(r) (Section 112(r) of the Act).

(e) Standards or requirements of the acid rain program.

(f) Requirements established pursuant to 42 USC 7661c(b) (Section 504(b) of the Act) and 42 USC 7414(a)(3) (Section 114(a)(3) of the Act) for monitoring and compliance certification.

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 (Part C of Title I of the Act) for temporary sources permitted pursuant to 42 USC 7661c(e) (Section 504(e) of the Act).

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e) (Section 183(e) of the Act).

(i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f) (Section 183(f) of the Act).

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 USC 7671 through 7671q (Title VI of the Act), unless the U.S. EPA determines that those requirements need not be contained in the permit.

(17) "Final permit" means:

(a) For a federally enforceable permit, the version of a permit issued by the cabinet that has completed all the review procedures required in Sections 7 through 9 of this administrative regulation and for which a final determination has been made.

(b) For a state-origin permit, the version of a permit which meets the applicable provisions of this administrative regulation and for which a final determination has been made.

(18) "Fugitive emissions" means those emissions which do not pass through a stack, chimney, vent, or other functionally-equivalent opening.

(19) "General permit" means a permit that meets the requirements of Section 4(4) of this administrative regulation.

(20) "Major source" means a stationary source, or a group of stationary sources, that are located on one (1) property or two (2) or more contiguous **or adjacent** properties under common control of the same person, or persons under common control, and that belong to a single major industrial grouping which emits a regulated air pollutant and which is described in paragraphs (a), (b), or (c) of this subsection.

(a) A **[**~~major~~**]** stationary or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant listed in 401 KAR 57:061 or twenty-five (25) tons per year or more of a combination of hazardous air pollutants listed in 401 KAR 57:061, or a lesser quantity established by the U.S. EPA and promulgated in an administrative regulation in 401 KAR Chapter 57. Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources; or

(b) A stationary source of air pollutants that directly emits or has the potential to emit, 100 tons per year or more of an air pollutant. The fugitive emissions of a stationary source shall be considered in determining if it is a major source only if it belongs to one (1) he following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plant;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or

27. All other stationary source categories subject to an administrative regulation in 401 KAR Chapters 59 and 61 which are promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or a national emission standard for hazardous air pollutants (NESHAP) in 401 KAR Chapter 57, promulgated pursuant to 42 USC 7412 (Section 112 of the Act).

(c) A **major** stationary source **defined to be a major source in 42 USC 7501 through 7515 (Part D of the Act)** [~~located in an area designated nonattainment pursuant to 401 KAR 51:010,~~] including:

1. For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," and ten (10) tons per year or more in areas classified as "extreme;"

2. For carbon monoxide nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and

3. For particulate matter (PM_{10}) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons per year or more of PM_{10}.

(21) "Minor source" means a stationary source that is required to obtain a permit pursuant to this administrative regulation and that is not a major source.

(22) "Permit revision" means a minor permit revision, a significant permit revision, or an administrative permit amendment.

(23) "Phase II" means the acid rain program period beginning January 1, 2000, and continuing thereafter.

(24) "Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the U.S. EPA. This term does not alter or affect the use of this term for other purposes in the Act, or the term "capacity factor" as used in the acid rain program.

(25) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(26) "Regulated air pollutant" means the following:

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which an ambient air quality standard has been promulgated in 401 KAR 53:010;

(d) A pollutant that is subject to a standard promulgated pursuant to 42 USC 7411 and 7412 (Sections 111 and 112 of the Act);

(e) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 USC 7671 through 7671q (Title VI of the Act);

(f) [~~(e)~~] A pollutant listed in 401 KAR 57:061; and

(g) [~~(f)~~] A pollutant listed in **401 KAR 63:020,** 401 KAR 63:021, or 401 KAR 63:022.

(27) "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 5**(7)** [~~(6)~~] of this administrative regulation.

(28) "Responsible official" means one (1) of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA); or

(d) **For the acid rain portion of a permit** for **an** affected source**[s]**, the designated representative.

(29) "Section 502(b)(10) changes" means changes that contravene an express permit term. These changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(30) [~~(29)~~] "Significant permit revision" means a permit revision required to be processed pursuant to Section 6(2)(c) of this administrative regulation.

(31) [~~(30)~~] "State implementation plan (SIP)" means the most recently prepared plan or revision required by 42 USC 7410 (Section 110 of the Act) which has been submitted by the cabinet and approved by the U.S. EPA.

(32) [~~(31)~~] "State-origin permit" means a permit that contains only state-origin permit conditions. If the permit contains one (1) or more federally enforceable permit conditions it is a federally enforceable permit.

(33) [~~(32)~~] "State-origin permit condition" means a provision in the permit that is not required pursuant to 42 USC 7401 through 7671q (the Act) or any of the Act's applicable requirements, and that is not federally enforceable.

(34) [~~(33)~~] "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated air pollutant.

(35) [~~(34)~~] "Timely application" means an application that meets the requirements of Section 3(1)(a) of this administrative regulation.

Section 2. Applicability. This administrative regulation shall apply to owners and operators of all air pollution sources, except as follows:

(1) A source shall be exempt from this administrative regulation if:

(a) The source is not subject to an applicable requirement; **and** [~~or~~]

(b) The source has uncontrolled emissions of less than twenty-five (25) tons per year and potential emissions of five (5) tons per year or less of a pollutant for which an ambient air quality standard is listed in 401 KAR 53:010, or less than the significant net emissions rate pursuant to 401 KAR 51:017, whichever is less; **or** [~~and~~]

(c) The source has potential emissions of [~~less than the exempting value provided in an administrative regulation in 401 KAR Chapter 57 or~~] less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061 [~~if an exempting value is not given in 401 KAR Chapter 57~~].

(2) The following **affected facilities** [~~sources~~] and activities shall also be exempt from this administrative regulation, but they shall not be exempt from compliance with applicable standards in other administrative regulations in 401 KAR Chapters 50 through 63. The cabinet may require the owner or operator to demonstrate compliance with all applicable administrative regulations.

(a) An asbestos **demolition or renovation operation** [~~source~~] which is subject only to the provisions of **40 CFR Part 61, Subpart M or 401 KAR 63:042** [~~401 KAR 58:020, Section 6~~].

(b) **An affected facility** [~~A source~~] which is subject only to the

provisions of 40 CFR Part 60, Subpart AAA.

(c) An incinerator with a charging rate of less than 500 pounds per hour, unless it is subject to an administrative regulation in 401 KAR Chapters 50 through 63.

(d) An internal combustion engine, except as provided in 401 KAR 59:019.

(e) A vehicle used for the transport of passengers or freight.

(f) A direct-fired source used for heating and ventilating.

(g) **An affected facility** [~~A source~~] subject only to the provisions of 401 KAR 63:005.

(h) One (1) or more indirect heat exchangers, with a rated total heat input capacity of less than fifty (50) million BTU per hour which use natural gas or liquid petroleum gas as a main fuel and which use only distillate fuel oil as a standby fuel, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(i) An individual addition of a natural gas or liquid petroleum gas-fired boiler having an individual rated heat input capacity of less than fifty (50) million BTU per hour, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(j) A publicly owned road.

(k) A feed grain mill having a hammermill with a rated capacity of ten (10) tons per hour or less, if the source does not include a grain dryer.

(l) A sawmill which produces only rough cut or dimensional lumber from logs and which has a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an administrative regulation in 401 KAR Chapters 59 or 61.

(m) The installation of air pollution control equipment where none is required. The owner or operator **shall notify the cabinet in writing prior to installing the equipment.** [~~may be required to submit an application for a permit.~~]

(n) Emitters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to an **applicable requirement** [~~administrative regulation~~].

(3) The total emissions from the affected facilities and activities at a source, which are exempted from this administrative regulation pursuant to subsection (2)(c) through (n) of this section, shall not exceed five (5) tons per year. These emissions shall not be excluded from the permit application to the extent that the emissions are necessary to determine compliance with an applicable requirement or to determine if a requirement is applicable.

Section 3. Permit Applications. (1) Duty to apply. Owners and operators of sources subject to this administrative regulation shall submit a timely and complete permit application pursuant to this section using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034. The cabinet may provide methods for electronic transmission of the completed application.

(a) Timely applications.

1. **Existing major sources.**

a. One-third (1/3) of the existing major sources with the lowest score, as determined pursuant to Section 10 of this administrative regulation, shall file a complete application for a permit within twelve (12) months after the effective date of this administrative regulation. The cabinet shall notify these sources within fifteen (15) days after the effective date of this administrative regulation.

b. All other existing major sources shall file a complete application for a permit within twelve (12) months after the date the U.S. EPA publishes a final rule approving the state permit program.

c. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5(2) of this administrative regulation. [~~An existing major source shall file a complete application for a permit within twelve (12) months after becoming subject to this administrative regulation or within twelve (12) months after the effective date of this administrative regulation, whichever date is later.~~]

2. **Existing minor sources.** An existing minor source shall file a complete application for a permit within twelve (12) months **after the date of publication by the U.S. EPA of a final rule which requires the minor source to obtain a permit. These applications shall be processed as federally enforceable permits pursuant to Section 5(2) of this administrative regulation.** [~~after becoming subject to this administrative regulation or within fifty four (54) months after the effective date of this administrative regulation, whichever date is later.~~]

3. **Existing sources subject to a state-origin requirement. Sources which are required to have a state-origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to an applicable requirement promulgated after the effective date of this administrative regulation, or by November 15, 2000, whichever date is earlier. The cabinet shall process these applications as state enforceable permits pursuant to Section 5(3) of this administrative regulation, unless the source requests to have the permit processed as a federally enforceable permit.** [~~An existing source which is required to have a state-origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to this administrative regulation or within sixty (60) months after the effective date of this administrative regulation, whichever date is later.~~]

4. A source constructing, reconstructing, or modifying after the effective date of this administrative regulation shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, or modification**, except as provided in Section 6 of this administrative regulation**.

a. The applications for sources that are required by the U.S. EPA to obtain federally enforceable permits shall be processed by the cabinet pursuant to Section 5(2) of this administrative regulation.

b. The applications for sources that are required to obtain state-origin permits shall be processed by the cabinet pursuant to Section 5(3) of this administrative regulation.

5. A source that is required to open an existing permit pursuant to the requirements of Section 6(3) of this administrative regulation shall file a complete application to obtain a permit revision within six (6) months after notification by the cabinet that the permit shall be reopened.

6. For permit renewal, **an** [~~a timely~~] application shall be submitted at least six (6) months prior to the date of permit expiration and in accordance with Section 5**(7)** [~~(6)~~] of this administrative regulation.

7. Applications for initial Phase II acid rain permits shall be submitted to the cabinet by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(b) Complete application.

1. To be deemed complete, an application shall provide all information required pursuant to subsection (3) of this section, except that applications for a permit revision shall supply the information only if it is related to the proposed change. This information shall be sufficient to evaluate the source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information pursuant to subsection (4) of this section.

2. **The cabinet shall promptly provide notice to the applicant if the application is complete. Unless the cabinet mails a request for additional information or a notice of incompleteness to the applicant within sixty (60) days of receipt of an application, the application shall be deemed complete.** [~~Unless the cabinet determines, and notifies the source, within sixty (60) days after receipt that an application is not complete, the application shall be deemed complete, except as provided in subparagraphs 3 and 4 of this paragraph.~~]

3. If, while processing an application **that has been determined**

or deemed to be complete, the cabinet determines that additional information is necessary, it may request the information in writing and set a reasonable deadline for response.

4. For permit revisions processed through minor permit revision procedures, pursuant to Section 6(2)(a) of this administrative regulation, a completeness determination shall not be required.

(c) Confidential information. A source that submits to the cabinet an application for a federally enforceable permit containing a claim of confidential information shall authorize the cabinet to submit the information to the U.S. EPA, or shall submit a copy of the information directly to the U.S. EPA.

(2) Duty to supplement or correct application. An applicant who fails to submit relevant facts or who has submitted incorrect information in a permit application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information. The applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it filed a complete application but prior to issuance of a draft permit. Failure to supplement or correct the application shall be a violation of this administrative regulation and shall cause the source to be subject to applicable penalties, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

(3) Standard application form and required information.

(a) Applications for required permits shall be made on Form DEP 7007 which is incorporated by reference in 401 KAR 50:034. The applicant may submit the application using computer software if the cabinet has provided for the electronic preparation of applications.

(b) An application shall include all information needed to determine the applicability of or to impose an applicable requirement and to evaluate the required fee amount pursuant to 401 KAR 50:038.

(c) The application and attachments shall include the company name and address or, if different, the plant name and address; owner's and agent's name and address; name, address, and telephone number of the plant site manager or contact; a description of the source's processes and products by Standard Industrial Classification (SIC) Code, which is incorporated by reference in 401 KAR 51:017, including any associated with alternate scenarios identified by the source; and all of the elements specified in paragraphs (d) through (j) below:

(d) The application shall provide the following emissions-related information:

1. All emissions for which the source is major and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from an emissions unit, unless the units are exempted in **Section 2(2) of this administrative regulation [~~this subsection~~]**. The applicant shall also provide any additional information related to the emissions of air pollutants necessary to verify which requirements are applicable to the source, and other information necessary to collect permit fees owed under the fee schedule approved pursuant to 401 KAR 50:038.

a. For major sources, the applicable requirements for all emissions units shall be identified in the permit application.

b. For minor sources, all applicable requirements for the emissions units that cause the source to be subject to this administrative regulation shall be identified in the permit application.

c. Fugitive emissions from a source shall be identified in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(20)(b) of this administrative regulation.

2. Identification and description of all points of emissions described in subparagraph 1 of this paragraph in sufficient detail to establish the basis for fees and applicable requirements.

3. Emissions rates in tons per year and in terms necessary to establish compliance consistent with the applicable standard reference test method. These methods are incorporated by reference in 401 KAR 50:015 or in the applicable administrative regulations.

4. Fuels, fuel use, raw materials, production rates, and operating schedules, **to the extent [~~if~~]** needed to determine or limit emissions.

5. Identification **and [,]** description**[~~, and operating parameters~~]** of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, if applicable, for all regulated air pollutants at the source.

7. Other information required by an applicable requirement, including information related to stack height limitations developed pursuant to 401 KAR 50:042.

8. Calculations on which the information in subparagraphs 1 through 7 of this paragraph is based.

(e) The application shall identify the following air pollution control requirements:

1. Citation and description of all applicable requirements; and

2. Description of or reference to the applicable test method for determining compliance with each applicable requirement.

(f) The application shall provide other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of these requirements.

(g) The application shall provide an explanation of proposed exemptions from otherwise applicable requirements.

(h) The application shall provide additional information required by the cabinet to define alternative operating scenarios identified by the source pursuant to Section 4(1)(i) of this administrative regulation, or to define permit terms and conditions implementing Section 4(1)(i) of this administrative regulation.

(i) The application shall provide a compliance plan containing the following:

1. A description of the compliance status of the source for all applicable requirements as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with those requirements.

b. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with those requirements.

2. A compliance schedule as follows:

a. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this condition, unless a more detailed schedule is expressly required by the applicable requirement.

b. For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.

3. A schedule for submission of certified progress reports, pursuant to Section 4(3)(d) of this administrative regulation, no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.

4. In Phase II of the acid rain program, the compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as provided in the acid rain program for the schedule and method the source will use to achieve compliance with the acid rain emissions limitations.

(j) The application shall identify requirements for compliance

certification, including the following:

1. A certification of compliance with all applicable requirements by a responsible official pursuant to subsection (4) of this section;

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and

4. A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements.

(4) Certification by responsible official. Application forms, reports, and compliance certifications submitted pursuant to this administrative regulation shall contain a certification by a responsible official, as defined in Section 1(28) of this administrative regulation, of truth, accuracy, and completeness. The certifications required in this administrative regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Section 4. Permit Content. (1) Standard permit requirements. A permit issued pursuant to this administrative regulation shall include the following elements:

(a) Emission limitations and standards, including operational requirements and limitations that assure compliance with applicable requirements at the time of permit issuance. This shall include:

1. The origin of and authority for each term or condition, and any variation from the applicable requirement upon which the term or condition is based;

2. A statement that the source shall comply with all applicable requirements;

3. If the SIP allows the determination of an alternative emission limit that is equivalent to the limit contained in the plan to be made in the permit issuance, renewal, or significant permit revision process, then a permit containing the equivalency determination shall contain conditions to ensure that the resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures;

4. For major sources, all applicable requirements for emissions units;

5. For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation; and

6. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(20)(b) of this administrative regulation.

7. The permit shall state that if an applicable requirement of 42 USC 7401 through 7671q is more stringent than an applicable requirement promulgated pursuant to 42 USC 7651 through 7651o, both provisions shall be placed in the permit and shall be federally enforceable.

(b) Permit duration and renewal. A statement shall be included which provides that the permit shall expire and shall be renewed pursuant to Section 5(7) **[**~~(6)~~**]** of this administrative regulation.

(c) Monitoring and related recordkeeping and reporting requirements.

1. Each permit shall contain the following monitoring requirements:

a. All emissions monitoring and analysis procedures or test methods required in the applicable requirements **including those specified in 42 USC 7414(a)(3) or 7661c(b) (Sections 114(a)(3) or 504(b) of the Act);**

b. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period representative of the source's compliance with the permit, as reported pursuant to subparagraph 3 of this paragraph. Monitoring requirements shall assure the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this sentence; and

c. Requirements covering the use, maintenance, and installation of monitoring equipment or methods, as necessary and appropriate.

2. Each permit shall incorporate the following recordkeeping requirements, if applicable:

a. Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The dates analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of analyses; and

(vi) The operating conditions at the time of sampling or measurement;

b. Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

3. Each permit shall incorporate the following reporting requirements, if applicable:

a. Submittal of required monitoring reports at least every six (6) months. All deviations from permit requirements shall be clearly identified in the reports, and all reports shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.

b. **Prompt reporting [**~~The cabinet shall be notified immediately~~**]** of deviations from permit requirements, including those attributed to upset conditions **[**~~as defined in the permit~~**]**, the probable cause of the deviations, and corrective actions or preventive measures taken. **The cabinet shall define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements. [**~~A written report shall be filed with the cabinet within ten (10) days of the deviation.~~**]**

(d) A permit condition prohibiting emissions exceeding allowances that the source lawfully holds in the acid rain program.

1. A permit revision shall not be required for increases in emissions authorized by allowances acquired pursuant to the acid rain program if the increases do not require a permit revision in another applicable requirement.

2. A limit shall not be placed on the number of allowances held by the source. However, a source shall not be allowed to use allowances in defense of noncompliance with an applicable requirement.

3. Allowances shall be accounted for according to the procedures established in 40 CFR Part 73, which is incorporated by reference in Section **11 [**~~10~~**]** of this administrative regulation.

(e) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to portions of the permit.

(f) Provisions stating the following:

1. The permittee shall comply with all conditions of the permit. Noncompliance shall be a violation of this administrative regulation and **42 USC 7401 through 7671q (the Act) and is grounds for an enforcement action [**~~shall cause the source to be subject to applicable penalties~~**]**, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance.

3. The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.

4. The permit shall not convey property rights or exclusive privileges.

5. The permittee shall furnish to the cabinet information that the cabinet may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the cabinet copies of records required to be kept by the permit.

(g) A provision to ensure that the source shall pay the fees to the cabinet pursuant to the approved fee schedule in 401 KAR 50:038.

(h) Emissions trading. A **provision stating that a** permit revision shall not be required in approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(i) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the cabinet. The terms and conditions:

1. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario in which it is operating;

2. **Shall** [~~May~~] extend the permit shield described in subsection (6) of this section to all terms and conditions in each operating scenario; and

3. Shall ensure that the terms and conditions of each alternative scenario meet all applicable requirements.

(j) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, **solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of other applicable requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The cabinet shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are not replicable procedures to enforce the emissions trades.** [~~to the extent that the applicable requirements provide for trading increases and decreases without a case by case approval of each emissions trade.~~] The terms and conditions:

1. Shall include all terms required in subsections (1) and (3) of this section to determine compliance;

2. **Shall** [~~May~~] extend the permit shield described in subsection (6) of this section to all terms and conditions that allow increases and decreases in emissions; and

3. Shall meet all applicable requirements and the requirements of this administrative regulation.

4. Shall require written notification to the cabinet and the U.S. EPA seven (7) days in advance of the proposed change. The source, cabinet and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(2) Federally enforceable requirements. The cabinet shall include a notification in a federally enforceable permit that all terms and conditions in the permit, except the provisions that are specifically designated as state-origin permit conditions, shall be enforceable by the U.S. EPA and citizens.

(3) Compliance requirements. All permits shall contain the following elements for compliance:

(a) Pursuant to subsection (1)(c) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Documents, including reports, shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.

(b) Requirements that the permittee shall allow the cabinet or an authorized representative to perform the following:

1. Enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept;

2. Have access to and copy, at reasonable times, any records required by the permit:

a. During normal office hours; and

b. During periods of emergency when prompt access to records is essential to proper assessment by the cabinet; and

3. Inspect, at reasonable times, any facilities, equipment, (including monitoring and air pollution control equipment), practices, or operations required by the permit. Reasonable times shall include, but not be limited to the following:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

4. Sample or monitor, at reasonable times, substances or parameters to assure compliance with the permit or any applicable requirements. Reasonable times shall include, but not be limited to the following:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

[~~1. Enter the premises of a source to inspect any emissions related activity or records required in the permit;~~

~~2. Have access to and copy records required by the permit;~~

~~3. Inspect facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required in the permit; and~~

~~4. Sample or monitor substances or parameters to assure compliance with the permit or any applicable requirements.~~]

(c) A schedule of compliance as required in Section 3(3)(i)2 of this administrative regulation.

(d) Progress reports on the schedule of compliance required in paragraph (c) of this subsection to be submitted at least semiannually, or at a more frequent period if specified in an applicable requirement or by the cabinet. Progress reports shall contain the following:

1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance were achieved; and

2. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.

(e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

1. The frequency, as specified in an applicable requirement or by the cabinet, of submissions of compliance certifications (must be at least annually);

2. In accordance with subsection (1)(c) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

3. A requirement that the compliance certification include the

following:

a. The identification of each term or condition of the permit that is the basis of the certification;

b. The compliance status;

c. Whether compliance was continuous or intermittent;

d. The method used for determining the compliance status of the source, currently and over the reporting period pursuant to subsection (1)(c) of this section; and

e. Other facts as the cabinet may require to determine the compliance status of the source;

4. A requirement that all compliance certifications be submitted to the U.S. EPA as well as to the cabinet; and

5. Additional requirements for monitoring and compliance certification, if specified by the cabinet.

(f) A specific condition that the source shall not be allowed to **commence operation until** [~~operate unless~~] it has demonstrated compliance, pursuant to 401 KAR 50:055 and Section 5(4) [~~(3)~~] of this administrative regulation, or **the permit has been revised to contain a compliance plan. For a federally enforceable permit, the compliance plan shall meet** [~~is operating in accordance with a compliance plan which has met~~] the applicable review requirements in Sections 7 through 9 of this administrative regulation.

(g) Other provisions required by the cabinet.

(4) General permits.

(a) The cabinet may, after notice and opportunity for public participation provided in Section 7 of this administrative regulation, issue a general permit covering numerous similar sources. A general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the cabinet shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions in subsection (6) of this section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources except as provided in the acid rain program.

(b) Sources that qualify for a general permit shall apply to the cabinet for coverage under the terms of the general permit or shall apply for a permit pursuant to Section 3 of this administrative regulation. The general permit application shall meet the requirements of this administrative regulation and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The cabinet may grant a source's request for a general permit without repeating the public participation procedures required in Section 7 of this administrative regulation. If the cabinet determines that the source does not meet the criteria for a general permit, **the cabinet's denial of the general permit shall not constitute a final action and** the permit application shall be processed pursuant to the requirements of Section 3 of this administrative regulation.

(5) Temporary sources. The cabinet may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one (1) change of location during the term of the permit. An affected source shall not be permitted as a temporary source. Permits for temporary sources shall include the following:

(a) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(b) Requirements that the owner or operator notify the cabinet at least ten (10) days in advance of each change in location; and

(c) Conditions that assure compliance with all other provisions of this administrative regulation.

(6) Permit shield.

(a) Except as provided in this administrative regulation, compliance with the conditions of the permit shall be deemed compliance with the applicable requirements as of the date of permit issuance, if:

1. The applicable requirements are included and are specifically identified in the permit; or

2. The cabinet, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(c) Nothing in this subsection or in a permit shall alter or affect the following:

1. 42 USC 7603 (emergency orders, Section 303 of the Act), including the authority of the U.S. EPA in that section;

2. The liability of an owner or operator of a source for violation of applicable requirements prior to or at the time of permit issuance;

3. The applicable requirements of the acid rain program; or

4. The ability of the U.S. EPA to obtain information from a source pursuant to 42 USC 7414 (Section 114 of the Act).

(7) Emergency provision.

(a) Effect of an emergency. An emergency shall constitute an affirmative defense to an action brought for noncompliance with the technology-based emission limitations if the conditions in paragraph (b) of this subsection are met.

(b) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An emergency occurred and the permittee can identify the cause of the emergency;

2. The permitted facility was at the time being properly operated;

3. During the period of the emergency the permittee took all reasonable steps[~~, as expeditiously as practicable,~~] to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

4. The permittee notified the cabinet **as promptly as possible** [~~immediately~~] and submitted written notice of the emergency to the cabinet within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of subsection (1)(c)3b of this section, and shall contain a description of the emergency, steps taken to mitigate emissions, and corrective actions taken.

(c) In an enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.

(d) This provision is in addition to any emergency or upset provision contained in an applicable requirement.

Section 5. Permit Issuance and Renewal. (1) A person shall not construct, reconstruct, modify, or operate a source without a permit **issued pursuant to this administrative regulation. A permit application submitted by an existing source which is deemed complete prior to the effective date of this administrative regulation may be processed by the cabinet according to the requirements of the version of this administrative regulation in effect at the time the application was deemed complete.** [~~as required by this section.~~

~~(a) Permit issuance.~~

~~1. The cabinet shall issue a draft permit after the provisions of subsection (2)(a) and (b) of this section have been met.~~

~~2. The cabinet shall issue a proposed permit after the provisions of subsection (2)(a) through (d) of this section have been met.~~

~~3. The cabinet shall make a determination regarding the issuance of a final permit after the provisions of subsection (2)(a) through (c) of this section have been met.~~

~~(b) A permit application submitted by an existing source which is deemed complete prior to the effective date of this administrative regulation may be processed by the cabinet according to the requirements of the version of this administrative regulation in effect at the time the application was deemed complete.~~

~~(c) For an existing source that is required to have a federally enforceable permit, the following provisions shall apply:~~

~~1. A source may operate on the basis of its existing permit or an order issued by the cabinet until it is scheduled to submit a timely application.~~

~~2. If the source fails to submit a timely application, or if the source fails to submit additional information requested by the cabinet pursuant to Section 3(1)(a)3 of this administrative regulation, the source shall not operate except in compliance with a final permit.~~

~~3. If the source submits a timely application and additional information requested by the cabinet pursuant to Section 3(1)(a)3 of this administrative regulation, the source shall operate in compliance with an existing permit or order issued by the cabinet until the cabinet has issued a proposed permit. Thereafter, the source shall operate in compliance with the proposed permit until a final determination on the permit is made by the cabinet, after which the source shall operate in compliance with the final permit.~~

~~(d) An existing source that is required to have a state origin permit may operate on the basis of an existing permit or order issued by the cabinet until the source fails to submit a timely application, or the source fails to submit any additional information requested by the cabinet pursuant to Section (3)(1)(a)3 of this administrative regulation, or the provisions of subsection 2(a) and (b) of this section have been met and a final determination is made on the permit.~~

~~(e) For a source which commences construction, reconstruction, or modification on or after the effective date of this administrative regulation, the following provisions shall apply:~~

~~1. A source that is subject to 401 KAR 51:017 or 401 KAR 51:052 shall not construct, reconstruct, modify, or operate except in compliance with a final permit.~~

~~2. A major source not subject to 401 KAR 51:017 or 401 KAR 51:052 shall not construct, reconstruct, modify, or operate except in compliance with a proposed permit until a final determination on a permit is made. Thereafter, the source shall operate in compliance with the final permit.~~

~~3. A minor source required to have a federally enforceable permit shall not construct, reconstruct, modify, or operate except in compliance with a draft permit. After a proposed permit is issued, the source shall operate in compliance with the proposed permit until a final determination on the permit is made, after which the source shall operate in compliance with the final permit.~~

~~4. For a source required to have a state origin permit, the source shall not construct, reconstruct, modify, or operate except in compliance with a final permit. The cabinet shall issue a final permit after the provisions of subsection (2)(a) and (b) of this section have been met.]~~

(2) Federally enforceable permits. The cabinet shall use the procedures provided in this subsection to issue a permit if the source is a major source, a minor source subject to a federally enforceable requirement and required by the U.S. EPA to obtain a federally enforceable permit, or a minor source that is subject to a federally enforceable requirement and requests that the cabinet issue a federally enforceable permit.

(a) Draft permit.

1. The cabinet shall deny the permit or issue a draft permit within sixty (60) days after the application is deemed complete. A minor source shall construct and operate in compliance with the draft permit until a final permit is issued or denied, except as provided in paragraph (c)4 of this subsection.

2. Public and affected state review. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

(b) Proposed permit.

1. The cabinet shall deny the permit or issue a proposed permit within sixty (60) days after the public and affected state review required in Sections 7 and 8 of this administrative regulation is completed. A major source shall construct and operate in compliance with the proposed permit until the final permit is issued, except as provided in paragraphs (c)2 and 3 of this subsection.

2. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(c) Final permit.

1. The cabinet shall issue or deny a final permit within eighteen (18) months after receiving a complete application, except as provided in paragraphs 2 and 3 of this subsection.

2. A source subject to 401 KAR 51:017 shall construct and operate in compliance with a final permit, except as provided in subparagraph 3 of this paragraph. The cabinet shall issue or deny a final permit for these sources within twelve (12) months after receiving a complete application.

3. An existing source, including a source subject to 401 KAR 51:017, submitting an application pursuant to Section 3(1)(a)1 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet until the final permit is issued or denied. The cabinet shall make a final determination on at least one-third (1/3) of these applications during each twelve (12) month period beginning twelve (12) months after the approval date of the state's permit program by the U.S. EPA, so that a final action shall be taken on all applications within thirty-six (36) months after program approval.

4. An existing source submitting an application pursuant to Section 3(1)(a)2 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet, until the final permit is issued or denied.

(d) The cabinet may extend the time periods specified in paragraphs (a) and (b) of this subsection with the consent of the applicant, however the time periods specified in paragraph (c) of this subsection shall not be exceeded.

~~[(2) Permit issuance provisions. As required in subsection (1) of this section, the following provisions, as applicable to the source, shall be met before a final determination on the permit is made:~~

~~(a) The cabinet has received a complete permit application, pursuant to Section 3(1)(b) of this administrative regulation, except that a complete application need not be received before issuance of a general permit pursuant to Section 4(4) of this administrative regulation.~~

~~(b) The conditions of the permit provide for compliance with all applicable requirements.~~

~~(c) The requirements for public participation, pursuant to Section 7 of this administrative regulation, have been met.~~

~~(d) The requirements for notifying and responding to affected states, pursuant to Section 8 of this administrative regulation, have been met.~~

~~(e) The requirements for review by the U.S. EPA pursuant to Section 9 of this administrative regulation have been met, and the U.S. EPA has not objected to the issuance of the permit within the time period specified in Section 9(3) of this administrative regulation.]~~

(3) State origin permits. If the source is not subject to a federally enforceable requirement or the source is a minor source not required by the U.S. EPA to have a federally enforceable permit, the cabinet shall use the procedures provided in this subsection to issue a permit.

(a) The cabinet shall deny or issue a final permit within sixty (60) days after receiving a complete application. The cabinet may extend this time period with the consent of the applicant.

(b) An existing source submitting an application pursuant to Section 3(1)(a)3 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet until a final permit is issued or denied.

(4) ~~[(3)]~~ Compliance demonstration. A source that is constructing, reconstructing, or modifying shall not commence operation until compliance with the applicable requirements is demonstrated,

pursuant to 401 KAR 50:055, **except as provided in Section 6 of this administrative regulation.**

1. A source which is operating to demonstrate compliance shall not be considered to have commenced operation.

2. If the source does not successfully demonstrate compliance, the permit shall be amended as necessary and the compliance schedule shall be revised or added, as appropriate, pursuant to Section 4(3)(f) of this administrative regulation.

~~[(4) Final action on permit applications.~~

~~(a) Except as provided in the acid rain program for the permitting of affected sources, and in paragraphs (b) and (c) of this subsection, the cabinet shall make a final determination on the permit or permit revision eighteen (18) months after receiving a complete application.~~

~~(b) For the initial round of permit applications submitted pursuant to Section 3(1)(a) of this administrative regulation, the cabinet shall make a final determination on at least one third (1/3) of the applications during each twelve (12) month period beginning twelve (12) months after the approval date of the state's permit program by the U.S. EPA, so that a final action shall be taken on all applications within thirty-six (36) months after program approval. Applications shall be processed in the order received.~~

~~(c) For sources which are constructing, reconstructing, or modifying and which are subject to 401 KAR 51:017, the cabinet shall make a final determination on the permit application within twelve (12) months from the date of receipt of a complete application.~~]

(5) [~~(d)~~] If an existing source submits a timely and complete application for a permit or permit revision, pursuant to Section 3 of this administrative regulation, the source's failure to have a permit or permit revision shall not be a violation of this administrative regulation until the cabinet makes a final determination **to approve or deny the permit or permit revision** [~~on the permit application~~]. The sources authority to operate shall cease to apply if, subsequent to the completeness determination made pursuant to Section 3(1)(b) of this administrative regulation, the applicant fails to submit by the deadline, specified in writing by the cabinet, additional information **requested pursuant to Section 3(1)(b)3 of this administrative regulation** [~~required to process the application~~].

(6) [~~(5)~~] General requirements.

~~[(a) A person shall not construct, reconstruct, modify, or operate a source in a manner different from the description contained in the permit application.~~

~~(b)~~] For a source that is constructing, reconstructing, or modifying, a permit shall become invalid if construction is not commenced within eighteen (18) months after the permit is issued, if construction begins but is discontinued for a period of eighteen (18) months or more, or if construction is not completed within eighteen (18) months of the scheduled completion date. The cabinet may extend these time periods upon a satisfactory showing that an extension is justified. This provision shall not apply to the time period between construction of the approved phases of a phased construction project. For a phased construction project, each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(7) [~~(6)~~] Permit duration and renewal.

(a) Permit duration. A permit issued after the effective date of this administrative regulation shall remain in effect for a fixed term of five (5) years, except that[~~:~~

~~1.~~] permits for solid waste incineration units that combust municipal waste shall remain in effect for a period of twelve (12) years and shall be reviewed by the cabinet at least every five (5) years[~~; and~~

~~2. One fifth (1/5) of the permits issued on the basis of the initial round of permit applications received pursuant to Section 3(1)(a) of this administrative regulation shall expire during each twelve (12) month period beginning November 15, 1997, so that all permits have expired by November 14, 2002. Expiration dates shall be assigned to permits in the order they are issued~~].

(b) Permit renewal.

1. Permit expiration shall terminate the source's right to operate unless a timely and complete renewal application has been submitted pursuant to Section 3(1)(a)6 of this administrative regulation.

2. Permits being renewed shall be subject to the same procedural requirements, including those for public participation and for affected state and U.S. EPA review, that apply to initial permit issuance.

3. If a timely and complete application for a permit renewal is submitted consistent with Section 3 of this administrative regulation, but the cabinet fails to issue or deny the renewal permit before the end of the term of the previous permit, all the terms and conditions of that permit, including any permit shield that is issued pursuant to Section 4(6) of this administrative regulation, shall remain in effect until the renewal permit has been issued or denied.

4. If the cabinet fails to act promptly on a permit renewal, the U.S. EPA may invoke its authority, pursuant to 42 USC 7661(e) (Section 505(e) of the Act), to terminate or revoke and reissue the permit.

Section 6. Permit Revisions and Reopenings. (1) Administrative permit amendment procedures. An administrative permit amendment may be made by the cabinet pursuant to the following:

(a) The cabinet shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on the request, and may incorporate the changes without providing notice to the public or affected states if it determines the permit revision has been made pursuant to this paragraph.

(b) The cabinet shall submit a copy of the revised permit to the U.S. EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) The cabinet may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for the administrative permit amendment as defined in Section 1(3) of this administrative regulation, if the amendment meets the relevant requirements of Sections 4 through 9 of this administrative regulation for significant permit revisions.

(e) Administrative permit amendments for the acid rain portion of the permit shall be governed by **regulations promulgated pursuant to 42 USC 7651 through 7651q (Title IV of the Act)** [~~the acid rain program~~].

(2) Permit revisions. Except as provided in the acid rain program, the procedures for revising a permit shall be as follows:

(a) Minor permit revision procedures.

1. Minor permit revision procedures shall be used for permit revisions that:

a. Do not violate an applicable requirement;

b. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

c. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

d. Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement but which the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. These terms and conditions include:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification in a provision of **42 USC 7401 through 7514a (Title I of the Act)** [~~the SIP~~]; and

(ii) An alternative emissions limit approved pursuant to 401 KAR 57:060;

e. Are not modifications in a provision of **42 USC 7401 through 7514a (Title I of the Act) or of** an administrative regulation promulgated in 401 KAR Chapters 50 through 63; and

f. Are not required to be processed as a significant permit

revision.

2. Notwithstanding this paragraph and paragraph (b)1 of this subsection, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that these minor permit revision procedures are explicitly provided for in the SIP or in applicable requirements.

3. Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs;

b. The source's suggested draft permit;

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of minor permit revision procedures and a request that these procedures be used; and

d. Completed forms for the cabinet to use to notify affected states and the U.S. EPA, as required in Sections 8 and 9 of this administrative regulation.

4. U.S. EPA and affected state notification. Within five (5) working days of receipt of a complete permit revision application, the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 8 and 9(2) of this administrative regulation, of the requested minor permit revision.

5. Timetable for issuance. The cabinet shall not issue a final minor permit revision until after the U.S. EPA's forty-five (45) day review period or until the U.S. EPA has notified the cabinet that it will not object to issuance of the minor permit revision, whichever is sooner, pursuant to Section 9(3) of this administrative regulation. Within ninety (90) days of the cabinet's receipt of an application for a minor permit revision or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later, the cabinet shall:

a. Issue the minor permit revision as proposed;

b. Deny the minor permit revision application;

c. Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures; or

d. Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 9(2) of this administrative regulation.

6. The source's ability to make a change. The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change, and until the cabinet takes any of the actions specified in subparagraph 5a through c of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.

(b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.

1. Criteria. Group processing shall be used only for permit revisions that:

a. Meet the criteria for minor permit revision procedures in paragraph (a) of this subsection; and

b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable emissions provided in the definition of "major source" in Section 1(20) of this administrative regulation, or five (5) tons per year, whichever is least.

2. Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.

b. The source's suggested draft permit revision.

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used.

d. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold prescribed in subparagraph 1b of this paragraph.

e. Certification, pursuant to Section 3(4) of this administrative regulation, that the source has notified the U.S. EPA of the proposed permit revision. The notification shall contain a brief description of the requested permit revision.

f. Completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 8 and 9 of this administrative regulation.

3 U.S. EPA and affected state notification. On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in subparagraph 1b of this paragraph, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected states of the requested permit revisions pursuant to Sections 8 and 9(2) of this administrative regulation.

4. Timetable for issuance. Subsection (2)(a)5 of this section shall apply to permit revisions eligible for group processing, except that the cabinet shall take one (1) of the actions specified in subsection (2)(a)5a through d of this section within 180 days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45)-day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later.

5.The source's ability to make a change. Subsection (2)(a)6 of this section shall apply to permit revisions eligible for group processing.

6. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to permit revisions eligible for group processing.

(c) Significant permit revision procedures.

1. Criteria. Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative permit amendments. Changes in existing monitoring permit terms or conditions, and relaxation of reporting or recordkeeping permit terms or conditions, shall normally be considered significant changes. The permittee may, however, make changes pursuant to this administrative regulation that would render existing permit compliance terms and conditions not applicable.

2. Significant permit revisions shall meet all the requirements of this administrative regulation for permit issuance and renewal, including provisions for applications, public participation, review by affected states, and review by the U.S. EPA.

(d) **A permit revision shall not be required for a change at a permitted source if the change is neither addressed nor prohibited by the permit, unless the change would result in a change in method of operation or a change in emissions. A change may**

also be made without a permit revision if it is authorized by the permit or is a Section 502(b)(10) change. A source may make the changes described in this paragraph if: ~~[Operational flexibility. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph. A source may make changes within a permitted facility without a permit revision if:]~~

1. The changes are not modifications pursuant to any provision of 42 USC 7401-7515 (Title I of the Act) or **subject to** 42 USC **7651** ~~[747651]~~ through 7651o (Title IV of the Act);

2. The changes do not result in emissions which exceed the emissions allowable under the permit, whether expressed as a rate of emissions or in terms of total emissions;

3. For each change, the owner or operator notifies the cabinet and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. **The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit.** The written notification shall include the following:

a. A brief description of the change within the permitted facility;

b. The date on which the change will occur;

c. Any change in emissions; and

d. Any permit term or condition that is no longer applicable as a result of the change.

4. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph.

5. The change shall be incorporated into the permit at renewal.

(3) Reopening for cause.

(a) Each issued permit shall include provisions specifying the conditions for which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under the following circumstances:

1. Additional applicable requirements become applicable to a source with a remaining permit term of three (3) or more years. A reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. A reopening shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to Section 5(7) ~~[(6)]~~(b)3 of this administrative regulation.

2. Additional applicable requirements, including excess emissions requirements, become applicable to an affected source in the acid rain program. Upon approval by the U.S. EPA and the cabinet, excess emissions offset plans shall be incorporated into the permit;

3. The cabinet or the U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

4. For federally enforceable permits, the cabinet or the U.S. EPA determines that the permit shall be revised or revoked to assure compliance with the applicable requirements or, for state-origin permits, the cabinet makes a similar determination.

(b) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable.

(c) Reopenings in paragraph (a) of this subsection shall not be initiated before a notice of intent to reopen is provided to the source by the cabinet at least thirty (30) days in advance of the date that the permit is to be reopened, except that the cabinet may provide a shorter time period in the case of an emergency.

(4) Reopenings for cause by the U.S. EPA.

(a) If the U.S. EPA finds that cause exists to terminate, modify, or revoke and reissue a federally enforceable permit pursuant to subsection (3) of this section, the U.S. EPA shall notify the cabinet and the permittee of this finding in writing.

(b) The cabinet shall, within ninety (90) days after receipt of notification, forward to the U.S. EPA a proposed determination of termination, revision, or revocation and reissuance of the permit, as appropriate. The U.S. EPA may extend this ninety (90) day period for an additional ninety (90) days if it finds that a new or revised permit application is necessary or that the cabinet has required the permittee to submit additional information.

(c) The U.S. EPA shall review the proposed determination from the cabinet within ninety (90) days of receipt.

(d) The cabinet shall have ninety (90) days from receipt of an objection by the U.S. EPA to resolve the objection and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

(e) If the cabinet fails to submit a proposed determination pursuant to paragraph (b) of this subsection or fails to resolve an objection pursuant to paragraph (d) of this subsection, the U.S. EPA shall terminate, modify, or revoke and reissue the permit after the permittee is notified of the reasons for the action, in writing. The permittee shall be given thirty (30) days from the date of the notice to comment on the U.S. EPA's proposed action and to request a hearing. This notice may be given during the procedures in paragraphs (a) through (d) of this subsection.

Section 7. Procedures for Public Participation. (1) The cabinet shall provide public notice of the opportunity to comment for the following permit actions:

(a) Issuance of a draft permit;

(b) Intended denial of a permit application;

(c) Issuance of a draft significant permit revision;

(d) Issuance of a draft general permit;

(e) Issuance of a permit renewal;

(f) Scheduling of a public hearing pursuant to subsection (7) of this section~~[; and~~

~~(g) Any other permit related activity that the cabinet determines to be of substantial interest to the public]~~.

(2) The cabinet shall provide public notice by prominent advertisement in the newspaper having the largest general circulation in the area of the facility applying for the permit. Publication shall include paid advertisement, legal notice, or other appropriate format, as determined by the cabinet. The cabinet may provide additional notice to the public through other methods, including but not limited to newsletters and press releases.

(3) A copy of the notice required in subsection (2) of this section shall be sent to the following persons:

(a) The applicant;

(b) For sources subject to 401 KAR 51:017, officials and agencies having authority over the locations where the source will be located, as follows:

1. The administrator of the U.S. EPA through the appropriate regional office;

2. Local air pollution control agencies;

3. The chief executive of the city and county;

4. Any comprehensive regional land use planning agency; and

5. Any federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source;

(c) Affected states; and

(d) Persons on a mailing list which is maintained and compiled by the cabinet. This mailing list shall include persons requesting to be on the list, and persons solicited from participants in past permit proceedings in the affected area. The cabinet may notify the public of the opportunity to be on the list through periodic publication in the public press and in such publications as state-founded newsletters, environmental bulletins, or state law journals. The cabinet may delete from the list persons who fail to respond to an inquiry of continued interest in receiving notice.

(4) Public notice and the notice for those on the mailing list shall

include the following minimum information:

(a) Name and address of the Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, Division for Air Quality;

(b) Name and address of the permit applicant and, if different, the name and address of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity involved in the permit action;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, such as:

1. Copies of the draft permit;

2. The application and relevant supporting material, including permit applications, compliance plans, permits, and monitoring and compliance certification reports, except for confidential information; and

3. All other materials available to the cabinet that are relevant to the permit decision;

(e) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of hearings scheduled for the permit; and

(f) A description of the emission change involved in any permit revision, and for sources subject to 401 KAR 51:017, the degree of increment consumption that is expected from the source or modification, if applicable.

(5) The cabinet shall make available for public inspection, in at least one (1) location in each region in which the source is located or would be constructed, reconstructed, or modified, all nonproprietary information contained in the permit application, draft permit, and supporting materials. Public inspection of materials for temporary sources or general permits may be located at the discretion of the cabinet.

(6) Public comment.

(a) Except for permit revisions qualifying for administrative permit amendments and minor permit revision procedures, the cabinet shall provide a minimum of thirty (30) days for public comment on all permit proceedings, including initial permit issuance, draft permits, significant permit revisions, and permit renewals. The comment period shall begin on the date of publication of notice in the newspaper.

(b) The cabinet shall provide notice and opportunity for participation by affected states pursuant to Section 8 of this administrative regulation.

(c) A proposed permit shall not be issued until the public comment period has ended and the cabinet has prepared a response to the comments received. Public comments submitted in writing during the public comment period shall be considered by the cabinet in its decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. Comments may be submitted in alternate format to accommodate individuals with disabilities.

(7) Public hearings.

(a) The cabinet shall provide a public hearing if, on the basis of written requests received within the public comment period, the cabinet determines that material issues have been raised concerning the terms and conditions of a permit. **A request shall not require the extension of the comment period associated with the notice.**

(b) The cabinet may also elect to hold a public hearing if the cabinet determines that the permit action is of significant public interest. In these cases, public notice of the hearing may be combined with the public notice of the draft permit.

(c) The cabinet shall give notice of a public hearing at least thirty (30) days in advance of the hearing. In addition to the information required in subsection (4) of this section, the notice of public hearing shall contain the following information:

1. Reference to the dates of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of applicable rules and procedures for the hearing.

(d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts are also available, upon request, in large type or in braille.

(8) Public record. The cabinet shall keep a record of the commentors and of the issues raised during the public participation process. These records shall be made available to the public and to the U.S. EPA.

(9) Petition for EPA objection. A person may petition the U.S. EPA to make an objection to a proposed permit pursuant to Section 9(3)(f) of this administrative regulation.

(10) The following actions shall be exempt from this section:

(a) Permit revisions qualifying for minor permit revision procedures, including group processing;

(b) Administrative permit amendments; and

(c) Fast track permit revisions pursuant to the acid rain program.

Section 8. Notice to Affected States. (1) The cabinet shall give notice of draft permits to affected states on or before the time that the cabinet provides the draft permit or draft permit revision notice to the public pursuant to Section 7 of this administrative regulation, unless Section 6(2)(a) or (b) requires the timing of the notice to be different.

(2) Cabinet response. The cabinet, as part of the submittal of the proposed permit to the U.S. EPA (or for a minor permit revision, as soon as possible after the submittal), pursuant to Section 9 of this administrative regulation, shall notify the U.S. EPA and affected states in writing of refusal by the cabinet to accept a recommendation for the proposed permit that an affected state submitted during the public review period. The notice shall include the cabinet's reasons for not accepting the recommendation.

(3) The cabinet is not required to accept recommendations based on requirements that are not applicable to the proposed permit, or that are not based on requirements of this administrative regulation.

Section 9. U.S. EPA Review. (1) Prohibition on default issuance of permits.

(a) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal until the affected states and the U.S. EPA have had an opportunity to review the proposed permit action pursuant to this section and Section 8 of this administrative regulation; and

(b) The cabinet shall not issue a permit, permit revision, or permit renewal if it has failed to take action on the application pursuant to subsection (3) of this section, unless the U.S. EPA has waived the review for the U.S. EPA and affected states.

(2) Transmission of information to the U.S. EPA.

(a) The cabinet shall provide to the U.S. EPA a copy of each federally enforceable permit application, permit revision application, proposed permit, and final permit. Information that is submitted with a claim of confidentiality shall be submitted pursuant to Section 3(1)(c) of this administrative regulation.

(b) On a case-by-case basis, and with U.S. EPA approval, the cabinet may submit a permit application summary form and a relevant portion of the permit application and compliance plan in place of the

complete application and compliance plan. If possible, this information shall be provided in computer-readable format compatible with the U.S. EPA's national database management system.

(3) U.S. EPA objection.

(a) The U.S. EPA will object to the issuance of any proposed permit determined by the U.S. EPA not to meet applicable requirements. The U.S. EPA shall file an objection in writing within forty-five (45) days of receipt of the proposed permit and the necessary supporting information.

(b) The cabinet shall not issue a permit if the U.S. EPA files an objection pursuant to the requirements in subsection (1) of this section.

(c) [~~(d)~~] The U.S. EPA objection shall include a statement of the reasons for objection and a description of the terms and conditions that the permit shall include to respond to the objections. The U.S. EPA shall provide the permit applicant a copy of the objection.

(d) [~~(e)~~] If the cabinet fails, within ninety (90) days after the date of a U.S. EPA objection, to revise and submit a proposed permit in response to the objection, the U.S. EPA shall issue or deny the permit pursuant to the requirements of 42 USC 7661 through 7661f, (Title V of the Act).

(e) [~~(f)~~] If the U.S. EPA does not object, in writing, pursuant to this section, a person may petition the U.S. EPA within sixty (60) days after the expiration of the U.S. EPA's forty-five (45) day review period to make an objection. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period pursuant to Section 7 of this administrative regulation, unless the petitioner demonstrates that it was impracticable to raise the objections within the comment period, or unless the grounds for the objection arose after the comment period. If the U.S. EPA objects to the proposed permit as a result of a petition filed pursuant to this subsection, the cabinet shall not issue the permit until the U.S. EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to a U.S. EPA objection.

(f) [~~(g)~~] If the cabinet has issued a permit prior to receipt of a U.S. EPA objection pursuant to this section, the U.S. EPA may modify, terminate, or revoke the permit pursuant to Sections 4 through 6 of this administrative regulation, and the cabinet shall thereafter issue a revised permit that satisfies the U.S. EPA objection. **The source shall not be in violation of the requirement to have submitted a timely and complete application.**

(4) Recordkeeping and sharing of information. The cabinet shall keep records of the information required in subsection (2) of this section for at least five (5) years. The cabinet shall submit, upon request from the U.S. EPA and in a form specified by the U.S. EPA, including computer-readable files to the extent practicable, information which may reasonably be required to determine if the permitting program complies with the requirements of 42 USC 7401 through 7661q, or 40 CFR Part 70. If the information has been submitted to the cabinet under a claim of confidentiality, the cabinet may require the source to submit this information to the U.S. EPA directly. If the cabinet is authorized by a source to submit information to the U.S. EPA under a claim of confidentiality, the cabinet shall submit the confidentiality claim to the U.S. EPA together with the information to which it applies.

Section 10. For Section 3(1)(a)1 of this administrative regulation, one-third (1/3) of the existing major sources with the lowest score shall be calculated using the following formula:

$(1 + n)(1 + p/2) = Score$

Where: "n" shall equal the number of emission units at the source as contained in the most recent version of the Kentucky Emissions Inventory System (KyEIS); and

"p" shall equal the sum of the number of pollutants, for which there is a national ambient air quality standard, emitted at each emission unit.

Section 11. [~~10.~~] Materials Incorporated by Reference. (1) The following documents relating to affected sources subject to the acid rain program, are hereby incorporated by reference:

(a) 40 CFR Part 72, Permits Regulation, as published in the Federal Register, January 11, 1993 (58 FR 3650-3687).

(b) 40 CFR Part 73, Allowance System, as published in the Federal Register, January 11, 1993 (58 FR 3687-3701).

(c) 40 CFR Part 75, Continuous Emission Monitoring, as published in the Federal Register, January 11, 1993 (58 FR 3701-3757).

(d) 40 CFR Part 77, Excess Emissions, as published in the Federal Register, January 11, 1993 (58 FR 3757-3760).

(e) 40 CFR Part 78, Appeal Procedures for acid rain program, as published in the Federal Register, January 11, 1993 (58 FR 3760-3766).

(2) Copies of the documents incorporated by reference in subsection (1) of this section shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices of the Division for Air Quality:

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

(2) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky, 41105-1507, (606) 325-8569;

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

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

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

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

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

~~[Section 1. Prohibitions. (1) No person shall construct, reconstruct, alter, or modify a source unless a construction permit to do so has been issued by the cabinet.~~

~~(2) No person shall use, operate, or maintain an air contaminant source unless:~~

~~(a) A permit to so operate the air contaminant source has been issued by the cabinet and is currently in effect;~~

~~(b) The cabinet or the court has issued to the source a compliance order with a compliance schedule consistent with the Clean Air Act; or~~

~~(c) The source has demonstrated to the satisfaction of the cabinet that it is in compliance with the provisions of all applicable regulations including all provisions relating to public participation, a complete application for a permit to operate has been accepted by the cabinet and the cabinet has notified the applicant that the application is complete. Operation authorized by this paragraph shall expire thirty (30) days after the date of notification made to the source by the cabinet that an operating permit fee balance as specified by 401 KAR 50:036, Section 5(1) is due or immediately upon notification to the source by the cabinet that the source operating permit is denied.~~

~~(3) No person shall use, operate, or maintain a source which has changed ownership after a shutdown of six (6) months or more unless:~~

~~(a) The provisions of 401 KAR 50:055, Section 3(1) are met;~~

~~(b) The source was issued an operating permit and was in compliance with all applicable regulations under the previous ownership; and~~

~~(c) The provisions of Section 5(2) of this regulation are met.~~

~~Section 2. Applications. (1) Applications for permits required under Section 1 of this regulation shall be made on forms prepared~~

by the cabinet for such purpose and shall contain such information as the cabinet shall deem necessary to determine whether the permit should be issued.

(2) Applications for permits shall be signed by the corporate president or by another duly authorized agent of the corporation; or by an equivalently responsible officer in the case of organizations other than corporations; or, in other cases, by the source owner or operator; or, in the case of political subdivisions, by the highest executive official of such subdivision. Such signature shall constitute personal affirmation that the statements made in the application are true and complete.

(3) The information submitted in the application shall, when specifically requested by the cabinet, include an analysis of the characteristics, properties and volume of the air contaminants based upon source or stack samples of the air contaminants taken under normal operating conditions. Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the permit application shall result in denial of the permit.

(4) An application for a permit may include one (1) or more affected facilities provided that all are contained within one (1) source. A person may apply for an amended permit to include new affected facilities provided that such new facilities are within the same source.

Section 3. Consideration of Applications. (1)(a) The cabinet shall deny an application for a permit if the cabinet determines that any provision of any applicable regulation is not met.

(b) The cabinet shall deny an application for a permit if the applicant willfully makes material misstatements in the application or amendments thereto.

(c) When required by the regulations of Title 401, Chapters 50 to 65, the cabinet shall base the determination of compliance with ambient air quality standards and prevention of significant air quality increments upon either:

1. Air quality models in accordance with 401 KAR 50:040; or

2. Ambient air quality monitoring in accordance with 401 KAR 53:010.

(d) In cases where no emission standards have been prescribed by regulation, the cabinet shall require the use of all available, practical and reasonable methods to prevent and control air pollution.

(2) Determinations and notifications.

(a) Operating permits.

1. Within thirty (30) days after receipt of an application to operate, the cabinet shall advise the owner or operator as to whether or not the application is complete, or if additional information is necessary in order to evaluate the application.

2. For sources which are subject to regulation in Title 401, Chapter 51, or modifications to any source which will cause an increase in the potential to emit of 100 tons per year in any one (1) year, the cabinet shall make its determination concerning the application including its approval, conditional approval, or denial of the operating permit application within sixty (60) days after receipt of a complete operating permit application. For all other sources, the time period for the cabinet's determination shall be within thirty (30) days of receipt of the complete application. The cabinet may extend each of the time periods specified in this paragraph if the cabinet determines that additional time is necessary. The cabinet shall notify the applicant, in writing, of its determination and shall set forth its reasons for any conditional approvals or denials.

(b) Construction permits. This paragraph shall apply to the proposed construction, modification, alteration or reconstruction of any source that is not subject to Section 4 of this regulation.

1. Within thirty (30) days after receipt of an application to construct, reconstruct, modify, or alter, or any addition to such application, the cabinet shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of subparagraph 2 of this paragraph shall be the date on which the cabinet makes a determination that the application is complete.

2. The cabinet shall make its determination concerning the application including its approval, conditional approval, or denial of the application within thirty (30) days after receipt of a complete application, unless the cabinet determines that an additional period of time is necessary to adequately review the application. The cabinet shall notify the applicant, in writing, of its determination and shall set forth its reasons for any conditional approvals or denials.

Section 4. Procedures for Public Participation. This section shall apply to the proposed major source construction, major modifications as defined in Title 401, Chapter 51, or modifications to any source which will cause an increase in the potential to emit of 100 tons per year or more of any one (1) pollutant.

(1) Within thirty (30) days after receipt of an application to construct, reconstruct, or modify or any addition to such application, the cabinet shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of subsections (2), (6) and (7) of this section shall be the date on which the cabinet makes a determination that the application is complete.

(2) Within thirty (30) days after the receipt of a complete application, the cabinet shall:

(a) Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved.

(b) Make available in at least one (1) location in each region in which the proposed source would be constructed, reconstructed, or modified, a copy of all materials submitted by the owner or operator, a copy of the cabinet's preliminary determination and a copy or summary of other materials, if any, considered by the cabinet in making the preliminary determination; and

(c) For sources subject to 401 KAR 51:017, notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source would be situated, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification if applicable, and of the opportunity to comment in writing and of the opportunity to request a public hearing to receive written or oral comments. The cost of such advertisement shall be borne by the applicant.

(d) For all other sources subject to this section, notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source would be situated, of the application, the preliminary determination, and of the opportunity to comment in writing. The cost of such advertisement shall be borne by the applicant.

(3) A copy of the notice required pursuant to this section shall be sent to the following persons (any person otherwise entitled to receive notice under this subsection may waive his/her rights to receive notice):

(a) The applicant;

(b) Officials and agencies having cognizance over the locations where the source will be situated as follows: the Administrator of the U.S. EPA through the appropriate regional office; local air pollution control agencies; the chief executive of the city and county; any comprehensive regional land use planning agency; and any state, federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source; and

(c) Persons on a mailing list compiled by including those who request in writing to be on the list, soliciting persons for "area lists" from participants in past permit proceedings in that area, and notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as state founded newsletters, environmental bulletins, or state law journals. The cabinet may update the mailing list from time to time by

requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to such a request.

(4) All public notices issued under this regulation shall contain the following minimum information:

(a) Name and address of the cabinet and division processing the permit action for which notice is being given;

(b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application; and

(e) A brief description of the comment procedures required by subsections (5) and (8) of this section.

(f) In addition to the general public notice described in paragraphs (a) to (e) of this subsection, the public notice for a hearing under subsection (8) of this section shall be given at least thirty (30) days before the hearing and shall contain the following information: reference to the date of previous public notices relating to the permit; date, time, and place of the hearing; and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(5) Public comments submitted in writing within thirty (30) days after the date such information is made available shall be considered by the cabinet in its final decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. All comments shall be made available for public inspection at the same location in the region at which the cabinet made available preconstruction information relating to the proposed source.

(6) The cabinet shall take final action on an application subject to this section regarding its approval, conditional approval, or denial of the application. The cabinet shall notify the applicant, in writing, of its approval, conditional approval, or denial of the application and shall set forth its reasons for any conditional approvals or denials. Such notification shall be made available for public inspection at the location in the region at which the cabinet made available preconstruction information relating to the proposed source or modification. The public shall be notified of the cabinet's final action on an application subject to this section by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be situated. The cost of such advertisement shall be borne by the applicant.

(a) For sources subject to 401 KAR 51:017 and for which a public hearing has been requested and held, the cabinet shall take final action within 150 days after receipt of a complete application.

(b) For all other sources subject to this section, the cabinet shall take final action within ninety (90) days after receipt of a complete application.

(7) The cabinet may extend each of the time periods specified in subsections (2) and (5) of this section by no more than thirty (30) days or such other period as agreed to by the applicant and the cabinet deems necessary. The time period specified in subsection (6) of this section shall then be extended by such period as extended for subsections (2) and (5) of this section and may be extended for such other period as agreed to by the applicant and the cabinet deems necessary. In accordance with Federal Regulation 40 CFR 52.21(r), the cabinet shall in no case exceed one (1) year from the date of receipt of a complete application for taking final action on an application subject to 401 KAR 51:017.

(8)(a) For sources subject to 401 KAR 51:017, the cabinet shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit(s). The cabinet also may hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision. Public notice of the hearing shall be given as specified in paragraphs (b) and (c) of this subsection.

(b) Whenever a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under subsection (5) of this section shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost.

Section 5. Terms and Conditions. (1) Permits issued hereunder shall be subject to such terms and conditions set forth and embodied in the permit as the cabinet shall deem necessary to ensure compliance with its standards. Such terms and conditions may include maintenance and availability of records relating to operations which may cause or contribute to air pollution including periodic source or stack sampling of the affected facilities.

(2) In the case of a transfer of ownership or name change of a source, the new owner or owner respectively shall abide by any permit to operate issued by the cabinet to the previous owner or to the same owner under the previous source name. The new owner or owner shall notify the cabinet of the change in ownership and/or source name within ten (10) days following the change in ownership or source name and shall apply for a duplicate permit to operate in the event of a change in the name of the source.

(3) When supported by justification which the cabinet deems adequate, the cabinet may, upon request by a source owner or operator, extend the termination date of an operating permit by a period not to exceed 180 days for the purpose of allowing sufficient time for a source to correct such deficiencies in the application as have been identified by the cabinet and to allow completion of the application review by the cabinet.

Section 6. Exemptions. The provisions of Section 1 of this regulation shall not apply to the affected facilities or sources listed in this section. These exemptions shall not relieve any source from the requirements of any standard set forth in an applicable regulation or a permit issued by the cabinet. Affected facilities or sources of pollutants located in areas designated as nonattainment for such pollutants which were required to obtain permits pursuant to subsections (11) and (14) of this section prior to the effective date of this regulation shall maintain the permit and any applicable requirements when the area is redesignated in 401 KAR 51:010 or 40 CFR 81.318, unless a state implementation plan which provides for other controls is approved by the U.S. EPA. The cabinet may require the owner or operator to demonstrate compliance with all applicable regulations.

(1) Except as provided elsewhere in this section, those affected facilities to which no regulation is applicable and which emit an air pollutant to which no ambient air quality standard applies.

(2) Incinerators with a charging rate of less than 500 pounds per hour except those subject to 401 KAR 51:017, 401 KAR 51:052, Title 401, Chapter 57, 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022.

(3) Except as provided in 401 KAR 59:019, internal combustion engines whether fixed or mobile, and vehicles used for transport of passenger or freight.

(4) Direct fired sources used for heating and ventilating.

(5) Open burning as set forth in 401 KAR 63:005.

(6) Indirect heat exchangers at a source with a total heat input

~~capacity of less than fifty (50) million BTU per hour which use natural gas, liquid petroleum gas, or distillate fuel oil as a main fuel or combinations of these as main and standby fuels and which are not subject to the requirements of 401 KAR 51:017 or 401 KAR 51:052.~~

~~(7) Any indirect heat exchanger with a heat input capacity of less than fifty (50) million BTU per hour which uses natural gas or liquid petroleum gas as a main fuel or combinations of these as main and standby fuels and which is not subject to the requirements of 401 KAR 51:017 or 401 KAR 51:052.~~

~~(8) Publicly owned roads.~~

~~(9) Feed grain mills having a hammermill with a rated capacity of ten (10) tons per hour or less, provided that the source does not include a grain dryer.~~

~~(10) Sawmills which produce only rough cut or dimensional lumber from logs and which have a rated capacity of 5,000 board feet per hour or less provided the source does not include an indirect heat exchanger or waste wood burner subject to regulation in Title 401, Chapter 59 or 61.~~

~~(11) Except as provided in this subsection, all sources whose uncontrolled emissions are less than twenty five (25) tons per year and whose potential to emit is less than or equal to five (5) tons per year of each of the following pollutants: particulate matter, sulfur dioxide, volatile organic compounds, nitrogen oxides, and carbon monoxide. This exemption shall not apply to sources subject to regulation in Title 401, Chapter 57, 40 CFR 60, 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for such pollutants in 401 KAR 51:010; or to incinerators.~~

~~(12) Those sources which install air pollution control equipment where none was required. The owner or operator shall notify the cabinet in writing of such additions.~~

~~(13) Those sources which voluntarily modify or replace their air pollution control equipment to provide an equivalent or more efficient control of air pollutants. However, the owner or operator of such sources shall submit to the cabinet a complete registration form for the cabinet's concurrence at least forty five (45) days before installation of such control equipment.~~

~~(14) Those affected facilities which are a part of a construction project where the total increase in the potential to emit from all affected facilities in the construction project is less than or equal to two (2) tons per year of each of the following pollutants: particulate matter, sulfur dioxide, volatile organic compounds, nitrogen oxides, and carbon monoxide, provided that such increase does not subject the source to any other regulation. The owner or operator shall notify the cabinet in writing of such increases and construction projects thirty (30) days prior to commencing the construction project. This exemption shall not apply to affected facilities which are subject to regulation in Title 401, Chapter 57, 40 CFR 60, 401 KAR 63:020, or 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for such pollutants in 401 KAR 51:010; or to incinerators.~~

~~(a) The owner or operator may not circumvent this regulation by separating what would normally be one (1) construction project into two (2) or more projects.~~

~~(b) If the owner or operator notifies the cabinet of or applies for a construction permit for another construction project before the first construction project becomes operational, then the two (2) construction projects shall be considered as one (1) construction project.~~

~~(c) If the owner or operator can demonstrate, through engineering analysis and internal documents, that two (2) or more construction projects were planned during separate time frames and involve separate independent facilities, the cabinet may allow the construction projects to be treated separately.~~

~~(15) Emitters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to regulation.~~

~~Section 7. Source Obligation. (1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who commences construction after June 6, 1979 without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action as provided under KRS 224.994.~~

~~(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of six (6) months or more, or if construction is not completed within a reasonable time. The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.~~

~~(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the requirements of the cabinet and any other requirements under local, state, or federal law.~~

~~Section 8. Relocation of Minor Sources. The owner or operator of a minor source who is planning to relocate the source to a new site without any modification, may do so after applying for a duplicate operating permit, provided that the source has been issued and is operating under a current operating permit and is currently in compliance with all applicable regulations. The owner or operator shall submit an application for a duplicate operating permit on forms provided by the cabinet, including the duplicate operating permit fee, at least ten (10) days prior to the planned relocation. If the location at the new site would cause the source to be subject to any additional or different regulation than is currently applicable at the previous location, the source shall be considered to be a new source and shall be subject to Section 1 of this regulation.]~~

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 6, 1993
FILED WITH LRC: October 6, 1993 at noon

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

401 KAR 50:038. Title V emissions fee.

RELATES TO: KRS 224.10-100, 224.10-230, 224.20-050(10), 224.20-100, 224.20-130, 40 CFR Part 70, 42 USC 7401-7671q, et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-230, 224.20-050(10)

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 administrative regulation provides for the assessment of fees necessary to fund the state operating permit program required by Title V of the Clean Air Act (42 USC 7661 through 7661f) and regulations promulgated by the U.S. EPA at 40 CFR Part 70, as published in the Federal Register, 57 FR 32250, on July 21, 1992.

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

(1) "Act," "Clean Air Act," or "CAA" means 42 USC 7401 through 7671q.

(2) "Actual emissions" means the amount 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).

(3) "Designated representative" means a responsible person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the acid rain program.

(4) "Emissions fee" means the amount of money assessed by the cabinet to recover the cost of administering the operating permit program.

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

(6) "Hazardous air pollutant" means a pollutant listed in 401 KAR 57:061.

(7) "Kentucky emissions inventory system" means a database used by the cabinet to record, among other information, emissions of air pollutants from Kentucky sources.

(8) "Operating permit program" means the state operating permit program required by Title V of the Clean Air Act (42 USC 7661 through 7661f) and regulations promulgated by the U.S. EPA at 40 CFR Part 70, as published in the Federal Register, 57 FR 32250, on July 21, 1992. This includes but is not limited to the review of permit applications and exemptions; the issuance of permits to air pollution sources; inspections of air pollution sources; enforcement activities other than prosecutions in a court of law or administrative hearing; air quality and emissions monitoring, including quality assurance; the preparation of reports, plans, regulations, and statutes; responses to inquiries; preparing inventories and tracking emissions; the preparation and maintenance of records, including computerized data bases; air quality modeling, analyses, and demonstrations; and providing direct and indirect support through a small business technical assistance program. The operating permit program does not mean activities directly related to the control of asbestos emissions from renovations or demolitions, the Asbestos Hazard Emergency Response Act, or costs directly related to vehicle inspection and maintenance.

(9) "Responsible official" means one (1) of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For affected sources, **if requested by the source,** the designated representative.

(10) "Subject emissions" means actual emissions, as recorded in the Kentucky emissions inventory system, of sulfur dioxide, oxides of nitrogen, PM_{10}, lead, volatile organic compounds, hazardous air pollutants listed in 401 KAR 57:061 **for which a standard applies**, **or** a pollutant subject to a standard contained in Section 111 of the Act, **[**~~or ethyl alcohol,~~**]** from an air pollution source subject to this administrative regulation, except that actual emissions in excess of 4,000 tons of a single pollutant from a source shall not be subject emissions. Pollutants subject only to **42 USC 7412r** (Section 112(r) of **the Act) [**~~42 USC 7401 through 7671q~~**]**, and pollutants that are class I or class II substances under 42 USC 7671 through 7671q and which are not otherwise regulated shall not be subject emissions.

Section 2. Applicability. (1) This administrative regulation shall apply to each air pollution source **which is a major source as defined in 401 KAR 50:035, Section 1(20) or which is subject to 42 USC 7411, 7412, 7470 through 7492, or 7501 through 7515 (Section 111, Section 112, Part C, or Part D of the Act)** required to have a permit issued by the cabinet **and for which a final rule exempting the source from the permitting requirements of 40 CFR Part 70 has not been published by the U.S. EPA. [**~~which emitted:~~

~~(a) Twenty-five (25) tons per year or more of sulfur dioxide, oxides of nitrogen, PM_{10}, volatile organic compounds, a pollutant subject to a standard contained in Section 111 of the Act, or ethyl alcohol, or any combination of these pollutants totalling twenty-five (25) tons per year; or~~

~~(b) Two (2) tons per year of a single hazardous air pollutant or five (5) tons per year of any combination of hazardous air pollutants.~~**]**

(2) This administrative regulation shall not apply to:

(a) Mobile sources; **[**~~or~~**]**

(b) Sources located in an air pollution control district granted concurrent jurisdiction by the cabinet under KRS 224.20-130;

(c) **[**~~Additionally, this administrative regulation shall not apply to~~**]** An electric utility unit exempted **[**~~from this fee~~**]** by 42 USC 7651g, **unless a substitute unit has been approved by the administrator of the U.S. EPA pursuant to 42 USC 7651c; or**

(d) A [~~or to any~~**]** substitute unit approved by the **[**~~Administrator of the~~**]** U.S. EPA pursuant to 42 USC 7651c**, if the cabinet has been notified in writing at least thirty (30) days prior to the fee assessment established in Section 3(1) of this administrative regulation**.

Section 3. Fee Assessment. (1) On or about July 1, 1994, and on or about July 1 of each succeeding year, 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 administrative regulation and shall provide written notification to the source of the amount of fee due. **If a pollutant qualifies as more than one (1) of the subject emissions listed in Section 1(10) of this administrative regulation, it shall be assessed as a single subject emission.**

(2) Determining subject emissions. At least four (4) 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 containing the most recent information appropriate to that source. Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its subject emissions. The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information. Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the subject emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet.

(3) Fee assessment. At least sixty (60) days prior to assessing the fee, the cabinet shall determine the subject emissions for each source, based on the information provided by the source and on other information available to the cabinet. The cabinet shall notify the

source of its determination for subject emissions at least forty-five (45) days prior to assessing the fee. Assessment of the subject emissions shall be a final determination by the cabinet. If the source fails to notify the cabinet of an error in the determination of subject emissions within thirty (30) days after the date the determination is mailed by the cabinet, the source shall be assessed a fee based on the cabinet's determination. **If the source notifies the cabinet in a timely manner that there is an error in the determination of its subject emissions, and the cabinet disagrees with the assessment by the source, the cabinet shall notify the source, in writing, specifying the reasons for rejecting the error notification.**

(4) Computation of emissions fee. The cabinet shall compute the emissions fee as follows:

(a) For fiscal year 1995 the emissions fee shall be **$6,652,700, and for fiscal year 1996 the emissions fee shall be $7,240,000.** [~~the amount of money approved by the U.S. EPA as adequate to administer the operating permit program and authorized by the Kentucky General Assembly for that purpose.~~] The cost per ton of the subject emissions shall be the emissions fee divided by the total number of tons of subject emissions from all sources subject to this administrative regulation.

(b) Except as provided in paragraph (c) of this subsection, the emissions fee for each succeeding fiscal year shall be **$7,240,000 adjusted annually using the method provided in 40 CFR 70.9(b)(2)(iv)** [~~determined pursuant to 40 CFR 70.9(b)(2)(iv)~~]. The cost per ton of subject emissions shall be determined as prescribed in paragraph (a) of this administrative regulation.

(c) Notwithstanding the provisions of paragraph (b) of this subsection the emissions fee for a fiscal year may be increased by an amount greater than that calculated pursuant to 40 CFR 70.9(b)(2)(iv), may be left unchanged from the previous fiscal year, or may be decreased from the previous fiscal year if the cabinet determines after public hearing and after approval by the U.S. EPA that the increase is necessary, or the same or lesser amount is adequate, to cover all reasonable costs of administering the operating permit program.

(5) Payment of fees.

(a) A source subject to this administrative regulation **which emitted twenty-five (25) tons or more of subject emissions** shall pay a portion of the emissions fee which shall be determined by multiplying the subject emissions from the source, expressed in tons to the nearest ton, by the cost per ton of subject emissions. **The** [A] source shall pay the 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**, except that a source shall not be required to pay a fee prior to approval of the state permit program by the U.S. EPA.**

(b) A source subject to this administrative regulation which emitted less than twenty-five (25) tons of subject emissions shall pay an annual fee of $150. The source shall pay the 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, except that a source shall not be required to pay a fee prior to approval of the state permit program by the U.S. EPA.

(6) Enforcement.

(a) Each day after the deadline for payment of the source's portion of the emissions fee during which the source fails to pay the fee shall be a separate violation of this administrative regulation.

(b) Failure to pay the fee within ninety (90) days after the date on which the cabinet notifies the source of the amount of fee due shall result in:

1. An increase in the fee of an additional fifty (50) percent of the original amount due, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of federal taxes); and

2. Suspension of the source's permit to operate until the fee is paid or until the cabinet has approved a schedule of payment.

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

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 6, 1993
FILED WITH LRC: October 6, 1993 at noon

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

401 KAR 57:061. Hazardous air pollutants and source categories.

RELATES TO: KRS 224.10-100, 224.20-110, 40 CFR Part 70, 42 USC 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides the list of hazardous air pollutants pursuant to 42 USC 7412(b) (Section 112(b) of the Act) and the list of source categories and subcategories, as published in the Federal Register, 57 FR 31591, July 16, 1992.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given to them in 401 KAR 57:005.

(1) "Act" means the Clean Air Act promulgated at 42 USC 7401-7671q, as amended by PL 101-549, November 15, 1990.

(2) "Area source" means a stationary source of hazardous air pollutants that is not a major source.

(3) "Hazardous air pollutant" means a substance listed in Section 2 of this administrative regulation.

(4) "Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants, or a lesser quantity which the cabinet may establish on the basis of the potency, persistence, potential for bioaccumulation, or other characteristics or relevant factors pertaining to the pollutant.

(5) "Stationary source" means a building, structure, facility, or installation which emits or may emit an air pollutant.

Section 2. List of Hazardous Air Pollutants. The following chemicals are hazardous air pollutants as listed in 42 USC 7412(b) (Section 112(b) of the Act):

CAS number	Chemical name
[~~(1)~~] 75070	Acetaldehyde
[~~(2)~~] 60355	Acetamide
[~~(3)~~] 75058	Acetonitrile
[~~(4)~~] 98862	Acetophenone
[~~(5)~~] 53963	Acetylaminofluorene
[~~(6)~~] 107028	Acrolein
[~~(7)~~] 79061	Acrylamide

[~~(8)~~]	79107	Acrylic acid
[~~(9)~~]	107131	Acrylonitrile
[~~(10)~~]	107051	Allyl chloride
[~~(11)~~]	92671	4-Aminobiphenyl
[~~(12)~~]	62533	Aniline
[~~(13)~~]	90040	o-Anisidine
[~~(14)~~]	1332214	Asbestos
[~~(15)~~]	71432	Benzene (including benzene from gasoline)
[~~(16)~~]	92875	Benzidine
[~~(17)~~]	98077	Benzotrichloride
[~~(18)~~]	100447	Benzyl chloride
[~~(19)~~]	92524	Biphenyl
[~~(20)~~]	117817	Bis(2-ethylhexyl)phthalate (DEHP)
[~~(21)~~]	542881	Bis(chloromethyl)ether
[~~(22)~~]	75252	Bromoform
[~~(23)~~]	106990	1,3-Butadiene
[~~(24)~~]	156627	Calcium cyanamide
[~~(25)~~]	105602	Caprolactam
[~~(26)~~]	133062	Captan
[~~(27)~~]	63252	Carbaryl
[~~(28)~~]	75150	Carbon disulfide
[~~(29)~~]	56235	Carbon tetrachloride
[~~(30)~~]	463581	Carbonyl sulfide
[~~(31)~~]	120809	Catechol
[~~(32)~~]	133904	Chloramben
[~~(33)~~]	57749	Chlordane
[~~(34)~~]	7782505	Chlorine
[~~(35)~~]	79118	Chloroacetic acid
[~~(36)~~]	532274	2-Chloroacetophenone
[~~(37)~~]	108907	Chlorobenzene
[~~(38)~~]	510156	Chlorobenzilate
[~~(39)~~]	67663	Chloroform
[~~(40)~~]	107302	Chloromethyl methyl ether
[~~(41)~~]	126998	Chloroprene
[~~(42)~~]	1319773	Cresols/Cresylic acid (isomers and mixture)
[~~(43)~~]	95487	o-Cresol
[~~(44)~~]	108394	m-Cresol
[~~(45)~~]	106445	p-Cresol
[~~(46)~~]	98828	Cumene
[~~(47)~~]	94757	2,4-D, salts and esters
[~~(48)~~]	3547044	DDE
[~~(49)~~]	334883	Diazomethane
[~~(50)~~]	132649	Dibenzofurans
[~~(51)~~]	96128	1,2-Dibromo-3-chloropropane
[~~(52)~~]	84742	Dibutylphthalate
[~~(53)~~]	106467	1,4-Dichlorobenzene(p)
[~~(54)~~]	91941	3,3-Dichlorobenzidene
[~~(55)~~]	111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
[~~(56)~~]	542756	1,3-Dichloropropene
[~~(57)~~]	62737	Dichlorvos
[~~(58)~~]	111422	Diethanolamine
[~~(59)~~]	121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
[~~(60)~~]	64675	Diethyl sulfate
[~~(61)~~]	119904	3,3-Dimethoxybenzidine
[~~(62)~~]	60117	Dimethyl aminoazobenzene
[~~(63)~~]	119937	3,3'-Dimethyl benzidine
[~~(64)~~]	79447	Dimethyl carbamoyl chloride
[~~(65)~~]	68122	Dimethyl formamide
[~~(66)~~]	57147	1,1-Dimethyl hydrazine
[~~(67)~~]	131113	Dimethyl phthalate
[~~(68)~~]	77781	Dimethyl sulfate
[~~(69)~~]	534521	4,6-Dinitro-o-cresol, and salts
[~~(70)~~]	51285	2,4-Dinitrophenol
[~~(71)~~]	121142	2,4-Dinitrotoluene
[~~(72)~~]	123911	1,4-Dioxane (1,4-Diethyleneoxide)
[~~(73)~~]	122667	1,2-Diphenylhydrazine
[~~(74)~~]	106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
[~~(75)~~]	106887	1,2-epoxybutane
[~~(76)~~]	140885	Ethyl acrylate
[~~(77)~~]	100414	Ethyl benzene
[~~(78)~~]	51796	Ethyl carbamate (Urethane)
[~~(79)~~]	75003	Ethyl chloride (Chloroethane)
[~~(80)~~]	106934	Ethylene dibromide (Dibromoethane)
[~~(81)~~]	107062	Ethylene dichloride (1,2-Dichloroethane)
[~~(82)~~]	107211	Ethylene glycol
[~~(83)~~]	151564	Ethylene imine (Aziridine)
[~~(84)~~]	75218	Ethylene oxide
[~~(85)~~]	96457	Ethylene thiourea
[~~(86)~~]	75343	Ethylidene dichloride (1,1-Dichloroethane)
[~~(87)~~]	50000	Formaldehyde
[~~(88)~~]	76448	Heptachlor
[~~(89)~~]	118741	Hexachlorobenzene
[~~(90)~~]	87683	Hexachlorobutadiene
[~~(91)~~]	77474	Hexachlorocyclopentadiene
[~~(92)~~]	67721	Hexachloroethane
[~~(93)~~]	822060	Hexamethylene-1,6-diisocyanate
[~~(94)~~]	680319	Hexamethylphosphoramide
[~~(95)~~]	110543	Hexane
[~~(96)~~]	302012	Hydrazine
[~~(97)~~]	7647010	Hydrochloric acid
[~~(98)~~]	7664393	Hydrogen fluoride (Hydrofluoric acid)
[~~(99) 7783064 Hydrogen sulfide~~]		
[~~(100)~~]	123319	Hydroquinone
[~~(101)~~]	78591	Isophorone
[~~(102)~~]	58899	Lindane (all isomers)
[~~(103)~~]	108316	Maleic anhydride
[~~(104)~~]	67561	Methanol
[~~(105)~~]	72435	Methoxychlor
[~~(106)~~]	74839	Methyl bromide (Bromomethane)
[~~(107)~~]	74873	Methyl chloride (Chloromethane)
[~~(108)~~]	71556	Methyl chloroform (1,1,1-Trichloroethane)
[~~(109)~~]	78933	Methyl ethyl ketone (2-Butanone)
[~~(110)~~]	60344	Methyl hydrazine
[~~(111)~~]	74884	Methyl iodide (Iodomethane)
[~~(112)~~]	108101	Methyl isobutyl ketone (Hexone)
[~~(113)~~]	624839	Methyl isocyanate
[~~(114)~~]	80626	Methyl methacrylate
[~~(115)~~]	1634044	Methyl tert butyl ether
[~~(116)~~]	101144	4,4-Methylene bis(2-chloroaniline)
[~~(117)~~]	75092	Methylene chloride (Dichloromethane)
[~~(118)~~]	101688	Methylene diphenyl diisocyanate (MDI)
[~~(119)~~]	101779	4,4'-Methylenedianiline
[~~(120)~~]	91203	Naphthalene
[~~(121)~~]	98953	Nitrobenzene
[~~(122)~~]	92933	4-Nitrobiphenyl
[~~(123)~~]	100027	4-Nitrophenol
[~~(124)~~]	79469	2-Nitropropane
[~~(125)~~]	684935	N-Nitroso-N-methylurea
[~~(126)~~]	62759	N-Nitrosodimethylamine
[~~(127)~~]	59892	N-Nitrosomorpholine
[~~(128)~~]	56382	Parathion
[~~(129)~~]	82688	Pentachloronitrobenzene (Quintobenzene)
[~~(130)~~]	87865	Pentachlorophenol
[~~(131)~~]	108952	Phenol
[~~(132)~~]	106503	p-Phenylenediamine
[~~(133)~~]	75445	Phosgene
[~~(134)~~]	7803512	Phosphine
[~~(135)~~]	7723140	Phosphorus
[~~(136)~~]	85449	Phthalic anhydride
[~~(137)~~]	1336363	Polychlorinated biphenyls (Arochlors)
[~~(138)~~]	1120714	1,3-Propane sultone
[~~(139)~~]	57578	beta-Propiolactone

[~~(140)~~]	123386	Propionaldehyde
[~~(141)~~]	114261	Propoxur (Baygon)
[~~(142)~~]	78875	Propylene dichloride (1,2-Dichloropropane)
[~~(143)~~]	75569	Propylene oxide
[~~(144)~~]	75558	1,2-Propylenimine (2-Methyl aziridine)
[~~(145)~~]	91225	Quinoline
[~~(146)~~]	106514	Quinone
[~~(147)~~]	100425	Styrene
[~~(148)~~]	96093	Styrene oxide
[~~(149)~~]	1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
[~~(150)~~]	79345	1,1,2,2-Tetrachloroethane
[~~(151)~~]	127184	Tetrachloroethylene (Perchloroethylene)
[~~(152)~~]	7550450	Titanium tetrachloride
[~~(153)~~]	108883	Toluene
[~~(154)~~]	95807	2,4-Toluene diamine
[~~(155)~~]	584849	2,4-Toluene diisocyanate
[~~(156)~~]	95534	o-Toluidine
[~~(157)~~]	8001352	Toxaphene (chlorinated camphene)
[~~(158)~~]	120821	1,2,4-Trichlorobenzene
[~~(159)~~]	79005	1,1,2-Trichloroethane
[~~(160)~~]	79016	Trichloroethylene
[~~(161)~~]	95954	2,4,5-Trichlorophenol
[~~(162)~~]	88062	2,4,6-Trichlorophenol
[~~(163)~~]	121448	Triethylamine
[~~(164)~~]	1582098	Trifluralin
[~~(165)~~]	540841	2,2,4-Trimethylpentane
[~~(166)~~]	108054	Vinyl acetate
[~~(167)~~]	593602	Vinyl bromide
[~~(168)~~]	75014	Vinyl chloride
[~~(169)~~]	75354	Vinylidene chloride (1,1-Dichloroethylene)
[~~(170)~~]	1330207	Xylenes (isomers and mixture)
[~~(171)~~]	95476	o-Xylenes
[~~(172)~~]	108383	m-Xylenes
[~~(173)~~]	106423	p-Xylenes
[~~(174)~~]	0	Antimony Compounds
[~~(175)~~]	0	Arsenic Compounds (inorganic including arsine)
[~~(176)~~]	0	Beryllium Compounds
[~~(177)~~]	0	Cadmium Compounds
[~~(178)~~]	0	Chromium Compounds
[~~(179)~~]	0	Cobalt Compounds
[~~(180)~~]	0	Coke Oven Emissions
[~~(181)~~]	0	Cyanide Compounds
[~~(182)~~]	0	Glycol ethers
[~~(183)~~]	0	Lead Compounds
[~~(184)~~]	0	Manganese Compounds
[~~(185)~~]	0	Mercury Compounds
[~~(186)~~]	0	Fine mineral fibers
[~~(187)~~]	0	Nickel Compounds
[~~(188)~~]	0	Polycyclic Organic Matter
[~~(189)~~]	0	Radionuclides (including radon)
[~~(190)~~]	0	Selenium Compounds

Section 3. List of Categories and Subcategories of Hazardous Air Pollutants. The following are major and area source categories and subcategories as listed in 42 USC 7412(c)(1) and Federal Register 57 FR 31576, July 16, 1992.

(1) For major sources.

(a) Fuel combustion.

1. Engine test facilities;
2. Industrial boilers;
3. Institutional/commercial boilers;
4. Process heaters;
5. Stationary internal combustion engines; and
6. Stationary turbines.

(b) Nonferrous metals processing.

1. Primary aluminum production;
2. Secondary aluminum production;
3. Primary copper smelting;
4. Primary lead smelting;
5. Secondary lead smelting;
6. Lead acid battery manufacturing; and
7. Primary magnesium refining.

(c) Ferrous metals processing.

1. Coke by-product plants;
2. Coke ovens: charging, top side, and door leaks;
3. Coke ovens: pushing, quenching, and battery stacks;
4. Ferroalloys production;
5. Integrated iron and steel manufacturing,
6. Nonstainless steel manufacturing-electric arc furnace (EAF) operation;
7. Stainless steel manufacturing-electric arc furnace (EAF) operation;
8. Iron foundries;
9. Steel foundries; and
10. Steel pickling-**HC1** **[**~~hei~~**]** process.

(d) Mineral products processing.

1. Alumina processing;
2. Asphalt/coal, tar application-metal pipes;
3. Asphalt concrete manufacturing;
4. Asphalt processing;
5. Asphalt roofing manufacturing;
6. Chromium refractories production;
7. Clay products manufacturing;
8. Lime manufacturing;
9. Mineral wool production;
10. Portland cement manufacturing;
11. Taconite iron ore processing; and
12. Wool fiberglass manufacturing.

(e) Petroleum and natural gas production and refining.

1. Oil and natural gas production;
2. Petroleum refineries-catalytic cracking (fluid and other) units, catalytic reforming units, and sulfur plant units; and
3. Petroleum refineries-other sources not distinctly listed.

(f) Liquids distribution.

1. Gasoline distribution (stage i); and
2. Organic liquids distribution (nongasoline).

(g) Surface coating processes.

1. Aerospace industries;
2. Auto and light duty truck (surface coating);
3. Flat wood paneling (surface coating);
4. Large appliance (surface coating);
5. Magnetic tapes (surface coating);
6. Manufacture of paints, coatings, and adhesives;
7. Metal can (surface coating);
8. Metal coil (surface coating);
9. Metal furniture (surface coating);
10. Miscellaneous metal parts and products (surface coating);
11. Paper and other webs (surface coating);
12. Plastic parts and products (surface coating);
13. Printing, coating, and dyeing of fabrics;
14. Printing/publishing (surface coating);
15. Shipbuilding and ship repair (surface coating); and
16. Wood furniture (surface coating).

(h) Waste treatment and disposal.

1. Hazardous waste incineration;
2. Municipal landfills;
3. Sewage sludge incineration;
4. Site remediation;
5. Solid waste treatment, storage and disposal facilities (tsdf); and
6. Publicly owned treatment works (potw) emissions.

(i) Agricultural chemicals production.

1. 2,4-D salts and esters production;
2. 4-Chloro-2- methylphenoxyacetic acid production;

3. 4,6-Dinitro-o-cresol production;
4. Captafol production;
5. Captan production;
6. Chloroneb production;
7. Chlorothalonil production;
8. Dacthal (tm) production;
9. Sodium pentachlorophenate production; and
10. Tordon (tm) acid production.

(j) Fibers production processes.
1. Acrylic fibers/modacrylic fibers production;
2. Rayon production; and
3. Spandex production.

(k) Food and agriculture processes.
1. Baker's yeast manufacturing;
2. Cellulose food casing manufacturing; and
3. Vegetable oil production.

(l) Pharmaceutical production processes: Pharmaceuticals production.

(m) Polymers and resins production.
1. Acetal resins production;
2. Acrylonitrile-butadiene-styrene production;
3. Alkyd resins production;
4. Amino resins production;
5. Boat manufacturing;
6. Butadiene-furfural cotrimer (r-11);
7. Butyl rubber production;
8. Carboxymethylcellulose production;
9. Cellophane production;
10. Cellulose ethers production;
11. Epichlorohydrin elastomers production;
12. Epoxy resins production;
13. Ethylene-propylene elastomers production;
14. Flexible polyurethane foam production;
15. Hypalon (tm) production;
16. Maleic anhydride copolymers production;
17. Methylcellulose production;
18. Methyl methacrylate-acrylonitrile-butadiene-styrene production;
19. Methyl methacrylate-butadiene-styrene terpolymers production;
20. Neoprene production;
21. Nitrile butadiene rubber production;
22. Nonnylon polyamides production;
23. Nylon 6 production;
24. Phenolic resins production;
25. Polybutadiene rubber production;
26. Polycarbonates production;
27. Polyester resins production;
28. Polyethylene teraphthalate production;
29. Polymerized vinylidene chloride production;
30. Polymethyl methacrylate resins production;
31. Polystyrene production;
32. Polysulfide rubber production;
33. Polyvinyl acetate emulsions production;
34. Polyvinyl alcohol production;
35. Polyvinyl butyral production;
36. Polyvinyl chloride and copolymers production;
37. Reinforced plastic composites production;
38. Styrene-acrylonitrile production; and
39. Styrene-butadiene rubber and latex production.

(n) Production of inorganic chemicals.
1. Ammonium sulfate production-captrolactam by-products plants;
2. Antimony oxides manufacturing;
3. Chlorine production;
4. Chromium chemicals manufacturing;
5. Cyanuric chloride production;
6. Fume silica production;
7. Hydrochloric acid production;
8. Hydrogen cyanide production;
9. Hydrogen fluoride production;
10. Phosphate fertilizers production;
11. Phosphoric acid manufacturing;
12. Quaternary ammonium compounds production;
13. Sodium cyanide production; and
14. Uranium hexafluoride production.

(o) Production of organic chemicals: Synthetic organic chemical manufacturing.

(p) Miscellaneous processes.
1. Aerosol can-filling facilities;
2. Benzyltrimethylammonium chloride production;
3. Butadiene dimers production;
4. Carbonyl sulfide production;
5. Chelating agents production;
6. Chlorinated paraffins production;
7. Chromic acid anodizing;
8. Commercial dry cleaning (perchloroethylene)-transfer machines;
9. Commercial sterilization facilities:
10. Decorative chromium electroplating;
11. Dodencanedioic acid production;
12. Dry cleaning (petroleum solvent);
13. Ethylidene norbornene production;
14. Explosives production;
15. Halogenated solvent cleaners;
16. Hard chromium electroplating;
17. Hydrazine production;
18. Industrial dry cleaning (perchloroethylene)-transfer machines;
19. Industrial dry cleaning (perchloroethylene)-dry-to-dry machines;
20. Industrial process cooling towers;
21. Obpa/1,3-diisocyanate production;
22. Paint stripper users;
23. Photographic chemicals production;
24. Phthalate plasticizers production;
25. Plywood/particle board manufacturing;
26. Polyether polyols production;
27. Pulp and paper production;
28. Rocket engine test firing;
29. Rubber chemicals manufacturing;
30. Semiconductor manufacturing;
31. Symmetrical tetrachloropyridine production;
32. Tire production; and
33. Wood treatment.

(2) For area sources.
(a) Asbestos processing;
(b) Chromic acid anodizing;
(c) Commercial dry cleaning (perchloroethylene)-transfer machines;
(d) Commercial dry cleaning (perchloroethylene)-dry-to-dry machines;
(e) Commercial sterilization facilities;
(f) Decorative chromium electroplating;
(g) Halogenated solvent cleaners; and
(h) Hard chromium electroplating.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 6, 1993
FILED WITH LRC: October 6, 1993 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Natural Resources
Division of Conservation
(Amended After Hearing)

402 KAR 2:030. Soil and water conservation peer group.

RELATES TO: KRS Chapter 146, **151.110, 151.232, 224.10-100,** 224.70-100, 224.70-110, Chapter 262

STATUTORY AUTHORITY: KRS 146.080, 146.110, **224.10-100**

NECESSITY AND FUNCTION: KRS Chapter **146** [~~262~~] establishes the state Division of Soil and Water Conservation within the Natural Resources and Environmental Protection Cabinet. The division coordinates with soil and water conservation districts and the Soil and Water Conservation Commission and secures the cooperation and assistance of federal, state, and local governments in the development of soil and water conservation programs. This administrative regulation establishes the soil and water conservation peer group and establishes its duty to review conservation compliance plans and best management practices and to develop statewide and regional agricultural groundwater protection plans.

Section 1. Definitions. **As used in** [~~The following definitions describe terms used in~~] this administrative regulation: [~~. The terms not defined below shall have the meanings attributed by common use.~~]

(1) "Agricultural production facility" means any tract of land except residences including all income-producing improvements: (a) Used for the production of livestock, livestock production, poultry, poultry products, or the growing of tobacco or other crops including timber;

(b) Devoted to and meeting the requirements and qualifications for payments pursuant to agricultural programs under an agreement with the state or federal government; or

(c) Commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.

(2) "Bad actor" means any person who engages in agricultural production activities, who receives notification of regional groundwater pollution and of the regional agricultural groundwater protection plan needed to protect the groundwater, and who is provided technical and financial assistance to implement the regional groundwater protection plan but still refuses or fails to comply with the regional groundwater protection plan.

(3) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water of the Commonwealth. Best management practices also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(4) "Conservation compliance plan" means a plan containing best management practices developed for persons engaged in agricultural production activities by the U. S. Department of Agriculture Soil Conservation Service, in conjunction with local conservation districts.

(5) "Corrective action" means an activity or measure taken to remedy groundwater pollution.

(6) "Generic groundwater protection plan" means a groundwater protection plan that can be applied to activities conducted at different locations because the activities are substantially identical and because the potentials of the activities to pollute groundwater are substantially the same.

(7) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, or solution conduits.

(8) "Groundwater pollution" means water pollution as defined in KRS 224.01-010 of groundwaters of the Commonwealth.

(9) "Groundwater protection plan" means a document that establishes a series of practices designed to prevent groundwater pollution.

(10) "Pesticide" means:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; or

(c) Any substance or mixture of substances intended to be used as a spray adjuvant.

(11) "Timber" means trees produced and harvested as agricultural crops without the application of pesticides or fertilizers or with the application of pesticides or fertilizers if in accordance with a conservation compliance plan.

Section 2. Scope and Applicability. (1) This administrative regulation establishes the soil and water conservation peer group for the purpose of developing groundwater protection plans for agricultural production activities at agricultural production facilities and for assisting the persons engaging in agricultural production activities and others in matters related to prevention of groundwater pollution.

(2) The goal of groundwater protection plans for agricultural production activities is to fulfill the requirements of KRS 224.70-100 and 224.70-110. Groundwater protection plans shall establish practices designed to prevent the **pollution of** [~~discharge of pollutants to~~] groundwater.

(3) It is a purpose of this administrative regulation to accelerate and strengthen best management practices so as to achieve greater adaptation of best management practices to prevent, correct, and abate the pollution of groundwater; to provide technical and financial assistance, education, and research; to assist persons engaged in agricultural production activities; to address a broad range of groundwater protection concerns; to develop or to improve conservation best management practices for treating and preventing agricultural production activities' adverse impacts on groundwater; and to employ those best management practices in groundwater protection plans for agricultural production activities.

Section 3. Organization of Soil and Water Conservation Peer Group. (1) The soil and water conservation peer group shall be a multidiscipline peer group that shall evaluate, develop, and improve best management practices, establish statewide and regional agricultural groundwater protection plans, and otherwise promote soil and water conservation activities that protect groundwater from adverse impacts of agricultural production activities within the Commonwealth. Representatives of the soil and water conservation peer group shall be appointed by the commission established under KRS 146.090 and approved by the Secretary of the Natural Resources and Environmental Protection Cabinet. The soil and water conservation peer group shall have one (1) representative from each of the following:

(a) Natural Resources and Environmental Protection Cabinet's Division of Forestry;

(b) Natural Resources and Environmental Protection Cabinet's Division of Conservation;

(c) Kentucky Department of Agriculture;

(d) Kentucky Geological Survey;

(e) University of Kentucky College of Agriculture-Cooperative Extension Service;

(f) Agricultural production organizations;

(g) Commodity groups;

(h) Environmental organizations; and

(i) Individuals engaged in agricultural production.

(2) The U. S. Department of Agriculture Soil Conservation Service and the Agricultural Stabilization and Conservation Service may each designate one (1) representative to the soil and water conservation peer group.

(3) The Natural Resources and Environmental Protection Cabinet's Division of Water shall serve as an advisory, non-voting representative on the soil and water conservation peer group.

Section 4. Responsibilities of Soil and Water Conservation Peer Group. It shall be the primary responsibility of the soil and water conservation peer group to develop statewide, regional, and site-specific agricultural groundwater protection plans. In addition, the soil and water conservation peer group may:

(1) Review groundwater quality data as they become available;

(2) Review scientific research on groundwater quality and alternative best management practices research;

(3) Evaluate the adoption and effectiveness of best management practices, and modify best management practices standards to improve groundwater protection practices;

(4) Develop statewide, regional, and site-specific agricultural groundwater protection plan minimum standards for corrective actions and procedures to address potential and identifiable groundwater pollution problems from agricultural production, and continue to evaluate and modify those groundwater protection plans on an ongoing basis;

(5) Assist with the review of state-funded groundwater monitoring data and with the establishment of groundwater priority protection areas;

(6) Provide technical assistance to persons engaged in agricultural production activities and to the Soil and Water Conservation Commission in its efforts to coordinate groundwater protection as related to agricultural production;

(7) Work with the Soil Conservation Service, Agricultural Stabilization and Conservation Service, and state conservation districts to disseminate to persons engaged in agricultural production activities those best management practices, conservation compliance plans, and groundwater protection plans which address the protection of groundwater; and

(8) Within its discretion and upon request, assist agribusiness or others in development of groundwater protection plans.

Section 5. Preparation and Approval of Statewide Agricultural Groundwater Protection Plan. (1) No later than six (6) months from the effective date of this administrative regulation, the soil and water conservation peer group shall be in place and begin the review of the available data on best management practices and the evaluation of the effect of agricultural activities in Kentucky on the groundwater. Based upon this review and evaluation, the soil and water conservation peer group shall revise recommended best management practices as necessary to ensure protection of groundwater from pollution. The review, evaluation, and revision process shall be a continuing process as necessary to protect groundwater.

(2) The soil and water conservation peer group shall prepare a proposed statewide agricultural groundwater protection plan to address potential agricultural sources of pollution to groundwater in accordance with the provisions of 401 KAR 5:036. The soil and water conservation peer group shall submit the proposed statewide agricultural groundwater protection plan to the commission for review and approval. Upon approval, the commission shall submit the proposed statewide agricultural groundwater protection plan to the Division of Water for approval. The soil and water conservation peer group and the commission shall work with the Division of Water to revise the proposed plan, if necessary, until it is approved by the Division of Water.

(3) The statewide agricultural groundwater protection plan shall provide for known differences in hydrogeology throughout the state. The plan, at a minimum, shall also address the potential sources of groundwater pollution identified in 401 KAR 5:036, Section 5 and shall contain appropriate nutrient management practices, animal waste management practices, pesticide and fertilizer management practices, sediment control practices, and conservation tillage practices designed to prevent groundwater pollution for each category of agricultural production.

(4) The statewide agricultural groundwater protection plan shall constitute the minimum requirements to be used by the commission in assisting persons engaging in agricultural production activities in the revision and modification of their conservation compliance plans.

(5) Conservation districts and the commission shall provide technical and financial assistance, as necessary and available, to persons engaging in agricultural production activities who shall comply with the statewide agricultural groundwater protection plan pursuant to 401 KAR 5:036.

Section 6. Implementation. (1) The statewide agricultural groundwater protection plan prepared by the soil and water conservation peer group shall constitute the minimum requirements for use in the development of conservation compliance plans.

(2) If the Division of Water identifies groundwater pollution in a region, the soil and water conservation peer group shall reevaluate the effectiveness of the best management practices, conservation compliance plans, and the applicable provisions of the statewide agricultural groundwater protection plan in effect for agricultural production in that region.

(3) Within six (6) months after discovery of the pollution identified in subsection (2) of this section, the soil and water conservation peer group shall develop modifications to those best management practices, conservation compliance plans, and the statewide agricultural groundwater protection plan provisions the soil and water conservation peer group determines were ineffective in preventing the groundwater pollution for the region identified by the Division of Water. The modifications shall recognize regional differences in hydrogeology to the extent that any differences may have contributed to the identified pollution. The soil and water conservation peer group shall develop a regional agricultural groundwater protection plan to address the problems that caused the groundwater pollution in the region. The regional agricultural groundwater protection plan as revised or developed shall contain a compliance schedule for implementation of all new or revised practices designed to eliminate the problem. Upon approval by the Division of Water, the regional agricultural groundwater protection plan shall constitute the minimum requirements for the conservation compliance plans in effect in the region.

(4) The soil and water conservation peer group shall work with the U. S. Department of Agriculture Soil Conservation Service and the Agricultural Stabilization and Conservation Service, and the conservation districts to disseminate to persons engaging in agricultural production activities in the region identified by the Division of Water the modified best management practices, conservation compliance plans and groundwater protection plans developed by the soil and water conservation peer group.

(5) Upon notice from the Division of Water that groundwater pollution has been found in a region of the state, the commission and conservation districts shall provide notice to persons engaging in agricultural production activities within the region of the availability of technical and financial assistance. The notice shall also state that, in order to qualify for available assistance, the person engaging in agricultural production activities shall comply with the modified best management practices contained in the regional agricultural groundwater protection plan. The commission and the districts shall work with the persons engaging in agricultural production activities and the Division of Water to assist those persons in implementing the required corrective action.

(6) If a person engaging in agricultural production activities fails to implement the modified best management practices and conservation compliance plan required by the regional agricultural groundwater protection plan in accordance with the schedule set out in that plan, he shall be declared a bad actor and will become ineligible for further financial assistance from the commission and the conservation

districts.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 12, 1993
FILED WITH LRC: October 13, 1993 at 10 a.m.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Amended After Hearing)

415 KAR 1:110. Contractor costs.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-130 requires the commission to establish a range of amounts to be paid from the fund for the cost of corrective action, and to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This regulation establishes the range of amounts that will be paid for the performance of particular aspects of corrective action and the manner of providing bids by contractors to determine eligibility for reimbursement from the fund.

Section 1. Range of Amounts to be Paid by the Fund for the Cost of Performing Corrective Action. (1) The commission shall not pay more than the following amounts for the performance of corrective action by certified contractors:

(a) Pavement removal and replacement **not including labor costs**:

Asphalt	
Removal[~~, per cubic yard~~ ~~$5.60~~] **includes the cost of loading:**	
1) asphalt pad, for each 3 inches of thickness, per square yard	**$1.30 to $1.60**
2) asphalt curbing, per linear foot	**$1.25 to $1.55**
Replacement[~~, per cubic yard~~ ~~$10.30~~]	
1) asphalt pad, for each 4 inches of thickness, per square yard	**$2.70 to $3.30**
2) asphalt curb and gutter, per linear foot	**$3.50 to $4.40**
Concrete	
Removal[~~, per cubic yard~~ ~~$11.75~~] **- includes the cost of loading:**	
1) concrete pad, per square yard	
4 inches thick	**$1.70 to $2**
6 inches thick	**$3.25 to $3.95**
9 inches thick	**$8.20 to $10**
10 inches or more thick	**$26 to $31**
with rebar	**add 15%**
2) concrete curbing, per linear foot	**$4.50 to $5.50**
Replacement[~~, per cubic yard~~ ~~$19.25~~]	
1) concrete, 4 inches thick, per square foot	**$2 to $2.80**
with rebar	**add 15%**
2) for each additional inch, per square foot	**$0.20 to $0.30**
Transportation of asphalt or concrete to disposal facility, [~~per mile,~~] per cubic yard, [~~$0.14~~] **for each 20 miles - mileage must be documented; if closest disposal facility not used, reasonabless of cost must be justified**	**$6.60 to $8**
Disposal fee, per cubic yard, not to exceed actual cost per unit	**$12 to $25**

(b) Excavation and disposal of contaminated soil**, not including labor costs**:

Excavation and stockpiling or loading directly to trucks, per cubic yard	**$3.15 to $3.85** [~~2~~]
Install [~~Clean soil, backfill~~] and compact **backfill**, per cubic yard	**$9 to** $15
Transportation **of contaminated soil** to disposal facility, [~~per mile,~~] per cubic yard**, for each 20 miles - mileage must be documented, if closest disposal facility not used, reasonabless of cost must be justified**	**$6.60 to $8** [~~$0.14~~]
Disposal fee**, per cubic yard, not to exceed actual cost per unit**	**$12 to $25** [~~Actual cost~~]

(c) Treatment of soils or water**, not including labor costs**:

Pump **and treat** contaminated water and charcoal filtration, per **1,000** gallon**s**	**$0.25 to $2.50** [~~$0.50~~]
Operation of [~~packed tower~~] air stripper, per **1,000 gallons** [~~hour~~ ~~$1~~]	**$0.05 to $0.25**
Treatment of contaminated soil by thermal desorber, [~~per ton~~ ~~$25~~]	
landfarming, [~~per ton~~ ~~$25~~]	
or other treatment of contaminated soil, per **cubic yard, not to exceed actual cost per unit** [~~ton~~]	**$12 to $25**
Disposal of contaminated water in waste-water treatment plan, per gallon, not to exceed actual cost per unit	**$0.50 to $1.50**

(d) Labor rates, per hour:

Labor rates include all fringes and benefits, and contractor's profits.

Carpenter	**$25 to $35** [~~$30~~]
Cement finisher	**$25 to $35** [~~$30~~]
Electrician	**$25 to** $30
Electrical contractor	**$30 to $40** [~~$36~~]
Equipment operator	**$20 to** $30
Laborer	**$15 to $20** [~~$26~~]
Master plumber	**$30 to $40** [~~$36~~]
Journeyman plumber	**$20 to** $30
Apprentice plumber	**$20 to** $25

(e) Geologic and field services labor rates, per hour:

Labor rates include all fringes and benefits, and contractor's profits.

Certified contractor	**$75 to** $90
Professional engineer	**$70 to $80** [~~$75~~]
Engineer-in-training	**$45 to $55** [~~$50~~]
Geologist	**$45 to $55** [~~$50~~]
Registered geologist	**$70 to $80** [~~$75~~]
Draft person	**$25 to $35**
Environmental technician, trained in sample collection	**$35 to $45**
Environmental specialist, must have a	

bachelor of science degree in chemistry, biochemistry, biology, or soil science	**$45 to $55**
Secretarial	$15 **to $20**
Mileage, per mile for automobile**, pickup truck or utility vehicle**	$0.22
~~[Travel expenses and other reimbursables~~	~~Actual cost]~~
Overnight lodging - must be demonstrated to be necessary	**$35 to $70**
Meals - when overnight stay is necessary	
Breakfast	**$4**
Lunch	**$5**
Supper	**$11**
Long distance telephone calls	Actual cost
~~[Seismic exploration, per hour~~	~~$100~~
~~Resistivity survey, per hour~~	~~$100~~
~~Spontaneous potential survey, per hour~~	~~$100~~
~~Terrain conductivity meter (equipment charge),~~	
~~Per day~~	~~$200~~
~~Per week~~	~~$500]~~
Soil gas analysis for VOC (equipment charge), per day	$150

(f) Environmental exploration **- does not include labor costs unless so stated**:

Mobilization **and demobilization** of drilling equipment ~~[to the site]~~ (includes rig, two (2) man crew, and initial off-site steam cleaning)**:**	
1) Auger rig, core rig, or wash rotary rig, per mile, minimum of $200	**$2 to $3**
2) Air rotary rig, per mile, minimum of $350	**$3.50 to $4**
~~[In town, lump sum~~	~~$350~~
~~Out of town - $5 per mile one way plus~~	~~$100]~~
Installation of monitoring well, **4 inch diameter** per linear foot	**$20 to $35** ~~[$46]~~
Drilling (excluding monitoring well) per linear foot	**$7 to $30** ~~[$26]~~
For depths greater than 60 feet, add $2.40 per linear foot.	
Hourly services (rig and two (2) man crew)	
May include drilling, well installation, decontamination, well development, difficult moving, and delay (not related to weather or mechanical breakdown), per hour	**$110 to $130** ~~[$115]~~
~~[Additional crew member, per hour~~	~~$25~~
~~Additional crew member with pickup truck, per hour~~	~~$35]~~
Equipment	
Steam cleaner, per day	**$50 to $75** ~~[$60]~~
Self-contained steam cleaning unit, per day	**$100 to $125** ~~[$110]~~
Grout unit, per day	**$45 to $75** ~~[$60]~~
Water trailer (500 gal.), per day	$50 **to $75**
~~[Water truck (1000 gal.) with driver, per hour~~	~~$40]~~
Water truck (1000 gal.) ~~[without driver]~~, per day	**$125 to $175** ~~[$150]~~
Materials	
Well materials, decontamination supplies, health and safety supplies**, grout, well casing and screen, filter pack, well covers, etc.**	Actual cost+15%

(g) Sampling analysis, including labor to take sample, sampling materials, transportation of sample, and chain of custody:

Soil Sample	
BTEX (benzene, toluene, ethylbenzene, xylene)	$50 **to $120**
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	
Polynuclear Aromatic Hydrocarbons	$150 **to $220**
Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310	
Total recoverable oil and grease ~~[Total Petroleum Hydrocarbons]~~	
Method SW 846 9071	$50 **to $60**
Lead	
Method SW 846 7421 or 6010	**$25 to $45** ~~[$30]~~
Water Samples	
BTEX (benzene, toluene, ethylbenzene, xylene)	$50 **to $120**
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	
Polynuclear Aromatic Hydrocarbons	$150 **to $220**
Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310	
Total recoverable oil and grease ~~[Total Petroleum Hydrocarbons~~	**$30 to $60** ~~$60]~~
Method SW 846 9070	
Total Lead	**$30 to $60** ~~[10]~~
Method SW 846 7421 or 6010	
Sludge and Cleaning Liquid Samples	
Toxicity Characteristic Leading Procedure for the parameters of metals, volatile organics, and Acid/Base/Neutral.	$650 **to $750**
If the parameter of Pesticides and Herbicides is required	$50
Ignitability	
SW846 Method 9095	**$25 to $35**
Paint Filter Test	
SW846 Method 1010	**$15 to $30**

(h) Legal Services

Attorney	
Sole practitioner, per hour	$40
Partner or principle in firm, per hour	$75
Associate in firm, per hour	$60
Paralegal, per hour	$30

(2) An amount in excess of the maximum amount set forth in subsection (1) may be approved by the commission if the contractor demonstrates that the additional cost is necessary to the performance of corrective action and the services or materials are not available at a lower cost.

(3) At the first regular meeting of the commission in each calendar year, the commission shall appoint a committee to review the appropriateness of the range of amounts established by this administrative regulation. The committee shall consist of three (3) members of the commission and the executive director. The committee shall:

(a) Establish a mailing list of persons who want to comment on this issue;

(b) Solicit comments and information from interested persons and persons who contract to perform corrective action;

(c) Conduct a public hearing to receive comment on the cost of corrective action; and

(d) Submit a report to the commission by July 1 of each calendar year recommending changes or revisions to this administrative regulation.

Section 2. Range of Amounts To Be Paid For Items Not Listed In

Section 1 of this Administrative Regulation. (1) Items not listed in Section 1 of this administrative regulation are subject to the following qualifications:

(a) Original invoices from manufacturers or retailers shall be supplied to the commission;

(b) Unlisted items shall be subject to a maximum reimbursable amount of fifteen (15) percent above cost, which includes rentals or purchases;

(c) No markups shall be allowed on any pass through costs such as utilities or employee expense accounts; and

(d) **Out-of-state travel expenses, including but not limited to air fare, shall not be reimbursed unless demonstrated to be necessary for the performanace of corrective action (example: expertise not available within state);**

(e) The cost is reasonable and necessary to the performance of corrective action.

(2) Costs for alternative corrective action technologies, such as soil venting, bioremediation, and groundwater treatment systems, shall be subject to the range of costs set forth in this section where appropriate. Additional costs associated with the technology shall be justified as to reasonableness and necessity.

(3) Costs of corrective action performed by an owner or operator as an initial response or an action to prevent or remedy an emergency situation, or as directed by the cabinet, shall be subject to the range of costs set forth in Section 1 of this administrative regulation where appropriate. These costs shall be justified as to reasonableness and necessity.

Section 3. Eligibility Criteria for Persons Who Contract to Perform Corrective Action. To be eligible for payment from the fund, persons who contract to perform corrective action shall be certified according to 415 KAR 1:115 and shall provide a bid proposal to the owner or operator. The bid shall be submitted on the bid proposal form dated **October** [~~August~~], 1993, hereby incorporated by reference. This form may be inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

(1) Personnel shall be categorized according to the applicable type of personnel described in Section 1 of this administrative regulation and the appropriate rate applied;

(2) Costs shall be itemized to comply with the cost items listed in Section **1** [2] of this administrative regulation;

(3) Original invoices shall be submitted with a request for payment or reimbursement from the fund;

(4) Documentation and additional information to support the request for payment or reimbursement shall be supplied as requested by commission staff.

Section 4. Certification of Contractor Costs. (1) The commission may issue a request for proposals from individuals or companies engaged in the performance of corrective action for releases from petroleum storage tanks. The commission shall establish the date by which the proposals are to be submitted.

(2) The commission shall specify in the notice of the request for proposals the information to be submitted by the individual or company. The information to be supplied shall include:

(a) Verification that the submitter is a certified contractor, or a company employing certified contractors. A company shall include the name and position of its certified contractors;

(b) A statement of qualification of the individual or company, including a statement of relevant experience in the performance of corrective action for releases from petroleum storage tanks;

(c) A list of references, including the name, business address, and telephone number of at least three (3) persons for whom the individual or company has performed corrective action for a release from a petroleum storage tank. If the company has not performed corrective action for at least three (3) persons, then a list of persons for whom the certified contractors employed by the company have performed corrective action may be submitted;

(d) A schedule of fees that the individual or company proposes to charge an owner or operator for the performances of corrective action for a release from a petroleum storage tank. The schedule of fees shall set forth a cost for each of the items listed in Section 1 of this administrative regulation. The schedule shall note any differences or variations in listed costs attributable to length of necessary transportation, or other factors. If subcontractors are to be used, then the schedule shall specify the maximum cost to be charged by the individual or company for the corrective action activities to be performed by a subcontractor;

(e) A verification by the individual, or an authorized agent of the company, that the proposal is true and accurate, and that the schedule of fees shall be applicable for a period of one (1) year from the date by which proposals are to be submitted to the commission;

(3) The commission shall review all proposals received after the date established by the commission for submittal of proposals. Proposals are to be submitted for the purpose of assisting the commission in the regulation of persons who contract to perform corrective action. These proposals shall not be made available for public inspection until after the date for submittal established by the commission, since to do so would create an unfair advantage for competitors of the individual or company. Proposals may not be amended after the date for submittal, except as provided in subsection (6) of this section.

(4) Commission staff shall review each proposal to verify that the individual or company complies with the requirements for contractor certification, is qualified to perform corrective action for releases from petroleum storage tanks, and the proposed costs comply with the requirements of Section 1 of this administrative regulation.

(5) If the commission verifies that the individual or company complies with the requirements of subsection (4) of the section, then the individual or company shall be placed upon a list of approved contractors that shall be made available to owners or operators of petroleum storage tanks upon request.

(6) If the commission verifies a proposal, then the individual or company shall not charge the owner or operator more than the listed costs on the schedule of fees unless the individual or company demonstrates to the satisfaction of the commission that:

(a) The increase in costs was beyond the reasonable control of the contractor;

(b) The increase is due to an increase in costs to the contractor, such as an increase in disposal fees or equipment costs, and is supported by adequate documentation; and

(c) The increase is reasonable and necessary to cover the actual costs of performing corrective action.

(7) Claims submitted to the commission by an owner or operator for the costs of corrective action performed by an approved contractor shall be reviewed by the commission staff to determine that the costs were necessary.

Section 5. This regulation shall become effective January 1, 1994.

JACK HALL, Executive Director
APPROVED BY AGENCY: October 7, 1993
FILED WITH LRC: October 7, 1993 at noon

PETROLEUM STORAGE TANK
ENVIRONMENTAL ASSURANCE FUND COMMISSION
(Amended After Hearing)

415 KAR 1:115. Contractor certification.

RELATES TO: KRS 224.60-110, 224.60-130
STATUTORY AUTHORITY: KRS 224.60-130
NECESSITY AND FUNCTION: KRS 224.60-130 requires the Petroleum Storage Tank Environmental Assurance Fund Commission to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation sets forth the criteria for obtaining certification from the commission to be eligible to contract to perform corrective action for a release from an underground petroleum storage tank, and to be eligible to receive reimbursement or payment from the fund. This administrative regulation is necessary to set minimum standards for determining technical competency and proficiency in the performance of corrective action, and to determine financial capability through proof of insurance.

Section 1. Definitions. Except as defined in this section, the terms in this regulation shall have the same definition as in KRS 224.60-115 or 415 KAR 1:050.

(1) "Certified contractor" means an individual certified by the commission as qualified to engage in the performance or supervision of corrective action at a facility in the event of a release from a petroleum storage tank system.

(2) "Company" means a person other than an individual engaged in the business of performing corrective action for a release from a petroleum storage tank system who employs one (1) or more certified contractors.

(3) **"Interim contractor" means an individual who is not a certified contractor and is identified by a company to replace a certified contractor in accordance with Section 7 of this administrative regulation.**

(4) "Participation in" means direct and substantial involvement in each aspect of corrective action, including site characterization, preparation of site investigation reports, preparation of proposed corrective action plan, and implementation of a corrective action plan approved by the cabinet.

(5) **[~~(4)~~]** "Supervise" means being physically on site and having the authority and responsibility for the **performance of** **[~~direction of employees engaged in performing~~]** corrective action at a facility in the event of a release from petroleum storage tank system, and having the ability to exercise independent judgement and direct the activities of employees and subcontractors in the performance of corrective action to achieve compliance with the administrative regulations of the cabinet.

Section 2. Applicability. (1) Effective **March** **[~~January~~]** 1, 1994, no costs for actions performed by a person who contracts to perform corrective action for a release from a petroleum storage tank system shall be eligible for reimbursement or payment from the fund unless the corrective action is performed or supervised by an individual who is certified by the commission, and the corrective action is performed in compliance with the administrative regulations of the cabinet set forth in 401 KAR Chapter 42. **This requirement shall apply only to applications for assistance agreements made after March 1, 1994.**

(2) The commission shall not reimburse costs of corrective action **commenced** **[~~incurred~~]** after **March** **[~~January~~]** 1, 1994, unless the corrective action is performed or supervised by an individual that has been certified pursuant to this administrative regulation.

(3) Certified contractors shall perform or supervise corrective action, including but not limited to, site checks, site investigations, and preparation of corrective action plans, in accordance with the administrative regulations of the cabinet.

(4) To be eligible for reimbursement from the fund, the person who contracts to perform corrective action shall designate the certified contractor responsible for supervision of the corrective action prior to incurring costs by giving written notice to the owner or operator of the facility and the commission. If the certified contractor changes, a new notice shall be given.

(5) A person or company who installs, repairs, closes, or removes an underground storage tank, not involving the performance of corrective action, shall not be subject to this administrative regulation.

Section 3. Application Requirements. (1) Each applicant for certified contractor shall meet all of the following requirements:

(a) Submit an application to the commission on the Certified Contractor Application form dated August, 1993, hereby incorporated by reference. This form may be inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

(b) Submit verification of experience by participation in the performance of corrective action at facilities where a release occurred from a petroleum storage tank system; **and**

(c) Complete the examination requirements of this administrative regulation**[~~; and~~]**

[~~(d) Provide proof of financial capability to perform corrective action and to compensate third parties for bodily injury and property damage caused by the certified contractor, or company employing the certified contractor, by submitting certificates of general liability insurance in the minimum amount of $1,000,000 and pollution liability insurance in the minimum amount of $100,000 per occurrence. The proof of financial capability shall be provided prior to the issuance of a certificate by the commission~~].

(2) The application shall be denied by the commission for any of the following:

(a) The applicant fails to provide the information required by the application form; or

(b) The applicant fails to comply with the experience requirements of this administrative regulation; or

(d) The applicant fails to successfully pass the examination required by this administrative regulation; or

(e) The applicant makes a misrepresentation or submits false information in the application**[~~; or~~]**

[~~(f) The applicant fails to provide proof of the insurance coverage required by this section~~].

Section 4. Experience Requirements. (1) The individual making application shall demonstrate participation in the performance of corrective action at a minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to making application.

(2) Technical training approved by the commission shall reduce the experience requirement of participation in the performance of corrective action to a minimum of four (4) facilities.

(3) A professional engineer registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

(4) A certified professional geologist registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

Section 5. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the commission in compliance with this section.

(1) The examination for certification shall be a written multiple choice examination covering all aspects of corrective action for a release from a petroleum storage tank system. The examination shall

test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to performing corrective action where a release has occurred from a petroleum storage tank system**, and with applicable occupational health and safety and public health and safety requirements**.

(2) A minimum score of seventy-five (75) percent on the examination shall be considered passing.

(3) Any applicant who fails the examination shall not reapply within ninety (90) days.

(4) Examinations shall be given quarterly through January 1, 1995, and semiannually thereafter.

(5) An application shall be filed with the commission at least ten (10) days in advance of the testing date to take the examination.

(6) All examinations shall be graded and the applicants shall be notified within fifteen (15) days. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant by appointment.

(7) The commission shall furnish the applicant with instructions for taking the examination upon receipt of a completed application. Instruction sheets shall refer the applicant to appropriate laws, regulations and industry publications.

Section 6. Certification and Renewal Procedures. (1) The commission shall issue a certificate to each individual who successfully complies with this administrative regulation. The certificate shall be renewed annually.

(2) An application for renewal shall be submitted to the commission on the Certified Contractor Application for Renewal form dated **Octobert** [~~August~~], 1993, hereby incorporated by reference. This form may be inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

(3) [~~A certified contractor shall submit proof of financial capability, as required by Section 3(1)(d) of this administrative regulation, at time of renewal, and shall demonstrate that the insurance coverage shall be effective for the following year.~~

~~(4)~~] The renewal of a certificate shall be denied by the commission for any of the following:

(a) The applicant fails to provide the information required by the Certified Contractor Application for Renewal form.

(b) The applicant makes a misrepresentation or submits false information in the application for renewal; or

(c) [~~The applicant fails to demonstrate the insurance coverage required by subsection (3) of this section; or~~

~~(d)~~] The applicant failed to supervise a corrective action during the year prior to renewal; or

(d) [~~(c)~~] The applicant fails to maintain a professional registration.

(3) An applicant denied a certification or a renewal may appeal the determination by requesting a hearing pursuant to **415** [~~405~~] KAR 1:120.

(4) The commission may require that a certified contractor take and pass a written examination to renew a certification if there has been a significant change in the laws, codes or industry recommended practices with respect to performing corrective action since the date of original certification.

Section 7. Revocation or Suspension of Certification. A certificate issued pursuant to this regulation may be suspended or revoked by the commission for the following:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated any provision of this regulation or any required federal, state or local regulation, code or standard relating to corrective action; or

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to perform corrective action in violation of standards of the State Fire Marshall or the cabinet;

(3) The certified contractor obtained the certification through fraud or misrepresentation.

(4) The certified contractor fails to perform a corrective action in a manner consistent with generally acceptable professional standards.

(5) **A person whose certificate is suspended or revoked may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.** [~~The certified contractor fails to maintain general liability insurance as required by Sections 3(1)(d) and 5(3) of this administrative regulation.~~]

Section 8. **Interim Contractor. (1) A company engaged in the performance of corrective action at a facility shall immediately notify the commission in writing of the extended absence of a certified contractor due to an emergency or unanticipated circumstances. The notice shall provide the commission with the following information:**

(a) Name and qualifications of the individual replacing the certified contractor; and

(b) The length of time for which the company seeks to have the interim contractor fulfill the obligations of the certified contractor.

(2) The commission shall evaluate the qualifications of the designated interim operator and shall notify the company of the commission's determination in writing within fifteen (15) days of receipt of the company's notice. The determination shall:

(a) Approve or deny the company's request for designation of the interim contractor;

(b) Specify conditions as appropriate to the facility and the interim contractor's qualifications. [~~Nonaffiliation with Laboratory. The certified contractor, or company employing the certified contractor, and any of his or her subcontractors is prohibited from using a laboratory for environmental analytical work which is affiliated with the underground petroleum tank owner or operator, prime contractor, private contractor, or subcontractor for that particular site.~~]

Section 9. This regulation shall become effective January 1, 1994.

JACK HALL, Executive Director
APPROVED BY AGENCY: October 7, 1993
FILED WITH LRC: October 7, 1993 at noon

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(Amended After Hearing)

704 KAR 20:620. Interdisciplinary early childhood education, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030
STATUTORY AUTHORITY: KRS 161.028
NECESSITY AND FUNCTION: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, the statute requires teacher education institutions to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary; the valued educator outcomes; and the standards for approval of programs leading to such a certificate.

Section 1. Definitions. The following definitions shall apply for

purposes of this administrative regulation:

(1) "Interdisciplinary" means a preparation program that includes child development, family studies, early childhood education, and **early childhood** special education.

(2) "Valued education outcome" means an outcome that a certified early childhood educator shall be able to demonstrate **in the performance of** [~~as he performs~~] teaching and managing functions in the workplace. Each valued educator outcome statement describes the general set of teaching or managing tasks that an early childhood educator shall perform and the contexts **for performance of** [~~in which he shall perform~~] the tasks.

(3) "Performance criteria" means the standard concepts and processes that shall govern performance to teach or manage tasks. The extent to which criteria are met shall determine the quality of the early childhood educator's performance on a given task. Scoring rubrics or guides developed from the criteria shall enable the setting of standards of performance and the measurement of performance.

(4) "Cultural diversity" means the wide range of differences among individuals that result from cultural and ethnic backgrounds, socioeconomic status, gender, personality traits, physical abilities and disabilities, and the interaction of factors of variability.

Section 2. (1) The Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who has completed a bachelor's degree and the approved program of preparation for this certificate as described in Sections 7, 8, and 9 of this administrative regulation at a teacher education institution approved by the Education Professional Standards Board. In addition, the applicant shall complete the written tests and a one (1) year internship as provided in this administrative regulation.

(2)(a) In order to satisfy the testing prerequisites for teacher certification as required by KRS 161.030, the applicant shall score at least the following minimum passing scores on the tests identified below:

1. The NTE Core Battery tests:
   a. Communication skills, 646;
   b. General knowledge, 643;
   c. Professional knowledge, 644.
2. Applicants shall successfully complete a test of knowledge specific to interdisciplinary early childhood teaching which shall be identified by the Education Professional Standards Board pursuant to KRS 161.030.

(b) The tests may be waived for out-of-state teachers who have two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program on at least a half-time basis.

(3) Upon successful completion of an approved program of preparation and testing, the Education Professional Standards Board shall issue a statement of eligibility in accordance with KRS 161.030.

(4) The Education Professional Standards Board shall issue the one (1) year certificate for the beginning teacher internship as provided in KRS 161.030 and 704 KAR 20:320 upon applicant's confirmation of employment in a position teaching children from birth to entry into a primary program on at least a half-time basis in a school which meets the criteria identified in KRS 161.030.

(5)(a) The beginning teacher internship may be waived for out-of-state applicants who have completed two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program.

(b) The beginning teacher internship may be waived for applicants who have completed two (2) or more years of successful experience in a position teaching children from birth to entry into a primary program on at least a half-time basis in Kentucky while holding one (1) of the following credentials:

1. Baccalaureate or higher degree in child development or early childhood education or early childhood special education.
2. Certification valid for kindergarten.
3. Special education certification valid for primary grades.

Section 3. (1) The Education Professional Standards Board shall issue a Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, for a duration period of five (5) years, except as follows:

(a) The initial certification for the beginning teacher internship shall be issued for a duration period of one (1) year. The certificate shall be extended for the remainder of the five (5) year period upon successful completion of the beginning teacher internship as provided in 704 KAR 20:320.

(b) Recency of preparation shall be a prerequisite for the issuance of certificates as provided in 704 KAR 20:045. An initial certificate valid for a one (1) year period shall be issued to an applicant who has completed the program of preparation more than five (5) years preceding the date of receipt of the certificate application form or who has not completed six (6) semester hours of graduate credit within the five (5) year period. The certificate shall be extended for the remainder of the five (5) year period upon completion of six (6) semester hours of graduate credit by September 1 of the year of expiration. The recency of preparation requirement shall be waived for applicants for initial Kentucky certification who have completed a planned fifth-year program provided they have completed three (3) years of successful teaching experience within the last five (5) years.

(2) The first five (5) year renewal shall require completion by September 1 of the year of expiration of fifteen (15) semester hours of graduate credit.

(3) The second five (5) year renewal shall require completion of the planned fifth-year program as defined in 704 KAR 20:020 by September 1 of the year of expiration.

(4) After completion of the planned fifth-year program, the certificate shall be renewed for subsequent five (5) year periods upon completion of three (3) years of successful teaching experience or six (6) semester hours of credit by September 1 of the year of expiration.

Section 4. (1) The Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, shall be valid for teaching children from birth to entry into the primary program. This includes teaching children in kindergarten or other programs for five (5) year old children where these programs are operated separately from the primary program. Persons holding this certificate shall serve as primary developers and implementers of individual programs for children with and without disabilities including individual education plans (IEP's) and individual family service plans (IFSP's) with consultation and support from specialists according to the needs of the child (e.g., speech-language pathologists, occupational and physical therapists, nurses, educators of the hearing impaired or vision impaired, and others).

(2) Effective with the 1999-2000 academic year all baccalaureate and postbaccalaureate persons teaching children from birth to entry into the primary program shall hold the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary. By the 1999-2000 school year, the Kentucky Department of Education shall report to the Education Professional Standards Board regarding continuation of supervised, nonbaccalaureate personnel as teachers.

Section 5. Beginning with the 1994-95 academic year and through the 1998-99 academic year, teachers of children from birth to entry into the primary program who do not hold the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, may be employed as provided in 704 KAR 3:410, Section 6 for Level III supervised, nonbaccalaureate teachers and for baccalaureate and postbaccalaureate teachers under the following conditions:

(1) Level I personnel shall hold one (1) of the following creden-

tials: baccalaureate or higher degree in child development, early childhood education, or early childhood special education; certification valid for kindergarten; special education certification valid for primary grades.

(2) If personnel with Level I qualifications are not available, the local board may request approval for Level II personnel who have a minimum of one (1) year of early childhood training or experience and who hold one (1) of the following credentials: a degree in family studies, social work, psychology, registered nurse, certification or licensure in speech communication disorders or speech-language pathology, or other related area including education if not specified under Level I.

(3) Personnel with qualifications identified in subsections (1) and (2) of this section shall:

(a) Be enrolled in an approved program leading to the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary; and

(b) Develop an individual program of studies with an adviser in an approved program for preparation to qualify for the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary.

Section 6. (1) All teacher preparation institutions offering approved programs of preparation leading to the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, shall establish an assessment system to judge the performance of candidates on the valued educator outcomes identified for this certificate.

(2) For candidates who have completed at least one (1) year of successful teaching experience with children from birth to entry into the primary program, the teacher preparation institution shall use this system to evaluate the performance of the candidate on some or all of the valued educator outcomes. For those outcomes which the candidate demonstrates an acceptable level of performance, the teacher education institution shall waive the corresponding curriculum requirements.

Section 7. Standards for Program of Preparation. In order to receive approval of the Education Professional Standards Board, a program of preparation leading to the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, shall meet the following standards:

(1) The program shall be designed to prepare candidates to teach and manage tasks as identified in the valued educator outcomes and accompanying performance criteria listed in Section 9 of this administrative regulation.

(2) The program shall include a system of continuous assessment to evaluate the candidate's progress and level of attainment on the valued educator outcomes and the related performance criteria. The assessments shall include performance on authentic teaching and managing tasks in settings that are inclusive of children across abilities and contexts. Candidates shall be evaluated by paper and pencil tests and authentic assessments of performance.

(3) The program of preparation shall ensure that candidates from culturally diverse backgrounds are recruited and retained in the program.

(4) The program of preparation shall provide the candidate with knowledge and experiences to perform teaching and managing tasks identified in the valued educator outcomes with children from culturally diverse backgrounds.

Section 8. Application for Program Approval. (1) A teacher education institution which proposes to offer a program of preparation leading to the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary, shall make application for approval to the Education Professional Standards Board. The application for approval shall include a program description which includes the following:

(a) Program outcomes: include valued educator outcomes for interdisciplinary early childhood education.

(b) Program components: provide list of coursework, clinical and field experiences, and student teaching related to general education, interdisciplinary specialty studies, and professional studies.

(c) Faculty: provide list of faculty responsible for and involved with the conduct of the specific program and their qualifications.

(d) Students: describe admission and retention policies and procedures that are specific to this program.

(e) Plan for assessment: description of the system of continuous assessment of valued educator outcomes.

(2) Institutions may receive interim program approval for a one (1) year period which may be extended for one (1) additional year while the institution develops the assessments identified in Section 7(2) of this administrative regulation. At the end of the period of interim approval the institution shall apply for full approval to the Education Professional Standards Board.

Section 9. Valued Educator Outcomes and Performance Criteria. (1) Valued Educator Outcome I.

(a) The early childhood educator shall design and organize learning environments, experiences, and instruction that address the developmental needs of infants, toddlers, preschool children, and kindergarten children and Kentucky's Learning Goals and Valued Outcomes. The early childhood educator shall develop plans for:

1. Implementation in a classroom setting;

2. Implementation in a home or other settings;

3. Implementation by teaching assistants and other staff in a variety of settings; and

4. Training teaching assistants, other staff, and parents. These plans shall include individual family service plans (IFSP's), individual education programs (IEP's), and transition plans for children across disabilities developed in partnership with family members.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Designs activity-based learning experiences that are developmentally and individually appropriate for the child and are based on appropriate assessment of the child.

2. Makes provisions for the special needs of children who have unique talents, learning and developmental needs, or specific disabilities.

3. Plans for a healthy and safe environment for children with appropriate health and safety precautions during activities and incorporating health and safety into the curriculum.

4. Develops curricula and focuses instruction on the developmental needs of the children and Kentucky's learning goals and valued outcomes.

5. Designs opportunities for positive guidance and self-regulation of the child including effective strategies for addressing challenging behaviors through analysis of communicative intent, use of nonaversive intervention strategies, and systematic implementation.

6. Links developmental learning experiences and strategies with cultural, social, and family diversity.

7. Incorporates knowledge and strategies from multiple disciplines and other service plans (e.g., health care, social services) into the design of intervention strategies.

8. Incorporates family resources, priorities, and concerns into the plan.

9. Plans for current developmental and learning experiences and strategies and relates those to the next educational setting for the child and family.

10. **Implements** [~~Designs~~] creative and appropriate use of technology to enhance learning and participation, control of the environment, and communication abilities including adaptive and assistive technology.

11. Selects and uses learning strategies and resources including

materials, classroom furnishings, and community resources that are developmentally and individually appropriate for the child.

~~[12. Implements child-oriented strategies to meet the individual needs of children including the development of communication systems (symbolic and nonsymbolic) for children.]~~

12. ~~[13.]~~ Provides a stimulus-rich indoor and outdoor environment for children using materials, media, and technology to enhance learning.

~~[14. Informs families about legal rights and procedures regarding children who have disabilities or meet income or other eligibility guidelines for services.]~~

13. ~~[15.]~~ Identifies resources essential to the accomplishment of the management task or objective.

(2) Valued Educator Outcome II.

(a) The early childhood educator shall create appropriate learning environments for infants, toddlers, preschool children, and kindergarten children that are supportive of developmental needs of the age group and Kentucky's Learning Goals and Valued Outcomes. The early childhood educator shall provide developmental and learning activities in classroom and home settings, and in other settings, such as other preschools, child care programs, and hospitals. Within these settings, the learning context may include individual child activities, parent-child activities, small groups, and large groups. The early childhood educator shall create appropriate learning environments for children with diverse abilities including children with and without disabilities.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Facilitates development and actively involves children at a high level of engagement in developmentally and individually appropriate learning activities within the contexts of play, ongoing care routines, daily living and nutritional experiences, transitions, systematic instructional situations, and natural experiences.

2. Focuses the attention of children and helps children make connections in basic skills or core concepts and processes through an integrated skills approach to all areas of child development: physical, emotional, social, aesthetic, cognitive, communicative, and adaptive behavior.

3. Identifies children's misconceptions; provides guidance; systematically provides additional learning cues, models, or assistance as needed; and, offers frequent feedback on progress toward learning outcomes.

4. Provides a stimulus-rich indoor and outdoor environment for children using materials, media, and technology to enhance learning.

5. Makes creative and appropriate use of materials, media and technology for learning including adaptive and assistive technology to enhance learning opportunities, communication skills, and to extend child control over the environment.

6. Manipulates antecedent and consequent conditions available in and appropriate to the child's natural environment for the purpose of encouraging appropriate child behavior through nonaversive techniques to foster self-control, self-discipline, and self-responsibility.

7. Uses activities which actively engage children in cooperative learning in multiage, multiability groups for learning and for development of interpersonal skills and peer relationships.

8. Adapts the learning environment for inclusion of children **from various cultures** with and without disabilities, special health care needs, and emotional needs.

9. Facilitates positive and supportive interactions between children and adults including staff, parents, and primary caregivers and promotes self-management and self-regulation.

10. Uses physical, social, and temporal aspects of the environment to engage children and maximize learning and development with adjustments as the situation demands.

11. Recognizes diversity as a strength within the group or class or among families, shows consistent sensitivity to gender, social, and cultural differences, and respects individual differences.

12. Operates within legal and ethical guidelines and adheres to high standards.

(3) Valued Educator Outcome III.

(a) The early childhood educator shall introduce, implement, facilitate, and manage development and learning for infants, toddlers, preschool children, and kindergarten children to promote growth toward developmental needs of the age group and Kentucky's Learning Goals and Valued Outcomes. The early childhood educator shall implement instruction in classroom and home settings, through itinerant services, and in other settings such as day care, other preschools, and hospitals. The early childhood educator shall implement instruction for young children with diverse abilities including children with and without disabilities.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Facilitates development and actively involves children at a high level of engagement in developmentally and individually appropriate learning activities within the contexts of play, ongoing care routines, daily living and nutritional experiences, transitions, systematic instructional situations, and natural experiences.

2. Incorporates knowledge and strategies from multiple disciplines and other service plans (e.g., health care, social services) into the design of intervention strategies.

3. Focuses the attention of children and helps children make connections in basic skills or core concepts and processes through an integrated skills approach to all areas of child development: physical, emotional, social, aesthetic, cognitive, communicative, and adaptive behavior.

4. Implements child-oriented strategies to meet the individual needs of children including the development of communication systems (symbolic and nonsymbolic) for children.

5. Incorporates family-centered activities as a part of the learning environment.

6. Links development and learning with the child's prior knowledge, experiences, and cultural background and makes provisions for diversity in the following areas: selection of materials; environment; activities; communication modes; and child response modes.

7. Identifies children's misconceptions, provides guidance, systematically provides additional learning cues, models, or assistance as needed, and offers frequent feedback on progress toward learning outcomes.

8. Uses instructional practices that are pedagogically sound and legally defensible.

9. Involves children in multiability groups for learning activities with adaptations as needed for materials or curriculum, personal assistance, and appropriate positioning and strategies for overcoming environmental barriers for children with physical disabilities.

10. Makes creative and appropriate use of materials, media and technology for learning including adaptive and assistive technology to enhance learning opportunities, communication skills, and to extend child control over the environment.

11. Manipulates antecedent and consequent conditions available in and appropriate to the child's natural environment for the purpose of encouraging appropriate child behavior through nonaversive techniques to foster self-control, self-discipline, and self-responsibility.

12. Facilitates positive and supportive interactions between children and adults including staff, parents, and primary caregivers and to promote self-management and self-regulation.

13. Uses physical, social, and temporal aspects of the environment to engage children and maximize learning and development with adjustments as the situation demands.

~~[14. Supports and assists the family in articulating priorities, concerns, and family resources that promote the child's development.~~

~~15. Demonstrates sensitivity to differences in family structures, processes, social and cultural backgrounds including special issues related to poverty, disability, and emotional needs of children.]~~

14. ~~[16.]~~ Specifically communicates options for programs and

services for the child at the next level and assists the family in identifying activities and resources to facilitate transition.

15. [~~17.~~] Identifies the outcome or goal of the management task or objective.

16. [~~18.~~] Uses problem-solving and participatory group processes to address management problems.

17. [~~19.~~] Establishes appropriate time lines for completion of management tasks.

(4) Valued Educator Outcome IV.

(a) The early childhood educator shall assess children's cognitive, emotional, social, communicative, adaptive, and physical development; organize assessment information; and communicate the results appropriate to the purpose of the assessment. Assessment purposes shall include:

1. Determining learning results;
2. Developmental screening;
3. Program planning;
4. Eligibility for disability services;
5. Program evaluation;
6. Progress on IFSP's and IEP's; and
7. Needs for transition to the next educational setting or program.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Uses multiple assessments, measures, and sources of data about the child with adaptations for sensory and physical impairments (e.g., observations of the child in relation to environments, interpersonal interactions, checklists, interviews, anecdotal records, norm- and criterion-referenced assessments, play-based assessments, and portfolios of
sample performance tasks);

2. **Appropriately** uses **a wide variety of** [~~appropriate~~] child assessment instruments **and** [~~or~~] procedures based on the purpose of assessment that are consistent with established criteria and standards;

3. Involves families actively as team members and promotes family and child self-assessment by helping families and children articulate their own strengths, concerns, priorities, and resources;

4. Collects assessment data in a systematic way, records child performance, and maintains up-to-date records of children's progress with appropriate use of technology to support these activities;

5. Organizes assessment data and communicates results to the team, child and family members in a user-friendly format and process and uses indicators of progress that all team members and parents understand;

6. Specifically communicates options for programs and services for the child at the next level and assists the family in identifying activities and resources to facilitate transition;

7. Evaluates child development and learning in a way that is sensitive to cultural backgrounds; and

8. Applies expert opinion found in guidelines and standards prescribed or mandated by state, national organizations, and learned societies to evaluate progress.

(5) Valued Educator Outcome V.

(a) The early childhood educator shall reflect on and evaluate teaching and learning situations, learning environments, and programs for infants, toddlers, preschool children, kindergarten children, and their families. This shall include learning situations and programs that are provided in relation to an IFSP or an IEP and by the early childhood educator, a teaching assistant or other staff member, the family, or other caregiver.

(b) Performance criteria shall include the extent to which the early childhood educator's evaluation:

1. Accurately articulates and assesses the learning situation or program and develops specific ideas and suggestions for improvement of the development program or learning environment with respect to:

a. The child's level of development and cultural background.

b. Developmental levels and learning outcomes for the child.

c. Developmentally and individually appropriate instruction.

d. The child's natural environment for learning.

e. Positive guidance and self-direction.

f. Active exploration and interaction.

g. Use of time, space, materials, technology, and human resources (e.g., peers, family, community);

2. Analyzes and evaluates the effect of the developmental program, learning environment, and family services on children as individuals and as groups of children;

3. Identifies priority activities for proficient performance and facilitates the development of learning experiences for assistants, staff, and volunteers.

(6) Valued Educator Outcome VI.

(a) The early childhood educator shall collaborate and consult with the following to design, implement, and support learning programs for children: staff in a team effort; volunteers; families and primary caregivers; other educational, child care, health and social services providers in an interagency and interdisciplinary team; and, local, state, and federal agencies.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Uses effective team membership and interpersonal skills to **support** [~~facilitate~~] the collaborative team effort, articulates the purpose and scope of the collaborative effort, takes on appropriate roles (e.g., leader, follower, advocate, team teacher), and facilitates successful closure to collaborative events.

2. Involves parents as equal **partner**s on the team.

3. Involves the appropriate persons and agencies to address the situation, problem, or task.

4. Uses information, skills, and applications learned in the interdisciplinary, collaborative team process to facilitate child development and learning including embedding opportunities for child participation and instruction in self-care and health related routine; uses appropriate orthopedic, prosthetic, and other assistive and adaptive equipment **in collaboration with the child's therapists and family**, and appropriately positions and handles students with physical disabilities **according to the instructions of family/therapists**.

5. Demonstrates an open mind to alternative perspectives, encourages contributions from different persons, sources and disciplines, and shows sensitivity to differences in roles, disciplines, service delivery models, social and cultural backgrounds.

6. Collaborates effectively with families and personnel to support successful transition of children.

~~[7. Implements a range of family oriented services based on identified resources, priorities, and concerns (e.g., information on community resources in child care, food stamps, health care, and disability services; support; referral; education and training).~~

~~8. Applies adult learning principles and processes in providing parents with training in child development, health, and safety.~~

~~9. Demonstrates use of ongoing, varied, and two (2) way communication strategies with family members (e.g., conferences, newsletters, daily notes, handbooks).~~]

7. [~~10.~~] Serves as a member of an interdisciplinary team to make appropriate referrals based on screening and observation and to provide functional and appropriate assessments for diagnostic and programming purposes (IEPs and IFSPs).

8. [~~11.~~] Writes appropriate and functionally-based IFSPs and IEPs with various team members including annual and short-term objectives based on child assessment data **and which facilitate effective transition to successful functioning in future environments**.

9. [~~12.~~] Clearly articulates child learning and developmental outcomes to assistants, staff, and volunteers.

10. [~~13.~~] Promotes self-direction and applies adult learning principles and processes in training and supervision of assistants, staff, and volunteers.

11. [~~14.~~] Assesses the knowledge and performance levels of

assistants, staff, and volunteers with sensitivity to social and cultural differences.

12. [~~15.~~] Identifies priority activities for proficient performance and facilitates the development of learning experiences for assistants, staff, and volunteers.

13. [~~16.~~] Provides feedback and evaluates performance in collaboration with the assistant staff or volunteer and facilitates the development of professional growth plans.

(7) Valued Educator Outcome VII.

(a) The early childhood educator shall engage in self-evaluation of teaching and management skills and participate in professional development to improve performance. This shall include the following performance areas:

1. Designing and planning developmental and learning activities;
2. Creating learning environments;
3. Implementing and managing activities;
4. Assessing children's learning development;
5. Evaluating learning situations and environmental programs; and
6. Collaborating with colleagues, parents, and others.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Provides documented evidence and articulates personal performance levels with respect to valued educator outcomes in paragraph (1)1 through 6, sensitivity to differences in social and cultural backgrounds, and identifies strengths and priorities for growth;

2. Articulates a professional development plan that has the potential to expand the personal repertoire of skills and strategies with respect to specific performance areas;

3. Shows documented evidence of growth and increased capacity to address specific areas of performance;

4. Demonstrates professional growth through **active participation in** professional organization **activities**;

5. Critically reviews and applies research and best practice information in the program; and

6. Provides feedback and evaluates performance in collaboration with the assistant staff or volunteer and facilitates the development **and implementation** of professional growth plans.

(8) Valued Educator Outcome VIII.

(a) The early childhood educator supports and promotes the self-sufficiency of families as they care for and provide safe, healthy, stimulating, and nurturing environments for young children.

(b) Performance criteria shall include the extent to which the early childhood educator:

1. Supports and assists the family in articulating priorities, concerns, and family resources that promote the child's development.

2. Demonstrates sensitivity to differences in family structures, processes, social and cultural backgrounds including special issues related to poverty, disability, and emotional needs of children.

3. Implements family-centered services which support child development.

4. Informs families about legal rights and procedures regarding children who have disabilities or meet income or other eligibility guidelines for services.

5. Implements a range of family-oriented services based on identified resources, priorities, and concerns (e.g., information on community resources in child care, food stamps, health care, and disability services; support; referral; education and training).

6. Applies adult learning principles and processes in providing parents with training in child development, health, and safety.

7. Demonstrates use of ongoing, varied, and two (2)-way communication strategies with family members (e.g., conferences, newsletters, daily notes, handbooks).

DANIEL GREEN, Chair
APPROVED BY AGENCY: October 1, 1993
FILED WITH LRC: October 4, 1993 at 2 p.m.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims
(Amended After Hearing)

803 KAR 25:092. Workers' Compensation pharmacy fee schedule.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.735
NECESSITY AND FUNCTION: KRS 342.035 requires the Workers' Compensation Board to periodically promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community. The increased security of payment afforded by the Workers' Compensation Act may be taken into consideration in determining what fees are reasonable. KRS 342.735 requires the board to establish administrative regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate charges for pharmaceuticals provided pursuant to KRS 342.020, and to expedite the payment of this class of medical expense benefits.

Section 1. Definitions. (1) "Brand name" has the meaning set forth in KRS 217.814(1).

(2) "Equivalent drug product" has the meaning set forth in KRS 217.814(5).

(3) "Generic name" has the meaning set forth in KRS 217.814(2).

(4) "Hospital" has the meaning set forth in 803 KAR 25:091, Section 1(1).

(5) "Practitioner" means any person licensed under the professional laws of Kentucky or any other state to prescribe and administer medicine and drugs.

(6) "Wholesale price" means the average wholesale price charged by wholesalers at a given time.

Section 2. Payment for Pharmaceuticals. (1) An employee entitled to receive pharmaceuticals under KRS 342.020 may request and require that a brand name drug be used in treating the employee. Unless the prescribing practitioner has indicated that an equivalent drug product should not be substituted, an employee who requests a brand name drug shall be responsible for payment of the difference between the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock and the brand name drug wholesale price at the time of dispensing.

(2) Any duly licensed pharmacist dispensing pharmaceuticals pursuant to KRS Chapter 342 shall be entitled to be reimbursed in the amount of the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock, at the time of dispensing, plus a five (5) dollar dispensing fee **plus any applicable federal or state tax or assessment**.

(3) If an employee's prescription is marked "Do Not Substitute," the dispensing pharmacist shall be entitled to reimbursement in an amount equal to the brand name drug wholesale price, at the time of dispensing, plus a five (5) dollar dispensing fee **plus any applicable federal or state tax or assessment**.

Section 3. Disputes; Applicability. (1) Any dispute arising under this administrative regulation shall be resolved pursuant to 803 KAR 25:012.

(2) This administrative regulation shall apply to prescriptions dispensed to a workers' compensation patient by a hospital pharmacy if the patient is not otherwise being treated or obtaining medical care from the hospital.

(3) This administrative regulation shall not apply to prescriptions dispensed by a hospital pharmacy, of a hospital regulated pursuant to 803 KAR 25:091, to a workers' compensation patient receiving medical treatment or care from the hospital on an inpatient or outpatient basis.

(4) Any insurance carrier, self-insured employer or group self-insured employer may enter into an agreement with any pharmacy to provide reimbursement at a lower amount than that required in this administrative regulation.

Section 4. Balance Billing. No pharmacy filling a prescription covered under KRS 342.020 shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge in excess of that permitted under this administrative regulation, except as provided in Section 2(1) of this administrative regulation. **This prohibition is applicable to prescriptions filled pursuant to KRS 342.020 and any prescription which is denied or disputed by the medical payment obligor may be billed directly to the party presenting the prescription for filling.**

JUDGE ARMAND ANGELUCCI, Chairman
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 13, 1993 at noon

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Amended After Hearing)

902 KAR 20:350. Boarding homes.

RELATES TO: KRS 216B.300-216B.320, 216B.990
STATUTORY AUTHORITY: KRS 216B.305
NECESSITY AND FUNCTION: KRS 216B.305 mandates that the Cabinet for Human Resources adopt standards through administrative regulation relating to boarding homes. This administrative regulation provides the standards for the operation of boarding homes.

Section 1. Definitions. (1) "Home" means a boarding home.

(2) "Registrant" means the owner of the home.

(3) "Manager" means person responsible for the day-to-day operation of the home.

(4) "Resident" means any person, including a boarder as defined in KRS 216B.300(3), other than the registrant, manager or person related to the registrant or manager, who is living in the home. The resident may require some minimal degree of assistance or supervision, but not to the level of care provided by family care homes or personal care homes.

(5) "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) In a form capable of supporting:

1. The rapid and progressive growth of infections or toxigenic microorganisms; or

2. The slower growth of Clostridium botulinum.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:

1. Has been treated; or

2. Is raw seed sprouts.

(d) The following are excluded:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) value of 0.85 or less;

3. Food with a hydrogen ion concentration (ph) level of four and six-tenths (4.6) or below;

4. Food in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur

(6) "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:

(a) Day care center;
(b) Family child care home,
(c) Adult day care center;
(d) Adult day health care facility;
(e) Family care home;
(f) Group home for the mentally retarded or developmentally disabled;
(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospital;
(h) Intermediate care facility;
(i) Nursing facility;
(j) Nursing home;
(k) Personal care home;
(l) Skilled nursing facility;
(m) Psychiatric residential treatment facility;
(n) Child caring facility;
(o) Child placing agency;
(p) Rural primary care hospital;
(q) Alzheimer nursing home;
(r) Youth camp;
(s) Boarding home; or
(t) Alternate intermediate service for the mentally retarded or developmentally delayed.

Section 2. Scope of Operations and Services. Boarding homes are operated and maintained to provide residential and dining services for at least three (3) individuals in accordance with KRS 216B.300(4).

Section 3. Registration Procedure. (1) An applicant seeking initial registration or a registrant seeking renewal shall:

(a) Submit an application on forms that the cabinet requires to the Department for Health Services, Health Services Building, 275 East Main St., Frankfort, KY, 40621; and

(b) Pay a registration fee of $100.

(2) Upon receipt of an application, the cabinet or its agents shall make an inspection of the home to determine compliance with the provisions of KRS Chapter 216B and this administrative regulation. When inspection reveals that the applicable requirements of KRS Chapter 216B and this administrative regulation have been met, registration shall be issued to the applicant by the cabinet.

(3) A receipt of registration shall be sent to the registrant.

(4) Unless renewed, initial registration shall expire on March 31 following the date of registration, as shown on the receipt of registration sent to the registrant, and every March 31 thereafter.

Section 4. Operation and Management of Boarding Homes Whose Residents Do Not Meet the KRS 216B.300(3) Definition of "Boarder". (1) The registrant shall be legally responsible for the operation of the home and for compliance with all federal, state and local laws and administrative regulations pertaining to the operation of the home.

(2) The manager shall be a literate adult, at least eighteen (18) years of age, who has general knowledge of the residents' physical and mental condition.

(3) The manager shall be the person directly responsible for the

twenty-four (24) hour daily operation of the home or for delegating that responsibility to another individual meeting criteria in subsection (2) of this section. The name of that individual to whom the responsibility may be designated shall be in writing and provided to the agents of the cabinet inspecting the home.

(4) The manager shall maintain records, located on the premises and available for inspection by the cabinet or its agents, which contain the following information (typed or in ink) about each resident who does not meet the KRS 216B.300(3) definition of a "boarder":

(a) Name and sex.

(b) Date of birth.

(c) Previous place of residence.

(d) Attending physician, mental health professional, and dentist, if any, address and phone number for each.

(e) Next of kin or responsible person (or agency), address and telephone number.

(f) Amount charged per week or month by the home.

(5) The manager shall have phone numbers of a hospital, an ambulance service, fire department, and a physician for emergencies posted by the telephone in large legible print.

(6) The manager shall have a written procedure for obtaining emergency services.

(7) All prescription medications taken by residents who do not meet the KRS 216B.300(3) definition of a "boarder" shall be noted in writing by the manager to include the date, time and dosage of the medication. The manager shall keep the original in a file and make it available to the cabinet or its agents upon request.

(8) The manager shall make a written report of any accident involving a resident, any incident involving a resident's health, welfare or safety, and any death of a resident. The manager shall keep the original in a file and make it available to the cabinet or its agents upon request.

(9) The manager shall provide for resident rights pursuant to KRS 216B.303.

(10) The registrant shall request and review all criminal conviction information for any applicant for employment or volunteer services from the Justice Cabinet prior to employing the applicant or utilizing the volunteer.

(11) Initial registrations may be denied and existing registrations may be revoked if the applicant for registration or the registrant has:

(a) Been convicted of a crime relating to abuse, neglect or exploitation of a child or an adult;

(b) Abused, neglected or exploited a child or an adult;

(c) Been listed on the Nurse's Aide Abuse Registry by the Office of the Inspector General; or

(d) Had a human services center or facility registration, certification, permit or license denied or revoked or voluntarily forfeits their certification, registration, license or permit after the cabinet initiates denial or revocation action.

(12) The manager shall report all suspected cases of abuse, neglect, or exploitation of adults or children to the cabinet pursuant to KRS Chapters 209 and 620.

(13) If a person who has job duties is known or is suspected to be infected with a communicable disease for which a reasonable probability for transmission exists due to the individual's job, the individual shall not perform these duties until such time as the infectious condition can no longer be reasonably expected to be transmitted. Disagreement regarding this requirement between the home and the individual involved shall be resolved by the individual's physician.

(14) The registration from the cabinet shall be posted in a conspicuous place in the home.

Section 5. Services to be Provided by Homes Whose Residents Do Not Meet the KRS 216B.300(3) Definition of "Boarder". (1) Basic services.

(a) All homes shall ensure that residents obtain basic room and board services.

(b) The home shall provide each resident with a lockable bureau or cupboard for storage of personal belongings.

(c) Mattress pads or covers shall be used on all mattresses. Beds, mattresses, springs, slats, mattress pads and cover shall be sanitary and in good repair. Each bed shall be provided with two (2) sheets; and one (1) pillow and one (1) pillowcase for each resident. Sheets and pillowcases shall be kept clean and changed at least once per week, or more often if necessary, or when there is a new resident. All beds shall be supplied with sufficient blankets or coverings to keep the resident warm.

(d) It shall be the responsibility of the manager, if a resident is unable due to an accident or acute illness, to obtain the services of a physician.

(e) Residents shall not require a degree of care exceeding the skill of the operator to provide.

(f) Prescription drugs for residents who do not meet the KRS 216B.300(3) definition of "boarder" shall be kept in a locked cabinet.

(2) Communicable diseases.

(a) The manager shall not allow individuals infected with the following diseases to reside in the home unless the individual's attending physician certifies in writing that the condition of the individual is not communicable to others in the home environment: anthrax, cammpylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tuberculosis, tularemia, and typhus. If an attending physician is in doubt regarding the communicability of a individual's condition, the physician may contact the Department for Health Services.

(b) A home may admit a (noninfectious) tuberculosis patient under continuing medical supervision for the patient's tuberculosis disease.

(c) If a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents, the manager shall assure that a physician is contacted and that appropriate measures are taken on behalf of that resident and the other residents in the home.

(3) Dietary services for residents who do not meet the KRS 216B.300(3) definition of a "boarder".

(a) Food supplies.

1. Food shall be in sound condition and safe for human consumption. Food shall be obtained from sources that comply with the applicable laws relating to food safety. The use of food that was not prepared in an approved food processing establishment is prohibited.

2. Fluid milk and fluid milk products used shall be pasteurized and shall comply with applicable law. Dry milk and milk products used shall be made from pasteurized milk and milk products. Raw milk shall not be provided or used in a home.

3. Only clean shell eggs meeting applicable grade standards, or pasteurized liquid, frozen, or dry eggs, or pasteurized dry egg products shall be used.

4. Only ice which has been manufactured with potable water and handled in a sanitary manner shall be used.

(b) Food protection.

1. Prepared, or served, food shall be protected from cross-contamination between foods and from potential contamination by insects, insecticides, rodents, rodenticides, unclean equipment or utensils, unnecessary hand contact, draining, or overhead leakage or condensation, dust, coughs and sneezes or other agents of public health significance.

2. The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above at all times, except during necessary times of preparation or service.

3. Hermetically sealed (airtight) packages shall be handled so as to maintain product and container integrity.

4. Pets may be present on the premises, but shall not be

permitted in the kitchen.

5. Laundry facilities.

a. In facilities that are initially licensed within one (1) year of the effective date of this regulation, laundry facilities may be located in the kitchen, but shall not be used during food preparation and service.

b. In facilities that are initially licensed more than one (1) year after the effective date of this regulation, laundry facilities shall not be located in the kitchen.

(c) Food preparation.

1. Food shall be prepared with the least manual contact, using suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.

2. Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served.

3. Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit prior to being placed in steam tables or other hot storage facilities except that:

a. Poultry and poultry stuffings, and stuffed meats shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process;

b. Raw pork and products containing raw pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit;

c. Rare roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit, and rare beef steak shall be cooked to a temperature of 130 degrees Fahrenheit;

4. Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes;

5. Unpasteurized liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

6. Potentially hazardous foods that were cooked and then refrigerated shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served. Bainsmarie, warmers, and other hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

7. Potentially hazardous foods shall be thawed:

a. In refrigerated units at a temperature not to exceed forty-five (45) degrees Fahrenheit; or

b. Under potable running water at a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period that shall not exceed that reasonably required to thaw the food; or

c. In a microwave oven only when the food will be immediately transferred to conventional cooking units as part of a continuous cooking process, or when the entire, uninterrupted cooking process takes place in the microwave oven; or

d. As part of the conventional cooking process if the food is less than, or equal to, three (3) pounds.

(d) Food display and service.

1. Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by the use of packaging, or by the use of easily cleanable display cases, serving line or salad bar protector devices, covered containers for self-service, or by other effective means. Potentially hazardous food other than milk, cream, cream cheese, or yogurt shall not be provided for resident self-service in the home.

2. Condiments, seasonings and dressings for self-service use shall be provided in individual packages, or in dispensers or containers except that, for table service, catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for resident use shall be provided in individual packages or in pour-type dispensers.

3. Ice for resident use shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination.

4. Once served to a resident, portions of leftover food shall not be reused or re-served except that nonpotentially hazardous packaged food, that is still packaged and is still in sound condition may be re-served. However, single-service creamers and completely wrapped pats of butter or margarine may be re-served if still packaged and in sound condition.

(e) Employee health and practices.

1. Employees engaged in food preparation, service and ware-washing operations shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, after smoking, eating, or using the toilet, and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.

2. Employees shall wear clean outer clothing.

3. Hairnets, hats, scarfs or similar hair coverings that effectively restrain head and facial hair shall be required for all employees working in food preparation areas.

4. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods.

5. Employees shall consume food or use tobacco only in designated areas. Such designated areas shall not be located in food preparation areas or in areas where the eating or tobacco use of an employee may result in contamination of food, equipment, or utensils.

6. All employees shall wash their hands thoroughly with soap and warm water in an adequate hand-washing facility before starting work and as often as necessary to remove soil and contamination. The hands of all employees shall be kept clean, while engaged in handling of food and food contact surfaces.

(f) Equipment and utensils.

1. Equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, taste, nor contribute to the contamination of food.

2. Safe plastic or safe rubber or safe rubber-like materials shall be resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, and shall be of sufficient weight and thickness to permit cleaning and sanitizing by normal ware-washing methods.

3. Single-service articles shall not be reused.

4. All equipment and utensils shall be maintained in good repair.

(g) Equipment and utensils/cleaning and sanitization.

1. Food utensils and equipment shall be stored in a manner to avoid contamination.

2. Food contact surfaces and sinks shall be smooth and easily cleanable.

3. Food contact equipment, surfaces, tableware and utensils shall be cleaned and sanitized prior to food preparation for the public and after each use.

4. Sinks, basins or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

5. Equipment and utensils shall be preflushed or prescrapped and, when necessary, presoaked to remove food particles and soil.

6. Manual cleaning and sanitizing shall be conducted as follows:

a. For manual cleaning and sanitizing of cooking equipment, utensils and tableware, three (3) compartments shall be provided and used. The cabinet may allow the use of compartments other than sinks.

b. All five (5) steps of the ware-washing process shall be completed as follows:

(i) Prerinsing or scraping;

(ii) Application of cleaners for soil removal;

(iii) Rinsing to remove any abrasives and remove or dilute cleaning chemicals;

(iv) Sanitization; and

(v) Air drying and draining.

c. A sanitizing method approved by applicable provisions of the state retail food code shall be used.

d. Wash, rinse and sanitizing solution shall be maintained in a clean condition.

e. The washing solution shall be maintained at a temperature of 110 degrees Fahrenheit or above, or as specified on the manufacturer's label.

f. When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted by law, and a test kit or other device that measures the parts per million concentration of the solution shall be provided and used at least once each business day and each time the sanitizing solution is changed.

7. Mechanical cleaning and sanitizing shall be conducted as follows:

a. Commercial dishwashers must comply with applicable provisions of the state retail food code.

b. A domestic or home-style dishwasher may be used provided the following performance criteria are met:

(i) The dishwasher shall effectively remove physical soil from all surfaces of dishes.

(ii) The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.

(iii) The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is a minimum of 150 degrees Fahrenheit after the final rinse and drying cycle.

(iv) The dishwasher shall be installed and operated according to manufacturer's instructions for the highest level of sanitization possible when sanitizing kitchen facilities' utensils and tableware; a copy of the instructions shall be available on the premises at all times.

8. There shall be sufficient area or facilities such as portable dish tubs and drain boards for the proper handling of soiled utensils prior to washing and of cleaned utensils after sanitization so as not to interfere with safe food handling, hand washing and the proper use of dishwashing facilities. Equipment, utensils and tableware shall be air dried.

(h) Water supply and sewage disposal.

1. Sufficient potable water for the needs of the establishment shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection.

2. Bottled and packaged potable water shall be obtained from a source that complies with applicable provisions of the Cabinet for Natural Resources and Environmental Protection, and the cabinet, and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water for consumer self-service shall be dispensed from the original container.

3. All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection, and the cabinet. Mop water shall not be disposed of in the dishwashing sink.

(i) Toilet facilities for employees.

1. Toilet facilities shall be installed pursuant to requirements of the state plumbing code, shall be conveniently located, and shall be accessible to employees at all times.

2. Bathrooms opening to the kitchen or dining area shall have adequate ventilation and a self-closing door. Ventilation may be provided by window(s) or by mechanical means. A soap dispenser and disposal towels shall be provided for hand washing in bathrooms used by food handlers.

3. Toilet facilities, including toilet fixtures and any related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

(j) Hand-washing facilities for employees.

1. Hand-washing facilities shall be installed pursuant to the requirements of the State Plumbing Code and shall be conveniently located in the food preparation area.

2. Each hand-washing facility shall be provided with hot and cold potable water tempered by means of a mixing valve or combination faucet.

3. A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each hand-washing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand-washing facilities.

4. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, or using the toilet. Employees shall keep their fingernails clean and trimmed.

5. Hand washing shall take place at a hand-washing lavatory or designated service sink and not at food preparation sink or at a ware-washing sink.

(k) Insect and rodent control.

1. Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents or of flies, cockroaches, other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

2. Pesticides and rodenticides.

a. No person shall apply insecticides or rodenticides except as follows:

(i) In accordance with applicable requirements of the Kentucky Department of Agriculture's Pesticide Use and Application Act;

(ii) In accordance with the manufacturer's labeling; and

(iii) In such a way that food, food contact surfaces, and the supply of potable water are not contaminated.

b. No open pesticide or rodenticide bait boxes shall be used.

c. Pesticides, rodenticides and other toxic materials shall be stored apart from food, equipment, and utensils, and all containers of toxic material shall be clearly labeled for easy identification.

d. Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(l) Therapeutic diets. Special diets or dietary restrictions shall be medically prescribed and provided accordingly.

(m) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast.

(n) All food showing evidence of spoilage or infestation shall be disposed of immediately upon detection.

(4) Housekeeping and sanitation. Each home shall:

(a) Have openings to the outside which shall be effectively protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, and other openings to the outside shall be tight fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to one (1) inch;

(b) Eliminate odors at their source by prompt and thorough cleaning of commodes and other obvious sources;

(c) Maintain the premises in such a manner as to prevent infestation by insects and rodents;

(d) Soiled clothing and linens shall be given immediate attention and shall be kept in a closed container. Once used, clothing or bedding shall be laundered before being used by another individual;

(e) All sewage and waste matter shall be disposed of into a public

sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the cabinet; provided, however, if a public sewerage system subsequently becomes available, connections shall be made thereto and any other sewerage system shall be discontinued.

(f) Collect and dispose of all garbage, refuse, trash, and litter in compliance with applicable state and local laws and regulations. Garbage containers shall be made of metal or other impervious material, and shall be watertight and rodent proof, and shall have tight-fitting covers.

Section 6. Accommodations. Each home shall:

(1) Be safe and of substantial construction and comply with applicable state and local laws relating to location, zoning, plumbing, and sanitation;

(2) Provide lighting with a minimum illumination level of fifty (50) foot-candles for each hall, stairway, entryway, resident area, and bathroom; a minimum illumination level of thirty (30) foot-candles shall be required for kitchens;

(3) Have a water supply which is potable, adequate and from an approved public supply of a municipality or water district, if available. In the event a public water supply of a municipality or a water district is not available, the supply shall be developed and approved in accordance with applicable requirements of the Natural Resources and Environmental Protection Cabinet; provided, however, if a public water supply of a municipality or water district subsequently becomes available, connections shall be made thereto and any other supply shall be discontinued;

(4) Have an ample supply of hot and cold running water available at all times for general use. The water temperature at any tap shall not exceed 110 degrees Fahrenheit and all plumbing shall be installed pursuant to the State Plumbing Code;

(5) Have adequate toilet and bathing facilities conveniently located as required by the State Plumbing Code. **Toilet facilities shall be kept clean and in good repair**;

(6) Have adequate ventilation in all areas used by residents. Toilet rooms shall be vented to the outside, if there is no window. There shall be an exterior window which can be opened in each resident room;

(7) Assure that beds occupied by residents shall be placed so no resident may experience discomfort due to proximity to radiators, heat outlets, or exposure to drafts;

(8) Not use stacked beds;

(9) Have beds and mattresses that are no less than thirty-three (33) inches wide and six (6) feet long;

(10) Not house residents in rooms or detached buildings or other enclosures which have not been previously inspected and approved for resident use, or in basements not approved by the cabinet for sleeping quarters. Approved basements must have an outside door;

(11) Not be located in a house trailer or motor home;

(12) Provide a heating system which can maintain an even temperature and is capable of maintaining a minimum temperature of seventy-two (72) degrees Fahrenheit in resident-occupied areas under winter conditions and a maximum temperature of eighty-five (85) degrees under summer conditions; and

(13) Be able to accept a resident who uses a wheelchair by assuring that the resident is able to enter and exit the home and utilize the bathroom facility without assistance (i.e., ramps, railings, etc.).

(14) Toilet rooms normally accessible and intended for public use shall comply with the provisions of Section 5(3)(i) of this administrative regulation.

Section 7. Safety. Each home shall take appropriate precautions to ensure the safety of the residents and visitors by:

(1) Having all exterior grounds including sidewalks, steps, porches, ramps, and fences in good repair;

(2) Having all of the home's interior including walls, ceilings, floors, floor coverings, steps, windows, window coverings, doors, plumbing, and electrical fixtures in good repair;

(3) Having a fire control and evacuation plan;

(4) Having an adequate number of 2A10 B:C rated fire extinguishers located throughout the home with a minimum of one (1) per floor or level of the residence;

(5) Having a 40 B:C rated fire extinguisher located within each food preparation area in the home;

(6) Having a person in charge thoroughly oriented in the evacuation of the residents in the event of a fire, **with evacuation plans posted in individual rooms and common use areas**; and

(7) Having smoke detectors located as follows

(a) One (1) shall be located in each bedroom; and

(b) At least one (1) shall be located on each floor or level of the home;

(8) Having at least one (1) emergency lighting source available in the home that automatically illuminates with a loss of power to the home.

Section 8. Complaint Procedures. (1) Complaints by registrants shall be directed to the appropriate agency.

(2) Every home shall conspicuously post a listing of agencies and their telephone numbers, including:

(a) The Protection and Advocacy Division of the Public Protection and Regulation Cabinet;

(b) The Adult Protective Services Division of the Department for Social Services;

(c) The health department of the county in which the home is situated; and

(d) The comprehensive care center for that area development district, and any other comprehensive care center that may serve residents in the home.

(e) The Division of Licensing and Regulation

Section 9. Suspension of Registration. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the registrant or manager has interfered with the authorized agents of the cabinet in the performance of their duties, the registration may be suspended immediately upon notice to the registrant without a hearing. In such event the registrant may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the provisions of this regulation, the cabinet or its agents may serve upon the registrant a written notice specifying the violation(s) in question and afford a reasonable opportunity to correct same. Whenever there is a failure to comply with any written notice issued under the provisions of this administrative regulation, the registrant shall be notified in writing that the registration shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the registrant within the ten (10) day period.

Section 10. Reinstatement of Suspended Registration. Any registrant may, at any time, make application for a reinspection for the purpose of reinstatement of the registration. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension have been corrected, the cabinet shall make a reinspection. If the applicant is found to be in compliance with the requirements of this administrative regulation, the registration shall be reinstated.

Section 11. Revocation of Registration. For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the registration may be permanently revoked after an

opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the registrant in writing, stating the reasons for which the registration is subject to revocation and advising that the registration shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for a hearing is filed with the cabinet by the registrant, within the ten (10) day period.

Section 12. Hearings. The hearings provided for in this administrative regulation shall be conducted by the cabinet at a time and place designated by it. During the course of the hearing, an appellant shall be given the opportunity to hear evidence against him, to cross-examine any witness against him and to present evidence in his behalf. At the conclusion of the hearing, the cabinet shall make findings of fact and conclusions of law. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefore at the time a hearing is requested.

Section 13. 905 KAR 8:150, Board home registration, is hereby repealed.

WILLIAM M. GARDNER, Inspector General
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: September 27, 1993
FILED WITH LRC: October 5, 1993 at 4 p.m.

PROPOSED AMENDMENTS RECEIVED BY NOON, OCTOBER 15, 1993

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 3:001. Definitions.

RELATES TO: KRS 164.740, 164.744(1), 164.748(1), (3) (14), (15), 164.753(2), 164.766, 8 USC 1101(a)(22), 10 USC Chapters 2, 106, 107, 20 USC 421-429, 1070a, 1070b, 1070c, 1078, 1078-1, 1078-2, 1078-3, 1078(c)(1), as amended by PL 103-66 §4108(a), 1087a, 1087aa-1087ii, 1095-1, 37 USC Chapter 2, 38 USC Chapters 30, 31, 32, 35, PL 97-376 §156, PL 96-342 §903

STATUTORY AUTHORITY: KRS 13A.222(4)(e), 164.746(6), 164.748(4), (15), 34 CFR §682.401(b)(10)(ii)

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal act. This administrative regulation sets forth general definitions applicable to one (1) or more administrative regulations in this chapter. KRS 164.740(12) and (14) define the terms "insured student loan" and "loan guarantee" to pertain to loans reinsured by the secretary to the extent of not less than eighty (80) percent. PL 103-66 §4108(a) amended 20 USC §1078(c)(1) by reducing the minimum rate of reinsurance from eighty (80) percent to seventy-eight (78) percent. KRS 164.748(15) authorizes the authority board to adopt "rules, regulations and policies consistent with the federal act" to overcome a conflict "between KRS 164.740 to 164.764 and the federal act, which conflict would result in a loss by the authority of any federal funds." This amendment is necessary to conform the definitions of "insured student loan" and "loan guarantee" to changes in the federal act enacted in PL 103-66 §4108(a).

Section 1. The following definitions apply to all authority insured student loan programs:

(1) "Academic year" means:

(a) A period of at least thirty (30) weeks of instructional time in which a full-time student is expected to complete at least twenty-four (24) semester hours or thirty-six (36) quarter hours at an institution which measures academic progress in credit hours but does not use a semester, trimester or quarter system; or

(b) At least 900 clock hours at a participating institution which measures academic progress in clock hours.

(2) "Applicable interest rate" means the maximum annual interest rate that a lender may charge on an authority insured loan.

(3) The definition of "authority" is governed by KRS 164.740(1).

(4) "Borrower" means a student or parent to whom a federal Stafford loan, a federal SLS loan, a federal PLUS loan, or a federal Consolidation loan is made.

(5) "Clock hour" means the equivalent of:

(a) A fifty (50) to sixty (60) minute class, lecture or recitation;

(b) A fifty (50) to sixty (60) minute faculty supervised laboratory, shop training, or internship; or

(c) Sixty (60) minutes of preparation in a program of study by correspondence.

(6) "College work study program (CWS)" means the part-time employment program for students authorized by Part C of the federal Act (42 USC §2751 - 2756b).

(7) "Co-maker" means one (1) of two (2) individuals who are joint borrowers on a federal PLUS Program loan and who are equally liable for repayment of the loan.

(8) "Default" means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the authority finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for:

(a) 180 days for a loan repayable in monthly installments; or

(b) 240 days for a loan repayable less frequent installments.

(9) "Defense loan" means a loan made before July 1, 1972, under Title II of the National Defense Education Act (20 USC 421-429).

(10) "Dependent student" means any student who does not qualify as an independent student (see independent student).

(11) "Direct loan" means a loan made under Part E of the federal Act (20 USC 1087aa, et seq.) after June 30, 1972, which does not satisfy the definition of "Perkins loan."

(12) "Disbursement" means the transfer of loan proceeds by a participating lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

(13) The definition of "disposable pay" is governed by Section 488A(d) of the federal Act (20 USC 1095-1).

(14) The definition of "eligible student" is governed by KRS 164.740(7).

(15) The definition of "endorser" is governed by KRS 164.740(8).

(16) "Enrolled" means the status of a student who:

(a) Has completed the registration requirements (except for the payment of tuition and fees) at the participating institution he is attending; or

(b) Has been admitted into a correspondence study program and has submitted one (1) lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

(17) "Escrow agent" means the authority acting in a capacity in which it agrees to receive the proceeds of an insured student loan as an agent of a participating lender for the purpose of transmitting those proceeds to the borrowers.

(18)(a) "Estimated cost of attendance" means, for loans disbursed prior to July 1, 1993, the tuition and fees applicable to a student, plus the participating institution's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses shall not include the purchase of a motor vehicle. The expenses may include, but are not limited to, reasonable transportation and commuting costs, costs for room, board, books, and supplies, the insurance premium for the loan, and if applicable, the origination fee for the loan.

(b) "Estimated cost of attendance" means, for loans disbursed on or after July 1, 1993.

1. Tuition and fees normally assessed a student carrying the same academic workload as determined by the participating institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

2. An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the participating institution on at least a half-time basis, as determined by the participating institution at which such student is enrolled;

3. An allowance (as determined by the participating institution) for room and board costs incurred by the student, which shall be not less than $1,500 for a student without dependents residing at home with parents, the amount normally assessed most of the institution's residents for room and board for students without dependents residing in institutionally owned or operated housing, or an allowance of not less than $2,500 for all other students based on the expenses reasonably incurred by the students for room and board;

4. For a student enrolled in an academic program of study abroad approved for credit by the student's home institution, reasonable costs associated with the study (as determined by the participating institution at which such student is enrolled);

5. For a student with one (1) or more dependents, an allowance

based on the estimated actual expenses incurred for such dependent care, based on the number and age of such dependents, except that the allowance shall not exceed the reasonable cost in the community in which the student resides for the kind of care provided, and the period for which dependent care is required includes, but is not limited to, class time, study time, field work, internships, and commuting time;

6. For a student with a disability, an allowance (as determined by the participating institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies;

7. For a student receiving all or part of the student's instruction by means of telecommunications technology, no distinction shall be made with respect to the mode of instruction in determining costs, except that the financial aid officer at a participating institution shall reduce the amount of an authority insured student loan for which a student is otherwise eligible, if the financial aid officer determines that the student's cost of attendance is substantially reduced due to instruction by means of the use of telecommunication, but this paragraph shall not be construed to permit including the cost of rental or purchase of equipment; and

8. For a student placed in a work experience under a cooperative education program, an allowance for reasonable costs associated with such employment (as determined by the participating institution at which such student is enrolled).

(19) "Estimated financial assistance" means the estimated amount of assistance that a student has been or will be awarded during the period of enrollment for which the loan is sought from federal, state, institutional or other scholarship, grant, work, or loan programs, including but not limited to:

(a) Any Social Security benefits paid to, or on account of, the student that would not be paid if he was not a student;

(b) Any veterans' education benefits paid because of enrollment in a postsecondary education institution, including veterans' education benefits received under United States Code Title 10 chapters 2, 106, and 107; Title 37 chapter 2; Title 38 chapters 30, 31, 32, and 35; PL 97-376, section 156; and PL 96-342, section 903; and

(c) Other scholarship, grant, or loan assistance;

(d) The estimated amount of other federal student financial aid, including but not limited to Pell Grants and assistance under the SEOG, federal work-study, and federal Perkins Loan programs, which the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(e) Loan proceeds withheld by the lender and applied towards an origination fee or insurance premium, if these costs are included in computing the borrower's estimated cost of attendance.

(20) The definition of "federal act" is governed by KRS 164.740(9).

(21) "Federal Consolidation Loan Program" means the loan program authorized by section 428C of the federal Act (20 USC Section 1078-3).

(22) "Federal PLUS Program" means the loan program authorized by section 428B of the federal Act (20 USC Section 1078-2).

(23) "Federal Supplemental Loans for Students (SLS) Program" means the loan program authorized by section 428A of the federal Act (20 USC Section 1078-1) and formerly called the ALAS Program.

(24) "Foreign school" means a school not located in a state.

(25) "Full-time student" means:

(a) A student enrolled in a participating institution (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research or social studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(b) A student enrolled in a vocational program of study (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than twenty-four (24) clock-hours per week or twelve (12) semester or quarter hours of instruction, or its equivalent.

(26) "Grace period" means the period that begins on the day on which a federal Stafford loan borrower ceases to be enrolled as at least a half-time student at a participating institution and ends on the day that the repayment period begins. See also "postdeferment grace period".

(27) "Graduate or professional student" means a student who:

(a) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(b) Has completed the equivalent of at least three (3) years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(c) Is not receiving aid under Title IV of the federal Act (20 USC Sections 1070 through 1099c-1) as an undergraduate student for the same period of enrollment.

(28) "Guarantee agency" means a state or private nonprofit organization that has an agreement with the secretary to administer a loan guarantee program under the federal Act.

(29) "Guaranteed Student Loan (GSL) Program" means the student loan program, which has been redesignated as the Robert T. Stafford Federal Student Loan program, authorized by Part B of Title IV of the federal Act (20 USC 1071(c)).

(30) "Half-time student" means a student who is enrolled in a participating institution, is carrying an academic workload that amounts to at least one-half (1/2) the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

(31) "Holder" means a participating lender in possession of authority insured student loan.

(32) "Income Contingent Loan (ICL) Program" means the student loan program authorized by Part D of the federal Act (20 USC 1087a, et seq.).

(33) "Independent student" means any individual who:

(a) Is twenty-four (24) years of age or older by December 31 of the award year;

(b) Is an orphan or ward of the court;

(c) Is a veteran of the Armed Forces of the United States;

(d)1. Is a graduate or professional student; and

2. For award years beginning prior to July 1, 1993, declares that he will not be claimed as a dependent for income tax purposes by his parents for the first calendar year of the award year;

(e)1. Is a married individual; and

2. For award years beginning prior to July 1, 1993, declares that he will not be claimed as a dependent for income tax purposes by his parents for the first calendar year of the award year;

(f) Has legal dependents other than a spouse;

(g) For award years beginning prior to July 1, 1993, is a single undergraduate student with no dependents who was not claimed as a dependent for income tax purposes by his parents for the two (2) calendar years preceding the award year and demonstrates total self-sufficiency for those two (2) years by total annual resources of at least $4,000; or

(h) Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

(34) The definition of "insured student loan" is governed by KRS 164.740(12), except that, for loans on which the first disbursement is made on or after October 1, 1993, the term shall include loans reinsured by the secretary to the extent of not less than seventy-eight (78) percent.

(35) "Legal guardian" means an individual appointed by a court

to be a "guardian" of a person and specifically required by the court to use his financial resources for the support of that person.

(36) The definition of "loan" is governed by KRS 164.740(13).

(37) The definition of "loan guarantee" is governed by KRS 164.740(14), except that, for loans on which the first disbursement is made on or after October 1, 1993, the term shall include loans reinsured by the secretary to the extent of not less than seventy-eight (78) percent.

(38) "National Defense Student Loan program" means the student loan program authorized by Title II of the National Defense Education Act of 1958 (20 USC 421-429).

(39) "National Direct Student Loan (NDSL) Program" means the student loan program authorized by Part E of the federal Act (20 USC 1087aa-1087ii) between July 1, 1972, and October 16, 1986.

(40) "National of the United States" means:

(a) A citizen of the United States; or

(b) As defined in the Immigration and Nationality Act, 8 USC 1101(a)(22), a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(41) "One (1) year training program" means a program which is at least:

(a) Twenty-four (24) semester or trimester hours or units, or thirty-six (36) quarter hours or units at an institution using credit hours or units to measure academic progress;

(b) 900 clock hours of supervised training at an institution using clock hours to measure academic progress; or

(c) 900 clock hours in a correspondence program.

(42) "Origination relationship" means a special relationship between a participating institution and a lender, in which the lender delegates to the institution, or to an entity or individual affiliated with the institution, substantial functions or responsibilities normally performed by lenders before making loans.

(43) "Parent" means a student's mother, father, or legal guardian. A parent by adoption is considered to be a student's mother or father.

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

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

(46) "Pell Grant program" means the grant program authorized by subpart 1 of Part A of the federal Act (20 USC 1070a).

(47) "Perkins loan" means a loan made under Part E of the federal Act (20 USC 1087aa, et seq.) to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under the National Direct Student Loan program.

(48) "Perkins Loan program" means the student loan program authorized by Part E of the federal Act (20 USC 1087aa-1087ii) after October 16, 1986.

(49) "Postdeferment grace period" means for an insured student loan made prior to October 1, 1981, a period of six (6) consecutive months being on the day following the last day of an authorized deferment period.

(50) "Recognized equivalent of a high school diploma" means:

(a) A general education development (GED) certificate; or

(b) A state certificate received by a student after the student has passed a state authorized examination which the state recognizes as the equivalent of a high school diploma.

(51) "Regular student" means a person who is enrolled or accepted for enrollment at a participating institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

(52) "Robert T. Stafford Federal Student Loan program" means the student loan program authorized by Part B of the federal Act, consisting of subsidized and unsubsidized loans authorized by sections 428 (20 USC Section 1078) and 428H (20 USC Section 1078-8) of the federal Act, and includes loans previously made under the guaranteed student loan program.

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

(54) "Six (6) month training program" means:

(a) A program which is at least:

1. Sixteen (16) semester or trimester hours or units, or twenty-four (24) quarter hours or units, at an institution using credit hours or units to measure academic progress;

2. 600 clock hours of supervised training at an institution using clock hours to measure academic progress; or

3. 600 clock hours in a correspondence program;

(b) A program which the secretary determines is at least a six (6) month training program on the basis of:

1. A certification by the nationally recognized accrediting association that accredits the institution that the program offered by the institution is equal in course content and student workload to the comparable clock or credit hour program described in paragraphs (a)1 through 3 of this subsection; and

2. The secretary's ratification of that accrediting agency's determination.

(55) "State" means each state of the Union, the Commonwealth of Puerto Rico, the District of Columbia, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(56) "State Student Incentive Grant (SSIG) program" means the grant program authorized by subpart 4 of Part A of the federal Act (20 USC 1070c, et seq.).

(57) "Subsidized Federal Stafford Student loan" means a loan qualifying for payment of an interest subsidy on behalf of the borrower under section 428 of the federal Act (20 USC Section 1078).

(58) "Supplemental Educational Opportunity Grant (SEOG) program" means the grant program authorized by subpart 3 of Part A of the federal Act (20 USC 1070b, et seq.).

(59) "Totally and permanently disabled" means the inability of a borrower to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(60) "Undergraduate student" means a student who is enrolled at a school in a course or program of study, at or below the baccalaureate level, that usually does not exceed four (4) academic years, or is up to five (5) academic years in length and shall be designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first four (4) academic years.

(61) "Unsubsidized federal Stafford student loan" means a student loan authorized under section 428H of the federal Act (20 USC Section 1078-8).

(62) "U.S. citizen or national" means:

(a) A citizen of the United States; or

(b) A person defined in the Immigration and Nationality Act (8 USC 1101, (a)(22)) who, though not a citizen of the United States, owes permanent allegiance to the United States.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: September 24, 1993

FILED WITH LRC: September 27, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, November 17, 1993, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative

regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: In the current academic year (1993-94), it is estimated that 68,895 student loans to eligible borrowers will be insured by the Kentucky Higher Education Assistance Authority for 166 participating lenders to meet the costs of attendance at over 6,600 eligible educational institutions (including 190 Kentucky educational institutions).

(a) Direct and indirect costs or savings to those affected: This administrative regulation merely defines terms used in other regulations in this chapter. The defined terms are derived from KRS 164.740 and from federal statutes and regulations. Consequently, the defined terms do not, themselves, impose a cost or create a savings associated with this administrative regulation. However, the proposed amendment, which overrides certain statutory definitions in KRS 164.740, is necessary to ensure continued operation of the authority's loan insurance program under federal requirements. Therefore, out of $165,417,000 of loans expected to be insured this year, approximately $151,352,000 could not be insured or disbursed to students absent the proposed amendment.

1. First year: The proposed amendment will ensure access to $151,352,000 of loans projected to be insured for approximately 63,000 students.

2. Continuing costs or savings: In academic year 1994-95, the proposed amendment will ensure access to $182,668,000 of loans projected to be insured for approximately 76,077 students.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None. This administrative regulation merely defines terms used in other regulations in this chapter, and therefore does not impose any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This administrative regulation merely defines terms used in other administrative regulations in this chapter. The defined terms are derived from KRS 164.740 and from federal statutes and regulations. Consequently, the defined terms do not, themselves, impose a cost or create a savings associated with this administrative regulation. However, the proposed amendment, which overrides certain statutory definitions in KRS 164.740, is necessary to ensure continued operation of the authority's loan insurance program under federal requirements. Therefore, out of $165,417,000 of loans expected to be insured this year, approximately $151,352,000 could not be insured or disbursed to students absent the proposed amendment.

(a) Direct and indirect costs or savings:

1. First year: Although not a cost or savings to the promulgating administrative body, the proposed amendment will ensure that the authority can fulfill one of its statutory functions by providing access to $151,352,000 of loans projected to be insured for approximately 63,000 students.

2. Continuing costs or savings: Although not a cost or savings to the promulgating administrative body, the proposed amendment will ensure that the authority can fulfill one of its statutory functions by providing access, in academic year 1994-95, to $182,668,000 of loans projected to be insured for approximately 76,077 students.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None. This administrative regulation merely defines terms used in other administrative regulations in this chapter, and therefore does not impose any reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation merely defines terms used in other administrative regulations in this chapter. KRS 13A.222(4)(e) permits an administrative body to promulgate a single administrative regulation to define terms used in several administrative regulations. KRS 164.740(12) and (14) define the terms "insured student loan" and "loan guarantee" to pertain to loans reinsured by the secretary to the extent of not less than 80%. PL 103-66 §4108(a) amended 20 USC §1078(c)(1) by reducing the minimum rate of reinsurance from 80% to 78% under certain conditions of excessive default rates on the loans. KRS 164.748(15) authorizes the authority board to adopt "rules, regulations and policies consistent with the federal act" to overcome a conflict "between KRS 164.740 to 164.764 and the federal act, which conflict would result in a loss by the authority of any federal funds." This amendment is necessary to conform the definitions of "insured student loan" and "loan guarantee" to changes in the federal act enacted in PL 103-66 §4108(a).

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 164.740(12) and (14) define the terms "insured student loan" and "loan guarantee" to pertain to loans reinsured by the secretary to the extent of not less than 80%. §4108(a) of PL 103-66 reduced the minimum reinsurance by the secretary to 78% under certain conditions of excessive default rates on the loans.

(a) Necessity of proposed regulation if in conflict: KRS 164.748(15) authorizes the authority board to adopt "rules, regulations and policies consistent with the federal act" to overcome a conflict "between KRS 164.740 to 164.764 and the federal act, which conflict would result in a loss by the authority of any federal funds." This amendment is necessary to conform the definitions of "insured student loan" and "loan guarantee" to changes in the federal act enacted in PL 103-66 §4108(a).

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See #5 and #5(a) above.

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. This administrative regulation merely defines terms used in other administrative regulations in this chapter. Therefore, the concept of tiering would not apply to defining terms. Furthermore, the administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by the federal act, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution." The regulation provides equal treatment and opportunity for all scholarship applicants and recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR §682.401(b)(17)(ii) requires the authority as the designated state guarantee agency to ensure by adoption of standards, policies, and procedures that its loan insurance program, and all of the participants (i.e. borrowers, lender, and educational institutions) in its program, at all times meet the requirements of the applicable federal regulations (34 CFR Part 682) and the federal act. PL 103-66 §4108(a) amended 20 USC §1078(c)(1) by reducing the minimum rate of reinsurance from 80% to 78% percent under certain conditions of excessive default rates on the loans.

2. State in sufficient detail the state compliance standards: This

administrative regulation merely defines terms used in other administrative regulations in this chapter. The defined terms are derived from KRS 164.740 and from federal statutes and regulations. Unless superseded by changes in the federal act or altered to conform to drafting requirements of KRS Chapter 13A, all defined terms (other than those indicated as being defined in KRS 164.740) contained in this administrative regulation are restated precisely as they are defined by the secretary in 34 CFR §668.1 and §682.200. This amendment is necessary to conform the definitions of "insured student loan" and "loan guarantee" to changes in the federal act enacted in Public Law 103-66 §4108(a).

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal mandate requires the authority as the designated state guarantee agency to ensure by adoption of standards, policies, and procedures that its loan insurance program, and all of the participants (i.e. borrowers, lender, and educational institutions) in its program, at all times meet the requirements of the applicable federal regulations (34 CFR Part 682) and the federal act. PL 103-66 §4108(a) amended 20 USC §1078(c)(1) by reducing the minimum rate of reinsurance from 80% to 78% percent under certain conditions of excessive default rates on the loans.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. This administrative regulation does not impose stricter or different requirements or responsibilities than those imposed by the federal mandate.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:010. Administrator's duties.

RELATES TO: KRS 317A.030, 317A.040
STATUTORY AUTHORITY: KRS 317A.040
NECESSITY AND FUNCTION: KRS 317A.040 requires the employment of an administrator to coordinate the examinations, inspections, and supervise the general office functions of the agency.

Section 1. The administrator shall serve as the board's liaison officer and coordinator in all administrative matters.

Section 2. The administrator shall have full powers to inspect any establishment licensed by this board or investigate any reported illegal practice.

Section 3. The administrator shall have the power for and on behalf of the board to issue subpoenas for licenses, for the attendance of witnesses, and the production of such records, documents, and material as may be necessary in the conduct of board meetings.

Section 4. The administrator shall assist the members of the board in the giving and supervising of examinations.

Section 5. The administrator shall fill all merit positions from the merit register as required by the Department of Personnel statutes and rules and administrative regulations. Any or all dismissals of employees shall be made by the majority decision of the board with notification to be made by the administrator. Any suspension or disciplinary action may [ean] be made by the appointing authority of the board.

PAT WILSON GAISER, Chairman
APPROVED BY AGENCY: October 4, 1993
FILED WITH LRC: October 12, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts
(1) Type and number of entities affected: There will be no entities affected as this regulation is being amended to conform with technical language changes only that were noted by LRC staff during the 1993 quadrennial review.
(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: There will be no effect on the promulgating administrative body since the amendment is technical language changes only.
(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: There is no 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: As indicated by the LRC staff review form, this administrative regulation does not appear to be in conflict with any existing statute.
(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. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:031. Replacement of license; duplicate license.

RELATES TO: KRS 317A.050
STATUTORY AUTHORITY: KRS 317A.060
NECESSITY AND FUNCTION: Licenses shall be posted to aid the board members and salon inspectors in conducting their inspections.

Section 1. If [~~In the event~~] a license is lost, destroyed or stolen after issuance, a duplicate license shall be issued to the licensee. The licensee shall file a statement verifying the loss of the license and each duplicate license shall be indicated "duplicate."

PAT WILSON GAISER, Chairman
APPROVED BY AGENCY: October 4, 1993
FILED WITH LRC: October 12, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts
(1) Type and number of entities affected: There will be no entities affected as this regulation is being amended to conform with technical language changes only that were noted by LRC staff during the 1993 quadrennial review.
(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: There will be no effect on the promulgating administrative body since the amendment is technical language changes only.
(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: There is no 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: As indicated by the LRC staff review form, this administrative regulation does not appear to be in conflict with any existing statute.
(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. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:050. Reciprocity for valid licensee.

RELATES TO: KRS 317A.100
STATUTORY AUTHORITY: KRS 317A.060
NECESSITY AND FUNCTION: KRS Chapter 317A authorizes the Kentucky State Board of Hairdressers and Cosmetologists to prescribe rules and administrative regulations governing health and safety of the public; governing the training and supervision of cosmetologists; and governing the examinations for applicants for licenses. This administrative regulation is to allow applicants from other states with less than 1,800 hours to qualify for examination in order to obtain licenses.

Section 1. Any applicant from out-of-state, who holds a valid license and who can show proof of two (2) years current experience, may [~~can~~] come before the state board for examination (practical only) by paying the fee as set forth in KRS 317A.050 plus the fee set forth in KRS 317A.050 for first license.

Section 2. Applicants shall provide a certification from state board granting original license and proof of two (2) years high school education or its equivalent.

PAT WILSON GAISER, Chairman
APPROVED BY AGENCY: October 4, 1993
FILED WITH LRC: October 12, 1993 at 4 p.m.
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REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts
(1) Type and number of entities affected: There will be no entities affected as this regulation is being amended to conform with technical language changes only that were noted by LRC staff during the 1993 quadrennial review.
(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: There will be no effect on the promulgating administrative body since the amendment is technical language changes only.
(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: There is no 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: As indicated by the LRC staff review form, this administrative regulation does not appear to be in conflict with any existing statute.
(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. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:055. Instructor's license for out-of-state applicant.

RELATES TO: KRS 317A.050, 317A.100
STATUTORY AUTHORITY: KRS 317A.050, 317A.100
NECESSITY AND FUNCTION: Out-of-state applicants for instructor's licenses shall meet the same or similar requirements of resident instructors.

Section 1. Any applicant from out-of-state who holds a current instructor of cosmetology license and who can show proof of two (2) years current experience as a licensed instructor and proof of the statutory educational requirements may ~~[can]~~ come before the state board for examination (science and practical) by paying the statutory nonresident instructor fee. After passing the prescribed examination for instructors, applicants shall pay the examination fee as set forth in KRS 317A.050 for regular cosmetologists and first cosmetology license fee as set forth in KRS 317A.050 before the first instructor license may be issued at the fee set forth in KRS 317A.050.

PAT WILSON GAISER, Chairman
APPROVED BY AGENCY: October 4, 1993
FILED WITH LRC: October 12, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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. Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts
(1) Type and number of entities affected: There will be no entities affected as this regulation is being amended to conform with technical language changes only that were noted by LRC staff during the 1993 quadrennial review.
(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: There will be no effect on the promulgating administrative body since the amendment is technical language changes only.
(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: There is no 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: As indicated by the LRC staff review form, this administrative regulation does not appear to be in conflict with any existing statute.
(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. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:060. Inspections.

RELATES TO: KRS 317A.050, 317A.060
STATUTORY AUTHORITY: KRS 317A.060
NECESSITY AND FUNCTION: Establishments licensed by this board require periodic inspections to insure compliance of the statutes and daministrative regulations of the board. Posting of the licensees' pictures with their licenses aids the inspector and board members in determining the validity of each license of the personnel.

Section 1. Any board member, the administrator and inspectors shall be allowed to enter any establishment licensed by this board or any place purported to be practicing cosmetology at any reasonable hour for the purpose of determining if the individuals are complying with the statutes and administrative regulations of the board.

Section 2. Each licensee shall attach his picture to his license and place same in a conspicuous area in the salon or school.

Section 3. Any salon closing for business but maintaining yearly license renewal shall be considered an inactive salon and shall remain same provided plumbing and equipment is not removed. The [~~Said~~] salon shall be inspected periodically. Any salon removing equipment and plumbing shall be considered out of business and said license voided.

Section 4. All establishments licensed by this board shall be inspected a minimum of two (2) times per year.

PAT WILSON GAISER, Chairman
APPROVED BY AGENCY: October 4, 1993
FILED WITH LRC: October 12, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts
(1) Type and number of entities affected: There will be no entities affected as this regulation is being amended to conform with technical language changes only that were noted by LRC staff during the 1993 quadrennial review.
(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: There will be no effect on the promulgating administrative body since the amendment is technical language changes only.
(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: There is no 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: As indicated by the LRC staff review form, this administrative regulation does not appear to be in conflict with any existing statute.
(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. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:065. Inspection of new, relocated and change of owner salons.

RELATES TO: KRS 317A.050, 317A.060
STATUTORY AUTHORITY: KRS 317A.060
NECESSITY AND FUNCTION: Any business seeking licensing by this board shall meet various city, county and state zoning laws, building and plumbing codes, as well as inspection by board personnel. This board does not issue a dual license for barber shops and beauty salons.

Section 1. All new beauty salons and all beauty salons moving to a new location shall complete an application furnished by the board.

Section 2. All new beauty salons, all beauty salons moving to a new location, and all beauty salons changing owners shall notify the board five (5) days before opening for business of the new location, date on which the salon is to be opened for business and name of the owner and[~~/or~~] manager of the salon.

Section 3. All new beauty salons and all beauty salons moving to a new location shall be inspected by an inspector employed by the board before issuance of license. No salon shall open for business prior to issuance of a salon license.

Section 4. All new beauty salons and all beauty salons moving to a new location shall comply with all city, county, and state zoning, building and plumbing laws, administrative regulations and codes.

Section 5. (1) Except as provided by subsection (2) of this section, all beauty salons shall be separated from all barber shops by a soundproof partition extending to the ceiling and each facility shall have its own individual entrance.
(2) The provisions of subsection (1) of this section do not apply to a nursing home if it:
(a) Has obtained a salon license from the board; and
(b) The practice of barbering does not occur at the same time as the practice of cosmetology.
(3) If the provisions of subsection (2) of this section have been met, a cosmetologist may engage in the practice of cosmetology on the premises of a nursing home in the same facility established by the nursing home for the practice of barbering.

Section 6. Any salon located in a residence shall have an outside entrance.

PAT WILSON GAISER, Chairman
APPROVED BY AGENCY: October 4, 1993
FILED WITH LRC: October 12, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts

(1) Type and number of entities affected: There will be no entities affected as this regulation is being amended to conform with technical language changes only that were noted by LRC staff during the 1993 quadrennial review.

(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: There will be no effect on the promulgating administrative body since the amendment is technical language changes only.

(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: There is no 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: As indicated by the LRC staff review form, this administrative regulation does not appear to be in conflict with any existing statute.

(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. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:080. Shops' and schools' public identification.

RELATES TO: KRS 317A.020, 317A.030, 317A.040, 317A.050

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY AND FUNCTION: Public identification aids the general public and inspectors employed by the board in locating establishments licensed by the board.

Section 1. The main entrance to any establishment licensed by the board shall display a sign indicating a beauty salon or cosmetology school. The [~~Said~~] sign shall indicate the name of the salon or school and shall be clearly visible at the main entrance of said place.

PAT WILSON GAISER, Chairman

APPROVED BY AGENCY: October 4, 1993

FILED WITH LRC: October 12, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts

(1) Type and number of entities affected: There will be no entities affected as this regulation is being amended to conform with technical language changes only that were noted by LRC staff during the 1993 quadrennial review.

(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: There will be no effect on the promulgating administrative body since the amendment is technical language changes only.

(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: There is no 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: As indicated by the LRC staff review form, this administrative regulation does not appear to be in conflict with any existing statute.

(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. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:085. School advertising.

RELATES TO: KRS 317A.050

STATUTORY AUTHORITY: KRS 317A.050

NECESSITY AND FUNCTION: Schools advertise for student enrollments and services rendered.

Section 1. Schools shall not use deceptive statements and false promises which act as inducements in an effort to get students to enroll in said schools.

Section 2. A school of cosmetology shall display in the reception

room, clinic room, or any other area in which the public receives services a sign to read: "School of Cosmetology - Work Done by Students Only." The sign shall be large enough to be read the length of the room in which sign is posted.

Section 3. No school is permitted to guarantee students' work.

Section 4. Schools shall be [are] forbidden to guarantee future employment to students.

PAT WILSON GAISER, Chairman
APPROVED BY AGENCY: October 4, 1993
FILED WITH LRC: October 12, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person. Carroll Roberts
(1) Type and number of entities affected: There will be no entities affected as this regulation is being amended to conform with technical language changes only that were noted by LRC staff during the 1993 quadrennial review.
(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: There will be no effect on the promulgating administrative body since the amendment is technical language changes only.
(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: There is no 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: As indicated by the LRC staff review form, this administrative regulation does not appear to be in conflict with any existing statute.
(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. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:100. Sanitation standards.

RELATES TO: KRS 317A.060
STATUTORY AUTHORITY: KRS 317A.130
NECESSITY AND FUNCTION: KRS 317A.060 authorizes the Kentucky State Board of Hairdressers and Cosmetologists to regulate the practice of cosmetology in Kentucky and establish uniform standards for sanitation.

Section 1. All establishments, including furniture, equipment, utensils, floors, walls, ceilings, restrooms and lavatories shall be kept in a clean and sanitary condition. Clean towels shall be provided for use of the patrons. The use in common of towels of any type is prohibited.

Section 2. Each student, apprentice cosmetologist, and cosmetologist shall have a sufficient number of combs and brushes at their disposal. Said combs and brushes shall be sterilized after each use. No comb or brush shall be used in common on any patron. Any article dropped on the floor shall be disinfected before being used again.

Section 3. All water supply and waste connections shall be constructed in conformity with the city, county, and state plumbing statutes, administrative regulations and code.

Section 4. A sufficient number of covered waste receptacles shall be provided in every establishment for disposal of trash and other waste.

Section 5. A protective covering shall be placed around the patron's neck so the cape does not come into contact with the nude skin. The protective covering shall be discarded after each use.

Section 6. The Cabinet for Human Resources, Department for Health Services, has approved the following methods of disinfection
(1) Dry disinfection. The use of Formalin and ultraviolet rays are considered acceptable methods of dry disinfection provided labels and manufacturer's directions are followed.
(2) Liquid disinfection.
(a) A ten (10) percent solution of Formalin is satisfactory for disinfection of all equipment. Formalin does not attack copper, nickel, zinc, or other metal substances.
(b) A seventy (70) percent solution of alcohol is an effective disinfectant for cleaning equipment.
(c) Any other liquid disinfectant approved by the Cabinet for Human Resources will be acceptable, provided labels and manufacturer's directions are followed.

Section 7. Use of brush rollers shall be [are] prohibited in any establishment licensed by this board.

Section 8. (1) The following grading shall be used for the inspection of any salon or school of cosmetology: 100%-90% = A; 89%-80% = B; 79%-70% = C.
(2) Any standard of less than an "A" rating shall [will] indicate failure to comply with the statutes and administrative regulations of the board.

PAT WILSON GAISER, Chairman
APPROVED BY AGENCY: October 4, 1993
FILED WITH LRC: October 12, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this amended adminis-

trative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts

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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:

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(a) Direct and indirect costs or savings:

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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: There is no 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: As indicated by the LRC staff review form, this administrative regulation does not appear to be in conflict with any existing statute.

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(6) Any additional information or comments:

TIERING: Is tiering applied? No. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:110. School license.

RELATES TO: KRS 317A.060, 317A.090

STATUTORY AUTHORITY: KRS 317A.050, 317A.060

NECESSITY AND FUNCTION: Each school owner shall submit an application to operate a school of cosmetology, furnish proof of financial responsibility, and meet all city, county, and state zoning, building, and plumbing codes.

Section 1. Each person, firm or corporation applying for a license to operate a school of cosmetology shall submit an application provided by the board.

Section 2. Each individual owner, or one (1) partner, in the instance of a partnership, or one (1) corporate officer in the instance of a corporation, shall submit a financial statement indicating financial assets in the amount of $10,000 for twenty (20) students enrolled and $1,000 for each additional student enrolled.

Section 3. A person having any interest in operating a school shall submit a minimum of two (2) character references, proposed copy of student contract indicating all financial charges to enrolling students, and term of lease for location, if applicable

Section 4. Application for license to operate a school of cosmetology shall be accompanied by an architect's or draftsman's plan of proposed premises drawn to scale, showing the arrangements of the classroom, clinic area, mannequin area, dispensary, reception area, shampoo area, office and any other area of the school, entrance and exits, and placement of equipment.

Section 5. A license to operate a cosmetology school carries the approval of this board and shall be ~~is~~ valid only for the location and person, firm, or corporation named on application and license issued by the board. A school of cosmetology license is never transferable from one location to another or from one person, firm or corporation to another.

Section 6. The owners, firm or corporation operating a school of cosmetology shall notify the board in writing twenty (20) days prior to selling, transferring, or changing of ownership and management of a school. Prospective ownership shall meet all qualifications of owning a school and have the approval of the board.

Section 7. Following approval of the application to operate a school of cosmetology by the board, the site shall be inspected by a quorum of the board or by at least one (1) member of the board and the board administrator. A final inspection of the premises shall be conducted by the members of the board prior to issuing of license. All schools shall comply with city, county, and state zoning laws, plumbing and building codes. The construction or renovation of the proposed school shall be completed and a final inspection conducted by the board within twelve (12) months from the date of approval of the site. Any extension of this period of time shall be granted for good cause shown provided said request is presented, in writing, to the board.

Section 8. Any cosmetology school owner, manager, or instructor who misrepresents facts to the board, to the students, or to the general public concerning any information regarding the school or any student enrolled therein, or in any way violates administrative regulations adopted by this board, may be served notice to show cause before this board, why the school's license and the instructor's license should not be revoked.

Section 9. Any person, establishment, firm or corporation which accepts, directly or indirectly, compensation for teaching persons any branch or subjects of cosmetology as defined in KRS 317A.010 shall be classified as a school and shall ~~will~~ be required to comply with all the provisions of law and the rules and administrative regulations of this board.

Section 10. The board shall not license a correspondence school, nor shall the board license any school of cosmetology in an establishment that teaches any other trade, profession or business, excluding vocational training schools.

Section 11. No person who is an owner, partner, stockholder, corporate officer or who has any financial or other interest in the management and control of the school, shall be enrolled in the [~~said~~] school as a student.

Section 12. No school of cosmetology shall permit or require students to be in attendance at school more than forty (40) hours in any one (1) week.

Section 13. Any school of cosmetology desiring night classes may, by proper application, be granted permission from the board to operate such classes. Under no condition shall the school operate past 10 p.m. local time.

Section 14. (1) It shall be considered a conflict of interest and therefore impermissible for a member of the board or for an employee of the board to apply for a new school license or to apply for any existing school license under KRS 317A.090 and this administrative regulation. If any member of the board or any employee of the board desires to apply for a new school license or for any existing school license, the [~~said~~] board member or employee of the board shall submit a letter of resignation to the board no later than thirty (30) days prior to submitting an application for a school license.

(2) The board may choose not to consider any application for a school license submitted by a relative of a member of the board, by a relative of a board employee or by any person with whom a member of the board or a board employee shares a significant financial interest. Failure to make full disclosure to the board as to the exact nature of the relationship between the board member or employee of the board and the applicant may result in denial of approval of licensure.

(3) The provisions of this section shall apply only to applications for licenses approved or filed, licenses issued, or actions of a person serving as a member of the board or as a board employee after June 10, 1986.

PAT WILSON GAISER, Chairman

APPROVED BY AGENCY: October 4, 1993

FILED WITH LRC: October 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts

(1) Type and number of entities affected: There will be no entities affected as this regulation is being amended to conform with technical language changes only that were noted by LRC staff during the 1993 quadrennial review.

(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: There will be no effect on the promulgating administrative body since the amendment is technical language changes only.

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(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

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(6) Any additional information or comments:

TIERING: Is tiering applied? No. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:120. School faculty.

RELATES TO: KRS 317A.010

STATUTORY AUTHORITY: KRS 317A.050, 317A.090

NECESSITY AND FUNCTION: All instructors and apprentice instructors shall hold the appropriate license and provide adequate supervision and instruction to students.

Section 1. Any person employed by a school for the purpose of managing, teaching and instruction, shall be licensed as a cosmetologist instructor. Each licensed instructor or apprentice instructor shall keep their photograph posted with their license.

Section 2. All students shall be under the immediate supervision of a licensed instructor during all classes and study hours and practical student work.

Section 3. No licensed cosmetologist shall render services in a school. Instructors and apprentice instructors shall render services only incidental to and for the purpose of instruction.

Section 4. Every instructor and apprentice instructor employed in a school of cosmetology shall devote their entire time during the school hours to that of instructing the students and shall not apply his or her time to that of private or public practice for compensation during school hours or permit students to instruct or teach other students in the absence of a teacher.

Section 5. Teaching by demonstrators shall be [~~is~~] strictly forbidden, except properly qualified licensed operators may demonstrate to the students new processes, new preparations, and new appliances in the presence of licensed teachers. Such a demonstration may only take place in a licensed school. Schools shall not permit more than one (1) demonstration in any calendar month.

Section 6. All services rendered in a school on patrons shall be done by students only. Instructors shall be allowed to teach and aid the students in performing the various services.

Section 7. Instructors and apprentice instructors in attendance shall, at all times, wear a clean, washable uniform, and an insignia or badge indicating they are an instructor or apprentice instructor in the school.

Section 8. Each school of cosmetology shall, within five (5) days after the termination, employment or other change in faculty personnel, notify the board of such change.

Section 9. Schools enrolling an apprentice instructor shall maintain the following ratio: one (1) apprentice instructor to one (1) instructor.

PAT WILSON GAISER, Chairman
APPROVED BY AGENCY: October 4, 1993
FILED WITH LRC: October 12, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

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GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:125. Schools' student regulations.

RELATES TO: KRS 317A.090
STATUTORY AUTHORITY: KRS 317A.060
NECESSITY AND FUNCTION: To protect the health and safety of the public and to protect the general public and students enrolled in schools of cosmetology against misrepresentation, deceit, or fraud while seeking services or enrolled therein.

Section 1. No student enrolled in a school of cosmetology shall be [is] permitted to receive a salary or commission from the school while enrolled as a student in said school.

Section 2. Students shall not be permitted to smoke while providing services to patrons.

Section 3. No student shall be allowed to remain in the school to work on patrons upon completion of the required hours for the appropriate course of enrollment.

Section 4. No student, after he or she has graduated from a school, shall be allowed to return to that school or any other school for further practice and work in the pay departments without permission of the board.

Section 5. Schools shall, at all times, display in a centralized conspicuous place the enrollment permits of all students enrolled therein.

Section 6. Schools shall require students to wear some kind of insignia, badge, cap, or marking on their uniforms to indicate that he or she is a student in the school.

Section 7. Schools shall require students to, at all times, wear a clean washable uniform, coat, or smock.

Section 8. Students shall be on time for all class studies and work.

Section 9. No Student shall be permitted to leave during school hours without special permission from the manager.

Section 10. No student shall be permitted to leave a class during a lecture or demonstration.

Section 11. Students are not permitted to operate any equipment in which there is known an operating hazard.

Section 12. All student kits containing all equipment, tools, and implements shall remain on school premises until completion of the course of enrollment or withdrawal from the school.

Section 13. A student desiring to change from one school to another shall notify the school in which the student is presently

enrolled of their withdrawal and complete an application for enrollment when entering another school.

Section 14. Students are required to comply with the rules of their school, as long as they do not conflict with KRS Chapter 317A or the regulations of the board.

Section 15. Owners of schools shall include the schools' refund policy in school-student contracts.

Section 16. Each student in a school shall be [is] permitted to file a complaint with this board concerning the school in which they are enrolled, provided the information is clearly and concisely given and the complaint shall at all times be signed by the complainant.

Section 17. Student Dismissal and Appeals. (1) Schools may dismiss students for law violations, rule violations, insubordination, or for any reason for which the board could deny, refuse to renew or revoke a license if the students were licensed pursuant to KRS Chapter 317A.

(2) Schools may dismiss students for violations of any of KRS Chapter 317A or for the violation of any rule of the board adopted pursuant thereto or for violation of any school rule not in conflict with said chapter or the board rules.

(3) Any student aggrieved by dismissal from a school may appeal to the board by writing the board and requesting that an appeal be granted, but such appeal shall be taken within ten (10) days after the date of dismissal and such appeal shall be docketed by the board for a hearing within thirty (30) days after the appeal request is received. The hearing day shall be set for as early a day as possible. The hearing and production of evidence shall be in conformity with that provided for board hearings in KRS Chapter 317A.

(a) Upon hearing the appeal, the board shall determine: whether or not the school acted in scope of its power; and whether or not there is sufficient evidence to support the order of dismissal appeal from said school.

(b) After the hearing the board shall enter an order sustaining or setting aside the school's order of dismissal. If the order of dismissal is overruled and set aside by the board, then the school shall reinstate the student.

Section 18. Within ten (10) working days from a student's withdrawal, a cosmetology school shall report the name of the withdrawing student and send the permit card and a notarized certification of the total number of hours that the withdrawing student has acquired in their cosmetology school to the board's office.

Section 19. In the event that the school after receiving request for the information outlined in Section 18 of this regulation does not forward same to the board within ten (10) days after receiving requests, a verified affidavit from the student as to the number of hours received may be accepted by the board and entered on their records as the appropriate number of hours earned.

Section 20. A training period for students is as follows: eight (8) hours per day, forty (40) hours per week (maximum). A student of cosmetology shall have a minimum of 225 days of school attendance under instruction. A student of manicuring shall have a minimum of thirty-seven and one-half (37 1/2) days of school attendance under instruction.

Section 21. All students shall be allowed thirty (30) minutes toward the middle of any eight (8) hour day for eating or taking a rest break. Students shall not be given credit for the one-half (1/2) hour break toward meeting the 1,800 hour requirement.

Section 22. An informational copy of the statutes and regulations of the Kentucky Board of Hairdressers and Cosmetologists shall be provided to each student enrolled in a school of cosmetology. Copies may be obtained from the board's office.

Section 23. No student shall be in attendance in a school of cosmetology more than eight (8) hours in one (1) day and no more than five (5) days in one (1) week.

Section 24. Persons completing hours in a school of cosmetology within a period of five (5) years from date of enrollment shall be given credit by the board for hours completed. Any extension of this period of time may be granted at the discretion of the board.

PAT WILSON GAISER, Chairman

APPROVED BY AGENCY: October 4, 1993

FILED WITH LRC: October 12, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts

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(a) Direct and indirect costs or savings to those affected:

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2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

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TIERING: Is tiering applied? No. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:190. Investigations and complaints.

RELATES TO: KRS 317A.140, 317A.145
STATUTORY AUTHORITY: KRS 317A.145
NECESSITY AND FUNCTION: KRS 317A.060, 317A.145. The board shall receive and investigate complaints relating to licensee's business or professional practices and illegal practices.

Section 1. The board or other board personnel shall receive all complaints against any person licensed under the provisions of KRS Chapter 317A relating to the ~~[such]~~ licensee's business or professional practices.

Section 2. The board shall make available to the public a complaint form which may be used by any person filing a complaint against any licensee.

Section 3. "Complaint" shall be defined as any writing received by the board which contains the name of the complainant and alleges violations of any board statute or administrative regulation or other wrongdoing by any licensee relating to the ~~[such]~~ licensee's business or professional practices.

Section 4. A log or record shall be maintained and shall be made available for public inspection, containing at least the following information concerning complaints received by the board:
(1) Licensee's name;
(2) Complainant's name;
(3) Date complaint was received by the board;
(4) Brief statement of the complaint; and
(5) Ultimate disposition of the complaint by the board.

Section 5. All complaints received by the board concerning any person licensed under the provisions of KRS Chapter 317A relating to the ~~[such]~~ licensee's business or professional practices shall be investigated.

Section 6. The board may, at any time, on their own volition or on the basis of information available, conduct an investigation or inspection and file a complaint against any person licensed under the provisions of KRS Chapter 317A.

Section 7. Any complaint, as defined in Section 3 of this administrative regulation, that is filed with the board, which alleges that a licensee has violated a statutory provision of KRS Chapter 317A or an administrative regulation of the board, shall be sent to the licensee before the complaint is placed on the board agenda. The licensee shall be provided at least ten (10) days after the complaint is mailed to file a written response to the complaint.

Section 8. The complaint and the response, if any is received, shall be placed on the board agenda for consideration at the next board meeting, or as soon thereafter as is practicable, following receipt of the written response or the expiration of the ten (10) days provided for a response, whichever occurs first.

Section 9. The board members shall review the complaint and any response received and shall take such action as it deems necessary.

Section 10. Any board member, who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint which could influence an impartial decision by the board member, shall disqualify themselves from participating in the adjudication of the complaint.

PAT WILSON GAISER, Chairman
APPROVED BY AGENCY: October 4, 1993
FILED WITH LRC: October 12, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on Wednesday, November 24, 1993, at 10:30 a.m., at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1993, 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 this 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: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts
(1) Type and number of entities affected: There will be no entities affected as this regulation is being amended to conform with technical language changes only that were noted by LRC staff during the 1993 quadrennial review.
(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: There will be no effect on the promulgating administrative body since the amendment is technical language changes only.
(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: There is no 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: As indicated by the LRC staff review form, this administrative regulation does not appear to be in conflict with any existing statute.
(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. Tiering was not applied as there was only one level of entity.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 314.041(5), 314.042(3), (6), 314.051(3), 314.071(1), (2), 314.073(4), (6), 314.161
STATUTORY AUTHORITY: KRS 314.131
NECESSITY AND FUNCTION: To establish fees to carry out the provisions of KRS Chapter 314.

Section 1. Fees for Licensure and Registration Applications. (1) The board shall collect fees for applications for licensure or for registration, and for renewal or reinstatement thereof.

(2) The fees shall not exceed the amounts indicated for the following applications:

(a) Licensure as a registered nurse - seventy (70) [~~ninety (90)~~] dollars.

(b) Licensure as a licensed practical nurse - seventy (70) [~~ninety (90)~~] dollars.

(c) Biennial renewal of active license - fifty (50) [~~seventy (70)~~] dollars.

(d) Biennial renewal of inactive license - thirty-five (35) [~~fifty (50)~~] dollars.

(e) Reinstatement of license - seventy (70) [~~ninety (90)~~] dollars.

(f) Active to inactive license status - thirty-five (35) [~~fifty (50)~~] dollars.

(g) Inactive to active license status - fifty (50) [~~seventy (70)~~] dollars.

(h) Endorsement verification of Kentucky licensure or registration - twenty (20) [~~fifty (50)~~] dollars.

(i) Duplicate license or registration card or letter - twenty (20) dollars.

(j) Registration as an advanced registered nurse practitioner - seventy (70) [~~ninety (90)~~] dollars.

(k) Biennial renewal of registration as an advanced registered nurse practitioner - fifty (50) [~~seventy (70)~~] dollars.

(l) Reinstatement of registration as an advanced registered nurse practitioner - seventy (70) [~~ninety (90)~~] dollars.

(3) An application shall not be evaluated unless current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The board shall collect fees for applications for approval of providers of continuing education and for renewal or reinstatement thereof not to exceed the following amounts:

(1) Initial provider approval - $100.

(2) Reinstatement of provider approval - $100.

(3) Biennial renewal of approval - seventy-five dollars.

(d) Individual review of continuing education offerings - thirty-five (35) dollars.

Section 3. Fees for Services. (1) The board shall collect fees for the following services not to exceed the amounts indicated:

(a) Administration of examination for registered nurse licensure - sixty (60) dollars.

(b) Administration of examination for practical nurse licensure - thirty-five (35) dollars.

(c) Verification of licensure or registration letter - ten (10) dollars.

(d) Copy of examination results or transcripts - ten (10) dollars.

(e) Nursing certificate (optional) - thirty (30) dollars.

(2) The fee for copies of statutes, regulations, and duplicated or printed materials shall be one (1) dollar minimum or shall not exceed twenty-five (25) cents per page.

(3) An applicant for licensure who takes or retakes the licensure examination shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board application for licensure and administration of examination fees pursuant to subsection (5) of this section.

(4) A nurse who is licensed in another state, United States territory or country and who submits an application for licensure in Kentucky as a registered nurse or a licensed practical nurse, but who is required to take or retake the licensure examination, shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board application for licensure and administration of examination fees.

(5) Applicants retaking the licensure examination shall:

(a) Submit fee for administration of examination prior to each time examination is taken.

(b) Submit new application and current fees if more than one (1) year has passed since date last examination was written or more than two (2) years have passed since the filing date of the original application.

(6) Graduates of foreign schools of nursing shall assume responsibility for costs incurred to submit credentials translated into English, commission on graduates of foreign nursing schools certificates, immigration documents and other documents needed to verify meeting licensure requirements.

Section 4. With the exception as stated in Section 3(5)(b) of this regulation, an application, which is not completed within one (1) year from the date the application form is filed with the board office, shall lapse and the fee shall be forfeited.

Section 5. An applicant who meets all requirements for approval, licensure or registration will be issued the appropriate approval, license or registration without additional fee.

Section 6. Refunds. (1) Current administration of examination fee on file for an examination candidate unable to be present for the administration of an examination due to unusual circumstances such as weather conditions, accidents, illness, family circumstances, will be refunded upon submission of written request by candidate.

(2) Overpayment of five (5) dollars or more of current fee will be refunded upon submission of written request by payer.

Section 7. A partial application fee may be held on record for one (1) year and may be applied toward the fee to meet the requirements for licensure or registration.

Section 8. Fees properly collected by the board are nonrefundable with the exceptions as stated in Section 6 of this regulation.

Section 9. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

ROBERTA G. SCHERER, President
APPROVED BY AGENCY: October 14, 1993
FILED WITH LRC: October 15, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1993, at 10 a.m., in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1993, 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 this 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman

(1) Type and number of entities affected: Approximately 50,000 registered nurses and licensed practical nurses.

(a) Direct and indirect costs or savings to those affected: The amendments lower several fees relating to continuing education.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The amendments do not add additional reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The amendments do not add or delete any costs.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The amendments do not add additional reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(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? Tiering is not applicable.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:005. Definitions.

RELATES TO: KRS 229.011

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: KRS 229.180 provides that the Kentucky Athletic Commission is authorized to adopt and promulgate any and all rules and administrative regulations considered by it necessary or expedient for the performance of its function provided in this chapter.

Section 1. Definitions. The following terms shall have the meaning assigned herein:

(1) "Commission" means the Kentucky Athletic Commission.

(2) "Commissioner" means a member [~~the Chairman~~] of the Kentucky Athletic Commission.

(3) "Chairman" means the chairman of the Kentucky Athletic Commission.

(4) [~~(2)~~] "Employee" means any employee of the Kentucky Athletic Commission.

(5) [~~(3)~~] "Official" means any announcers, [~~judges (amateur),~~] judges [~~(professional), managers~~], physicians, referees, or [~~seconds, ticket selling agents and~~] timekeepers.

(6) [~~(4)~~] "Contestant" means any person [~~boxer or wrestler either male or female and any animal whatsoever~~] participating in boxing [~~or sparring matches~~], wrestling, elimination events or kick boxing matches, shows [~~matches~~] or exhibitions coming under the jurisdiction of the Kentucky Athletic Commission.

(7) [~~(5)~~] "Trainer" means any person who participates in the training of any contestant provided such training occurs within this Commonwealth [~~or who participates in such training in any way preceding or during the match~~].

(8) [~~(6)~~] "Manager" means any person managing, handling, booking, directing, or in any other way directly or indirectly acting for or with a contestant in obtaining and participating in any match, show [~~contest~~] or exhibition, whether for compensation or not.

(9) [~~(7)~~] "Second" means any person aiding, assisting or advising a contestant during a boxing match, show [~~contest~~] or exhibition.

(10) [~~(8)~~] "Show" means any organized grouping of boxing [~~or sparring~~] matches, wrestling matches, elimination event matches or kick boxing matches or exhibitions coming under the jurisdiction of the Kentucky Athletic Commission.

(11) [~~(9)~~] "Club" means any person, corporation, association or partnership conducting boxing, kick boxing, or elimination event [~~sparring~~] matches, shows or exhibitions under the jurisdiction of the Kentucky Athletic Commission.

(12) [~~(10)~~] "License" means the written authority to engage in the business of conducting, holding, giving, or officiating at, or participating in, boxing [~~or sparring matches~~], wrestling, elimination events or kick boxing matches, shows [~~matches,~~] or exhibitions.

(13) [~~(11)~~] "Permit" means a written permission for licensee to engage in, conduct, hold, or give a professional boxing [~~or sparring match~~], wrestling, elimination event or kick boxing match, show [~~match,~~] or exhibition at a specific date and hour and at a specific place.

(14) [~~(12)~~] "Promoter" means any [~~whether an~~] individual, corporation, association, partnership or club [~~means any applicant~~] who has been issued a license to promote and conduct professional boxing, [~~or~~] wrestling, elimination events or kick boxing matches, shows [~~matches~~] or exhibitions within this Commonwealth.

(15) "Elimination event" means a boxing show where the winner of each match continues to box against additional opponents in a tournament format until an overall winner is determined.

(16) "Kick boxing" means a boxing show where the participants are allowed to throw kicking or foot blows at the opponent in addition to regular punching with the hands.

(17) "Match" means one (1) of the contests which make up a show.

TODD J. NEAL, Chairman

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed participants and promoters.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

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: Definition of terms.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:010. General requirements for boxing, elimination events, kick boxing, matches, shows, or exhibitions.

RELATES TO: KRS 229.071(2), 229.171
STATUTORY AUTHORITY: KRS 229.180
NECESSITY AND FUNCTION: [~~KRS 229.071(2) provides that an applicant for a license to conduct professional boxing and wrestling matches must always conduct himself in the best interest of boxing and wrestling generally.~~] KRS 229.171 states that the commission is given the sole control, authority and jurisdiction over professional boxing [~~and wrestling~~] and all persons who participate therein. This administrative regulation sets forth the general requirements for boxing, elimination events, and kick boxing matches, shows, or exhibitions.

Section 1. The proposed program for a show shall [~~must~~] be filed with the commission[~~er~~] at least five (5) days prior to the date of the show. [~~Substitutions may be made for good cause before noon of the day of the show.~~] Notice of any change in a program or any substitutions in a show shall [~~must~~] be immediately filed with the commission[~~er. After receipts of approval of the commissioner for such change or substitution, such changes or substitutions must immediately be publicly announced by the club in a newspaper of general circulation and by such other methods as are available and convenient~~].

Section 2. Before the commencement [~~beginning~~] of a show, all changes or substitutions shall be announced from the ring, and in addition, notice of any change or substitution shall [~~must~~] be posted in a conspicuous place at the ticket office. Purchasers of tickets shall [~~will~~] be entitled, upon request by them, to a refund of the purchase price of such tickets, provided such request is made before the commencement of the show.

[~~Section 3. Promoters shall be held responsible for any betting, wagering or gambling in any form which takes place upon their premises. Each club shall post in four (4) parts of the arena the warning "No Betting Allowed."~~

~~Section 4. All promoters shall cause the prompt ejection of any person guilty of any disorderly conduct or drunkenness.~~

~~Section 5. Promoters shall not permit drinks to be dispensed on the floor of the arena nor on the premises except in paper cups, and not at all during the actual presentation of the show.~~]

Section 3. For boxing, elimination events, and kick boxing shows [~~6.~~] the row nearest the ring on all four (4) sides shall be [~~known as "Commission and Press Row" and shall be~~] under the exclusive control of the commission.

[~~Section 7. All applications for permits must reach the commissioner not less than ten (10) days prior to the date of the proposed match or exhibition.~~]

Section 4. [~~8.~~] The ring specifications for boxing, kick boxing, and elimination events shall be as follows:

(1) All matches [~~contests~~] shall be held in a roped ring not less than sixteen (16) [~~nor more than twenty (20)~~] feet square inside the ropes; and the floor of the ring shall extend beyond the ropes for a distance of not less than one (1) [~~two (2)~~] feet and shall be elevated not more than four (4) feet above the arena floor and shall be provided with steps for the use of those properly entitled to enter the ring on two (2) sides.

(2) The ring shall be formed of posts and ropes, said ropes extending in a triple line eighteen (18) inches, thirty-five (35) inches and fifty-two (52) inches above the ring floor, and said ropes to be not less than one (1) inch in diameter and wrapped in clean, soft material drawn taut. Ropes shall be held in place with vertical straps on each of the four (4) sides. A fourth rope may be used subject to prior approval by the commission[~~er~~].

(3) Ring posts shall be made of metal or other strong material not less [~~more~~] than three (3) inches in diameter and not nearer the ropes than eighteen (18) inches and shall be wrapped in soft, clean material.

(4) The ring floor shall be padded or cushioned with clean, soft material, to be approved by the commission[~~er~~], of not less than one (1) inch in thickness and extending over the edge of the platform, with a covering of canvas or similar material tightly stretched.

(5) Turnbuckles shall be padded with a safe, soft vertical pad at least six (6) inches in width.

Section 5. [~~9.~~] A bell [~~gong~~] or horn shall be used by the timekeeper in indicating the time.

Section 6. [~~10.~~] Buckets, water buckets, stools, towels, rubber gloves, [~~powdered resin, fans~~] and such other articles as are necessary in the show [~~contest~~] shall be furnished in sufficient number and quantity by the promoter.

[~~Section 11. Boxing decisions shall be rendered as follows:~~

~~(1) If a contest lasts the scheduled limit, the winner of such contest shall be decided by a majority vote of the judges if three (3) are used, or by a majority vote of the judges and the referee if two (2)~~

judges are used, or by the referee alone if no judges are used.

(2) Decisions shall be based primarily on effectiveness, giving credit for:

(a) Clean, forceful hitting in boxing bouts;

(b) Aggressiveness;

(c) Defensive work; and

(d) Ring generalship and deducting points for an opposite showing.

(3) The winner of a wrestling contest shall be decided by a fall or falls or time limit as may be agreed upon in making the match.

Section 12. Boxing scoring shall be as follows:

(1) Each round in boxing is to be accounted for on the score card, using the five (5) point (or ten (10) point at the commissioner's discretion) must system. Score in ratio of merit and demerit, the difference displayed by the contestants.

(2) Score cards must be signed and handed to the announcer in the ring and filed by him with the commissioner or employee of the Kentucky Athletic Commission in attendance. The decision shall then be announced from the ring.

Section 13. No boxing contestant shall take part in any bout until after six (6) days have elapsed since his participation in a bout of ten (10) rounds or more nor until three (3) days have elapsed since his participation in a bout of less than ten (10) rounds.

Section 14. Boxing rounds shall be as follows:

(1) Rounds shall be of three (3) minutes duration, with one (1) minute rest period between rounds.

(2) No boxing bout, except championship bouts, shall be of more than twelve (12) rounds.

(3) All main bouts shall be ten (10) rounds or more unless the commissioner in his discretion provides otherwise.

(4) Championship bouts may be more than twelve (12) rounds, but the number of rounds shall be approved by the commissioner.

Section 15. Requirements for boxing gloves shall be as follows:

(1) Contestants shall wear boxing gloves, to be furnished by the promoter, of equal weight and not less than six (6) ounces for contestants over the featherweight class and not less than five (5) ounces, in or under, the featherweight class.

(2) Gloves for all main bouts shall be new and shall be put on in the ring subject to the commissioner's discretion. All gloves shall be clean and in a sanitary condition. No breaking, roughing or twisting of gloves shall be permitted. The laces on gloves shall be tied on the back of the wrist and taped.

Section 16. Requirements for bandages shall be as follows:

(1) Only soft cotton or linen bandages shall be used for the protection of the boxer's hands. Bandages shall not be more than two (2) inches in width and five (5) yards in length for each hand.

(2) Medical adhesive tape not more than one (1) inch in width may be used to hold bandages in place. Adhesive tape shall not be lapped more than one eighth (1/8) of one (1) inch. Adhesive tape not to exceed one (1) thickness shall be crossed over the back of the hand for its protection. Three (3) strips of adhesive tape, lapping not to exceed one eighth (1/8) of one (1) inch, may be used for protection of the knuckles.

Section 17. The boxing count shall be as follows:

(1) If a boxer is knocked to the floor by his opponent or falls from weakness or other causes, his opponent shall immediately retire to the farthest corner of the ring and remain there until the referee completes his count or signals a resumption of action. The referee, after the opponent reaches the farthest corner of the ring, shall commence counting off the seconds and indicating the count with a motion of the arm.

(2) If a boxer fails to arise before the count of ten (10), the referee shall declare him the loser by waving both arms to indicate a knockout.

(3) If a boxer who is down arises during the count, the referee may, if he deems it necessary, step between the boxers long enough to assure himself that the boxer just arisen is in condition to continue the bout.

(4) Should a boxer who is down arise before the count of ten (10) is reached and again go down from weakness or the effects of a previous blow, without being struck again, the referee shall resume the count where he left off.

Section 18. A failure to resume a bout shall be as follows:

(1) Should a boxer fail to resume the bout for any reason after a rest period, or leave the ring during the rest period and fail to be in the ring when the gong rings to begin the next round, the referee shall count him out the same as if he were down in that round.

(2) If a boxer who has been knocked out of or has fallen out of the ring during a bout fails to return immediately to the ring and be on his feet before the expiration of ten (10) seconds, the referee shall count him out as if he were down.

Section 19. A boxer shall be considered "down" when:

(1) Any part of his body other than his feet is on the ring floor; or

(2) He is hanging helplessly over the ropes and in the judgment of the referee, he is unable to stand; or

(3) He is rising from the "down" position.

Section 20. (1) The following shall be considered boxing fouls:

(a) Hitting below the belt;

(b) Hitting an opponent who is down or who is getting up after having been down;

(c) Holding an opponent and deliberately maintaining a clinch;

(d) Holding an opponent with one (1) hand and hitting with the other;

(e) Butting with head or shoulder or using the knee;

(f) Hitting with inside or butt of the hand, the wrist, or the elbow, and all backhand blows;

(g) Hitting or "flicking" with the glove open or thumbing;

(h) Wrestling, or roughing, against the ropes;

(i) Purposely going down without having been hit;

(j) Deliberately striking at the part of opponent's body over the kidneys;

(k) Use of the pivot blow or rabbit punch or any physical action which may injure a contestant;

(l) Use of abusive or profane language; or

(m) Failure to obey the referee.

(2) A contestant who commits a foul may be disqualified and the decision awarded to his opponent by the referee. The referee must immediately do so if contestant commits a deliberate and willful foul which incapacitates his opponent.

(3) Any boxer committing a foul may be suspended for any length of time deemed necessary.

(4) If a bout is temporarily stopped by the referee, due to accidental fouling, said referee, with the aid of the physician, if necessary, shall decide whether the contestant who has been fouled is in physical condition to continue the bout. If in their opinion said contestant's chances have not been seriously jeopardized, as a result of the foul, he shall order the bout resumed after a reasonable time, such time to be set by the referee, but in any event not exceeding three (3) minutes.

Section 21. The following shall be prohibited in boxing:

(1) "Battle Royal;" and

(2) Use of grease or any other substance which may handicap an opponent.

~~Section 22. The wrestling canvas ring shall be clean and sanitary and free from grit, dirt, resin, or other foreign substances. The following provisions shall relate to wrestling "falls:"~~

~~(1) Both shoulders momentarily pinned to the canvas (for the referee's silent count of three (3) seconds) shall constitute a fall. Flying and rolling falls shall not count.~~

~~(2) Conceding a fall, or quitting because of having received punishment from a legitimate hold, constitutes a fall.~~

~~(3) Referee shall not place his hands under the shoulders of a contestant unless necessary to determine a fall.~~

~~(4) The referee shall slap on the back, or shoulder, a contestant securing a fall.~~

~~Section 23. When wrestling contestants roll off the canvas and under the ropes, they shall be ordered to the middle of the ring to resume the contest. If a contestant fails to obey the referee's order to return to the ring before the expiration of ten (10) seconds he shall be counted out and the decision awarded to his opponent.~~

~~Section 24. The following shall relate to wrestling holds:~~

~~(1) Any legitimate holds or methods known to wrestling science may be used by the contestant, but no deliberate slugging, strangling, gouging, biting, kicking, hair pulling, spitting, or scratching shall be permitted. (2) Contestant's fingernails must be trimmed well below the tips of the fingers.~~

~~(3) No contestant shall be permitted to grasp or hang onto clothing, canvas, or ropes for support during the progress of a contest.~~

~~(4) When a contestant throws an opponent over the ropes he will be automatically disqualified.~~

~~(5) When a referee orders the contestants to break, they must do so within a three (3) count.~~

~~Section 25. For use of foul tactics after warning by the referee, the offending wrestling contestant may be placed on the defensive or disqualified by the referee and the decision awarded to his opponent.~~

~~Section 26. No boxer whose license to box is under suspension in any other jurisdiction shall box in the Commonwealth of Kentucky.~~

~~Section 27. All referees and judges must attend at least one (1) seminar approved by the commission during each calendar year.~~

~~Section 28. Each promoter must furnish the commission copies of all contracts between him and any of the contestants.~~

~~Section 29. The annual license fee shall be $300 where the professional matches are to be conducted within fifteen (15) miles of the city limits of a city or cities containing an aggregate population of 200,000 or more and $100 elsewhere. Each such license shall expire twelve (12) months after the date of issue.~~

~~Section 30. An invoice showing the number of tickets printed along with full tickets not sold and stubs must accompany the promoter's report on the show and the figures shown thereon must correspond to the difference between tickets printed and full tickets not sold.~~]

TODD J. NEAL, Chairman

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed participants and promoters.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Participants must hold appropriate licensure.

(2) Effects on the promulgating administrative body: General requirements.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:015. Prompt payment of fees, fines and forfeitures required.

RELATES TO: KRS 229.081, 229.091(1), 229.991

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: KRS 229.091(1) provides that every licensee shall be subject to such administrative regulations as the commission prescribes. This administrative regulation is intended to insure that licensees pay all fees, fines and forfeitures owed to the Commonwealth in a prompt manner.

Section 1. All compensation agreements shall be in writing and submitted to the commission[~~er~~] for [~~his~~] approval not less than five

(5) calendar days prior to the date of the proposed show.

Section 2. Compensation shall not be paid to any contestant [~~or official~~] in advance unless by prior approval of the commission[~~er~~].

Section 3. No promoter shall pay any part of the compensation due to managers, contestants, or their agents, if such manager or contestant or agent owes the Commonwealth of Kentucky any fees, fines, forfeitures, or other funds incurred in conducting, holding, giving, officiating at, or participating in, boxing, kick boxing, elimination events [~~or sparring matches~~], wrestling matches, shows, or exhibitions.

Section 4. Before the commencement of any boxing, elimination event, kick boxing show or exhibition, the promoter of the show or exhibition shall tender to the commissioner or an employee of the commission a check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials set forth in Section 5 of this administrative regulation.

Section 5. The schedule for compensation to be paid in advance to officials participating in a professional show [~~match~~] shall be as follows:

(1) Judges for elimination events (minimum three (3)) - $125 each per day. [~~Announcers - $50.~~]

(2) Judges for boxing shows or kick boxing shows (minimum three (3)) - $50 each.

(3) Timekeeper for:

(a) Boxing shows or kick boxing shows - $50; and

(b) Elimination event - $125 per day.

(4) Physician for elimination events - $225 per day. [~~(less than nine (9) contestants - $125.)~~]

(5) Physician for boxing shows or kick boxing shows [~~(nine (9) or more contestants)~~] - $150.

(6) Referees for elimination events (minimum two (2)) - $125 per day. [~~Seconds (minimum two (2)) - $10 each.~~]

(7) Referees for boxing shows and kick boxing shows - $50 each. If there are more than thirty (30) scheduled rounds [~~four (4) bouts~~], a minimum of two (2) referees shall be [~~is~~] required.

[~~(8) Each official (except seconds) must be paid an additional fifty (50) dollars if the site of the show to which he must travel is located more than fifty (50) miles from the official's principal residence.~~]

Section 6. If a show or exhibition is cancelled, with less than twenty-four (24) hours notice to the commission, officials shall be paid one-third (1/3) the compensation required by this administrative regulation.

TODD J. NEAL, Chairman

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed promoters.

(a) Direct and indirect costs or savings to those affected: Outlines costs for officials to be paid by the promoter.

1. First year: Officials fees must be paid as outlined.

2. Continuing costs or savings: Costs will continue as outlined until changes are made.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Officials fees are to be paid prior to the show.

(2) Effects on the promulgating administrative body: Sets out the fees to be paid to the officials.

(a) Direct and indirect costs or savings: These funds are not received by the agency.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:020. Tickets.

RELATES TO: KRS 229.031

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: In order to assure that the state receives its five (5) percent tax of the gross receipts from the sale of all tickets to a show [~~match~~] or exhibition, an administrative regulation is required to govern and control the sale of such tickets. KRS 229.180 states that in order to provide more supervision, the General Assembly intended the commission to have wider discretion than that ordinarily possessed by administrative agencies.

Section 1. All persons admitted to any show [~~match~~] or exhibition except members [~~representatives~~] of the commission[~~er~~], employees of the [~~Kentucky Athletic~~] commission, employees of the licensed promoter, officials, representatives of the press, and contestants shall be required to have a ticket. No cash may be accepted for admission by any representative of the promoter except the properly authorized ticket selling agent. All officials, employees, or members [~~other duly authorized representatives~~] of the [~~Kentucky Athletic~~] commission shall [~~must~~] be admitted to any professional show or exhibition [~~or amateur exhibition or match~~] upon showing the appropriate identifi-

cation card [~~signed by the commissioner~~].

Section 2. Orders for all admission tickets [~~to be~~] purchased, printed, sold, given away or used by a club shall be submitted in writing [~~in duplicate~~] to the commission, upon specific request of the commission [~~or for his approval. If the order for such tickets is approved, a copy shall be retained by the commissioner for his files~~].

Section 3. All orders for admission tickets shall specify:

(1) Different color for each price class of admission ticket;

(2) Admission tickets to be numbered in consecutive order for each price class ticket; and

(3) Verified invoice [~~manifest~~] delivered by the printer [~~to the commissioner~~] for each order of tickets printed and delivered to the promoter.

Section 4. Complimentary tickets shall be of such color and character as to make them readily distinguishable from paid admission tickets. The commission[~~er~~] may limit the number or otherwise restrict the use of such tickets and [~~he~~] may require the payment of taxes on [~~all such~~] complimentary admission tickets. The [~~Kentucky Athletic~~] commission shall be entitled to receive twelve (12) complimentary reserved tickets upon request clearly marked "Not for Sale" to any professional boxing, kick boxing, elimination event or wrestling show [~~match~~] or exhibition conducted [~~and held~~] within this Commonwealth.

Section 5. A schedule of ticket prices shall [~~must~~] be posted conspicuously at the front of the ticket office and tickets shall not be sold for any prices other than the price printed on the face of the ticket [~~thereof~~].

Section 6. All admission tickets collected at the gate shall be deposited in a suitable lock box. The commission may request an audit of the tickets used for a show in order to validate the fees paid pursuant to KRS 229.031. [~~Said lock box shall not be opened at any time except in the presence and under the supervision of the commissioner or an employee of the Kentucky Athletic Commission.~~]

Section 7. Each purchaser of an admission ticket shall be given a stub which shall be redeemed by the promoter on presentation by the purchaser if [~~should~~] the show does not take place as published and announced.

TODD J. NEAL, Chairman

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed promoters.

(a) Direct and indirect costs or savings to those affected: The promoter is required to use tickets consistent with this administrative regulation.

1. First year: Based on the size of each show.

2. Continuing costs or savings: Based on the size of each show.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Tickets may be audited by the commission.

(2) Effects on the promulgating administrative body: This will insure accurate reporting of ticket sales.

(a) Direct and indirect costs or savings: There will not be any costs for the agency.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Tickets may be audited by the commission.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:030. Contestants in boxing, kick boxing, and elimination events.

RELATES TO: KRS 229.081, 229.091(1)

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: KRS 229.081 provides for all licensing of contestants for professional boxing, kick boxing and elimination events [~~wrestling matches and exhibitions~~]. KRS 229.091(1) provides that every licensee shall be subject to such administrative regulations as the commission prescribes.

Section 1. Contestants shall report to and be under the general supervision of the commissioner or employee of the [~~Kentucky Athletic~~] commission in attendance at the show, and shall be subject to any [~~reasonable~~] orders given by the commissioner or employee.

Section 2. Contestants shall produce one (1) form of identification. No contestant shall assume or use the name of another and shall not change his ring name nor be announced by name other than that which appears on his license except upon approval of the commissioner or employee of the commission.

Section 3. Contestants shall [~~must~~] be clean, neatly attired in proper ring attire and trunks of opponents shall be of distinguishing colors.

Section 4. [~~Boxers shall not use white trunks while engaged in a show and~~] Contestants shall not use during a match [~~show~~] a belt which contains any metal substance. Such belt as is permissible shall not extend above the waistline of the contestant.

Section 5. Contestants shall wear shoes of soft material during a match [~~show~~] and such shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.

Section 6. A contestant, while engaged in a match [~~show~~], shall wear an abdominal guard or protective [~~protection~~] cup which has [~~s of such a type as have~~] the approval of the commissioner or employee of the [~~Kentucky Athletic~~] commission in attendance and which, in the contestant's own judgment, is [~~are~~] sufficient [~~protection~~] to withstand any blow which might injure the contestant.

Section 7. Whenever a contest is ended by reason of fouling or failure to give an honest exhibition of skill, as determined by the commissioner or an employee of the commission, the compensation of the offending contestant [~~so offending~~] shall be withheld by the club and [~~forfeited into the custody of the commissioner. Such forfeit~~] shall be disposed of as may be ordered by the commission.

Section 8. (1) The class weights permitted in boxing and kick boxing matches [~~bouts~~] shall be as follows:

CLASS	WEIGHT
Flyweight	to 112 lbs.
Bantamweight	to 118 lbs.
Jr. Featherweight	to 122 lbs.
Featherweight	to 126 lbs.
Jr. Lightweight	to 130 lbs.
Lightweight	to 135 lbs.
Jr. Welterweight	to 140 lbs.
Welterweight	to 147 lbs.
Jr. Middleweight	to 154 lbs.
Middleweight	to 160 lbs.
Light Heavyweight	to 175 lbs.
Cruiserweight	to 190 lbs.
Heavyweight	over 190 [~~175~~] lbs.

(2) Elimination events shall be divided into at least two (2) weight divisions. No open shows shall be permitted.

Section 9. Contestants in all shows held under the jurisdiction of the [~~Kentucky Athletic~~] commission shall weigh in stripped, at a time set by the commission [~~on the day of the contest or at another hour within eight (8) hours prior to entering the ring on the day of the contest, in the presence of his opponent for the bout~~]. The commissioner or an employee of the [~~Kentucky Athletic~~] commission and a representative of the promoter conducting the show [~~bout~~] shall be in attendance.

Section 10. On the day of the show [~~At the time of weighing in~~], a physical examination of each contestant [~~opponent~~] shall be made by the official physician. A record of each contestant's weight shall be recorded by the representative of the promoter and such record shall also be filed with the [~~Kentucky Athletic~~] commission.

Section 11. A contestant shall immediately notify the promoter and the commission[~~er~~] if, as a result of illness or for any other reason, he is unable to participate in a show, in which he has entered into a contract to engage, and shall immediately file with the commission[~~er~~] a [~~reputable~~] physician's certificate verifying such injury or illness, or such other verified evidence, as the commission[~~er~~] may require to establish valid reasons for his failure to participate. The commissioner may require a contestant to submit to an examination if deemed necessary to establish the true facts of the contestant's failure to participate.

Section 12. All matches in an elimination event shall be made by the commissioner or an employee of the commission. [~~The foregoing requirements shall not apply to any animal contestant, with the exception that all animal contestants shall be under the general supervision of the commissioner or employee of the Kentucky Athletic Commission in attendance at the show, and shall be subject to any reasonable orders given by the commissioner or employee.~~]

TODD J. NEAL, Chairman

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All participants in boxing, kick boxing, and elimination events.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Contestants must provide one form of identification.

(2) Effects on the promulgating administrative body: Sets out the requirements of contestants.

(a) Direct and indirect costs or savings: There will not be any 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: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:035. Seconds.

RELATES TO: KRS 229.171 [~~229.081, 229.091(1)~~]
STATUTORY AUTHORITY: KRS 229.180
NECESSITY AND FUNCTION: KRS 229.171 gives the Kentucky Athletic Commission the sole direction, management, control, and jurisdiction over all professional boxing shows, kick boxing shows, and elimination events held in the Commonwealth. It is therefore necessary to control the activities of some unlicensed participants in these shows. [~~KRS 229.081 provides for the licensing of seconds at professional boxing and wrestling matches and exhibitions. KRS 229.091(1) provides that every licensee shall be subject to such regulations as the commission prescribes.~~]

Section 1. Seconds shall report to and be under the general supervision of the commissioner or employee of the [~~Kentucky Athletic~~] commission in attendance at the show. Seconds [~~They~~] shall obey all [~~reasonable~~] orders of the commissioner or employee.

Section 2. Seconds shall be [~~properly qualified for such duties and shall be~~] governed by the law and administrative [~~rules and~~] regulations of the [~~Kentucky Athletic~~] commission.

Section 3. Any violation, by seconds, of the law or administrative [~~rules and~~] administrative regulations of the [~~Kentucky Athletic~~] commission may be sufficient cause for disqualification of the contestant, for whom they act, by the referee or judges.

Section 4. Seconds shall not act as managers unless so licensed.

Section 5. Seconds shall not be more than three (3) in number [~~in main bouts and two (2) in number in other bouts~~].

Section 6. Seconds shall be equipped with first aid kits and the necessary supplies for proper attendance upon their contestants.

Section 7. Seconds shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round of a boxing match [~~contest~~], kick boxing match, or elimination event match [~~or a period of wrestling,~~] removing all equipment [~~first aid kits, supplies, buckets, stools, etc~~]. None of this equipment [~~these articles~~] shall be placed on the ring floor until after the bell [~~gong~~] has sounded at the end of the round or period.

Section 8. Seconds shall not throw towels or other articles into the ring.

Section 9. Seconds shall wear surgical gloves at all times while carrying out their duties. [~~Seconds shall not coach nor in any way assist a contestant except during rest periods and shall not by word or action hinder, heckle or annoy contestant's opponent at any time.~~]

Section 10. Seconds may be ejected from a match or excluded from future matches based on a violation of these administrative regulations.

TODD J. NEAL, Chairman
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas
(1) Type and number of entities affected: All persons who act as seconds in boxing, kick boxing, and elimination events.
(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.
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: Regulation of the activities of seconds.
(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:040. Managers.

RELATES TO: KRS 229.081, 229.091(1)
STATUTORY AUTHORITY: KRS 229.180
NECESSITY AND FUNCTION: KRS 229.081 provides for the licensing of managers at professional boxing and kick boxing [~~and wrestling matches and exhibitions~~]. KRS 229.091(1) provides that

every licensee shall be subject to such administrative regulations as the commission prescribes.

Section 1. Managers shall report to and be under the general supervision of the commissioner or employee of the [~~Kentucky Athletic~~] commission in attendance at the show. They shall be subject to any [~~reasonable~~] orders given by the commissioner or employee of the commission.

Section 2. Managers shall do business only with promoters, officials, and contestants licensed by the [~~Kentucky Athletic~~] commission who are in good standing and they shall act as managers only in shows that have been approved by the commission[~~er~~].

Section 3. Managers shall not act or attempt to act [~~in any way~~] for a contestant unless legally authorized to do so by said contestant.

Section 4. Copies of written contracts between managers and contestants may be filed with the commissioner or employee of the commission as evidence of such authority to act and shall [~~must~~] be filed if requested by the commissioner or employee of the commission.

TODD J. NEAL, Chairman

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed managers.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Requirements for managers to report to the commission on the authority to act for a contestant.

(2) Effects on the promulgating administrative body: Sets requirements for managers.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:045. Judges.

RELATES TO: KRS 229.081, 229.091(1)

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: KRS 229.081 provides for the licensing of judges for professional boxing, kick boxing, and elimination events [~~and wrestling matches and exhibitions~~]. KRS 229.091(1) provides that every licensee shall be subject to such administrative regulations as the commission prescribes.

Section 1. The judges officiating at any show shall be governed by the law and administrative [~~rules and~~] regulations adopted by the [~~Kentucky Athletic~~] commission and shall be subject to any [~~reasonable~~] orders given by the commissioner or employee of the commission.

Section 2. At the beginning of a match [~~show~~] the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants. At the conclusion of the match the judges [~~bout they~~] shall render their decision.

Section 3. The judges shall [~~be ready at all times during the progress of the bout~~], if requested by the referee, [~~to~~] assist him in determining whether fouls have been committed, whether the contestants are in earnest, and whether there is collusion affecting the result of the match [~~bout~~].

Section 4. In order to become licensed, and to maintain licensure, a judge shall annually take and pass an examination on the applicable administrative regulations, as administered by the commission.

TODD J. NEAL, Chairman

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed judges.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Judges must take and pass an examination.

(2) Effects on the promulgating administrative body: The commission will be required to construct an examination.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:050. Announcers.

RELATES TO: KRS 229.171 [~~229.081, 229.091(1)~~]

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: KRS 229.171 gives the Kentucky Athletic Commission the sole direction, management, control, and jurisdiction over all professional boxing, kick boxing, and elimination events held in the Commonwealth. It is therefore necessary to control the activities of some unlicensed participants in these shows. [~~KRS 229.081 provides for the licensing of announcers for professional boxing and wrestling matches and exhibition. KRS 229.091(1) provides that every licensee shall be subject to such regulations as the commission prescribes.~~]

Section 1. The announcer officiating at any show shall be governed by the law and administrative [~~rules and~~] regulations adopted by the [~~Kentucky Athletic~~] commission, and he shall be subject to any [~~reasonable~~] orders given by the commissioner or employee of the commission.

Section 2. The announcer shall have general supervision over all announcements made by the ringside or in the arena. He shall announce from the ring the name of contestants, their [~~correct~~] weight, decisions at the end of each match [~~bout~~], and such other matters as are necessary. No person other than the official announcer shall make announcements.

[~~Section 3. Before announcing the result of a bout, the announcer shall enter the ring and collect the score cards from the judges and the referee and shall immediately submit them for examination to an employee of the Kentucky Athletic Commission and then shall immediately announce the decision.~~]

Section 3. If a match [~~4. In the event a bout~~] is stopped before its scheduled termination, the announcer shall immediately confer with the referee and the commissioner or an employee of the [~~Kentucky Athletic~~] commission and then shall immediately announce the decision.

Section 4. [~~5.~~] The announcer shall not enter the ring during the actual progress of a match [~~bout~~].

Section 5. An announcer may be ejected from a match or excluded from further matches based on a violation of these administrative regulations.

TODD J. NEAL, Chairman

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All announcers at boxing, kick boxing, and elimination events.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Sets up the ability to regulate announcers.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:055. Physicians.

RELATES TO: KRS 229.081, 229.091(1)

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: KRS 229.081 provides for the licensing of physicians for professional boxing, kick boxing, and elimination events [~~matches and exhibitions~~]. KRS 229.091(1) provides that every licensee shall be subject to such administrative regulations as the commission prescribes.

Section 1. The physician officiating at a show shall be governed by the law and administrative [~~rules and~~] regulations adopted by the [~~Kentucky Athletic~~] commission and shall be subject to any [~~reasonable~~] orders given by the commissioner or employee of the commission.

Section 2. The physician shall have general supervision over the physical condition of the contestants, and it shall be his duty to make a thorough physical examination of all contestants at weighing-in time, or within eight (8) hours prior to the time set for their entrance into the ring. He shall deliver a written report to the commissioner [~~or other agent~~] or employee of the [~~Kentucky Athletic~~] commission, in attendance at the show, stating the physical condition of the contestant prior to the contestant's entrance into the ring.

Section 3. The physician shall take his position near the ringside and shall carefully observe the physical condition of the contestants during each match [~~the bout~~], and he shall [~~be prepared to~~] administer medical aid should any emergency arise requiring same.

Section 4. The physician shall prohibit any contestant who is physically unfit for competition or impaired from alcohol or a controlled substance from entering the ring, and he shall order the referee to stop a match [~~bout~~] if he deems such action necessary to prevent serious physical injury to a contestant, official, second, manager, or spectator.

Section 5. The physician shall not enter the ring except in an emergency or unless authorized to do so by the referee, the commissioner, or an employee of the [~~Kentucky Athletic~~] commission [~~in attendance~~].

Section 6. The physician shall be licensed pursuant to KRS Chapter 311 as a physician.

TODD J. NEAL, Chairman

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All physicians licensed by the commission.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Sets out activities of the physician at a boxing show, kick boxing show, or elimination event.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:060. Referees.

RELATES TO: KRS 229.081, 229.091(1)

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: KRS 229.081 provides for the licensing of referees for professional boxing, kick boxing, and elimination events [~~and wrestling matches and exhibition~~]. KRS

229.091(1) provides that every licensee shall be subject to such administrative regulations as the commission prescribes.

Section 1. The referee shall be the chief official of the show, and he shall take his place in the ring and shall have general supervision over the contestants, managers, and seconds during the entire show.

Section 2. The referee shall be familiar with the law and administrative [~~rules and~~] regulations governing boxing, kick boxing and elimination events [~~and wrestling~~], and he shall be responsible for their enforcement during the entire period of a show.

Section 3. The referee shall, before starting a match [~~show~~], ascertain from each contestant the name of his chief second and hold said chief second responsible for the conduct of his assistant seconds during the progress of the match [~~show~~].

Section 4. The referee shall call contestants together in the ring immediately preceding a match [~~show~~] for final instructions, at which time each contestant shall be accompanied in the ring by his chief second only.

Section 5. The referee shall inspect the person, attire, and equipment of the contestants and make certain that no foreign substances which are contrary to the law and administrative [~~rules and~~] regulations concerning the same have been applied or used by the contestants.

Section 6. The referee shall have the authority to stop a match [~~show~~] at any time if:

(1) He considers it too one-sided;

(2) [~~or if~~] Either of the contestants is [~~if apparently~~] unable to protect himself from possible injury;

(3) [~~or if~~] He considers the contestants not competing in earnest; or

(4) [~~if~~] He has reasonable grounds to believe that [~~there be~~] collusion exists between the contestants affecting the results of the contest[~~s; and in such a case, he may disqualify one (1) or both contestants and declare that no contest has been held~~].

Section 7. The referee shall have the authority to disqualify a contestant who commits a foul and award the decision to his opponent. He shall [~~must~~] immediately disqualify a contestant who commits an intentional or deliberate foul which [~~of such nature as to~~] incapacitates an opponent.

Section 8. The referee shall decide a round in favor of the contestant who has been fouled by his opponent, and he may permit a rest period at any time not exceeding three (3) minutes.

Section 9. The referee shall not touch the contestants during [~~the progress of~~] the match [~~show~~] except upon failure of contestants to obey his orders.

Section 10. In order to become licensed, and to maintain licensure, a referee shall annually take and pass an examination on the applicable administrative regulations, as administered by the commission. [~~Upon conclusion of the show the referee shall render his decision unless, by appropriate action of the director, provision has been previously made for a decision by judges.~~]

Section 11. The referee shall decide all questions arising during a match [~~show~~] which are not otherwise specifically covered by law or the administrative [~~rules and~~] regulations of the [~~Kentucky Athletic~~] commission.

TODD J. NEAL, Chairman

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed referees.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Sets the requirements for the activities of referees.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(Proposed Amendment)

201 KAR 27:070. Timekeeper.

RELATES TO: KRS 229.081, 229.091(1)

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: KRS 229.081 provides for the licensing of timekeepers for professional boxing, kick boxing, and elimination events [~~and wrestling matches and exhibitions~~]. KRS

229.091(1) provides that every licensee shall be subject to such administrative regulations as the commission prescribes.

Section 1. The timekeeper officiating at any show shall be governed by the law and administrative [~~rules and~~] regulations adopted by the [~~Kentucky Athletic~~] commission and shall be subject to any [~~reasonable~~] orders given by the commissioner or employee of the commission.

Section 2. The timekeeper shall seat himself outside the ring near the bell [~~gong~~] and shall take his cue to commence or take time out from the nod of the referee.

Section 3. The timekeeper shall be provided with a whistle and a stop watch approved by the commission. [~~, the accuracy of which shall have been properly examined and certified to by a reputable watchmaker before it is used.~~]

Section 4. Ten (10) seconds before the start of each round of a boxing match [~~show~~], the timekeeper shall give warning to the seconds, contestants, and officials by sounding the whistle.

Section 5. The timekeeper shall indicate the starting and ending of each round of a boxing match [~~contest~~] by striking the bell [~~gong~~] with a metal hammer.

Section 6. In the event a match [~~bout~~] terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the match [~~thereof~~].

Section 7. Ten (10) seconds prior to the end of each round, the timekeeper shall give warning to the seconds, contestants, and officials by striking a gavel three (3) times. [~~In wrestling bouts the timekeeper shall sound a gong at the starting of the bout and at the termination of each five (5) minute period during the bout. He shall call out the length of time the contestants have been wrestling sufficiently loud for the referee to hear. He shall sound a gong at the end of the rest period previously agreed upon and again at the end of the bout.~~]

TODD J. NEAL, Chairman

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 23, 1993, at 9 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 November 18, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed timekeepers.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Requirements for timekeepers.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:010. Definitions and abbreviations.

RELATES TO: KRS 319A.010 through 319A.210

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY AND FUNCTION: KRS Chapter 319A and pertinent parts of KRS 319A.070(3) require the Kentucky Occupational Therapy Board, hereinafter referred to as the board, to promulgate administrative regulations pertaining to the practice and licensure of occupational therapists and occupational therapy assistants. This administrative regulation sets forth the definition of terms and phrases which will be used by the board in enforcing and interpreting the provisions of Chapter 319A and the administrative regulations promulgated pursuant thereto.

Section 1. Definitions. In addition to the definitions in KRS 319A.010, and unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 201, Chapter 28, shall have the meanings given in this administrative regulation.

(1) "Accessory joint mobilization" means the production of accessory movements by active or passive means. Accessory movements are joint play movements and component motions. It does not include conventional, passive range of motion that a person with normal muscle and joint function could perform actively.

(2) "Act" means the Kentucky Occupational Therapy Practice Act and the provisions of KRS Chapter 319A.

(3) "Assessment of integrity and pathology of muscle, soft tissue and joint capsule" means the use of active [~~and/~~]or passive procedures or tests to identify and delineate structural deviations of the tested tissue/structure from normalcy. It does not include range of motion, and manual muscle tests which are tests to determine function or performance.

[~~(4) "Board" means the Kentucky Occupational Therapy Board~~

~~and its staff, if any.~~

~~(5) "Certified occupational therapy assistant" means a person who is certified by the A.O.T.A. as having met the educational requirements, supervised field work, and examination standards required for certification as a C.O.T.A.~~]

(4) [~~(6)~~] "Electromodalities" means the physical agents which supply or induce an electric current through the body, which make the body a part of the circuit. Some examples are transcutaneous electrical nerve stimulator ("TENS") units and functional electrical stimulation ("FES"). Use of vibration, surface electromyographic biofeedback or similar therapeutic devices are not electromodalities. An occupational therapist may perform occupational therapy with a patient while the patient is wearing a TENS unit.

(5) [~~(7)~~] "Gait training" means the instruction of proper walking patterns but does not include instruction as to transfer functions or any instruction which is considered to be a part of occupational therapy as otherwise defined in these administrative regulations or in KRS 319A.010(2).

[~~(8) "Occupational therapist" means a person licensed in accordance with the provisions of the Act and regulations to practice occupational therapy under this chapter.~~

~~(9) "Occupational therapist registered" means a person who is certified by the A.O.T.A. as having met the educational requirements, supervised field work, and examination standards required for certification as an O.T.R.~~

~~(10) "Occupational therapy" means the use of goal directed activities with individuals who are limited by physical limitations due to injury or illness, psychiatric and emotional disorders, developmental or learning disabilities, poverty and cultural differences or the aging process, in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Occupational therapy services include: teaching daily living skills; developing perceptual motor skills and sensory integrative functioning; developing play skills and prevocational and leisure capacities; designing, fabricating or applying selective orthotic and prosthetic devices or selective adaptive equipment; using specifically designed crafts and therapeutic activities to enhance functional performance; administering and interpreting tests such as manual muscle and range of motion; and consulting in the adaptation of the environment for the handicapped. These services shall be provided individually, in groups or through medical, health, educational, and social systems. The practice of occupational therapy shall not include gait training; the use or application of thermal or electromodalities; accessory joint mobilizations; assessment of integrity and pathology of muscle, soft tissue and joint capsule; and postural or biomechanical analysis.~~

~~(11) "Occupational Therapy Aide" means a person not licensed who assists in the practice of occupational therapy under the direct supervision of a licensed occupational therapist or occupational therapy assistant and who is required to have an understanding of occupational therapy but is not required to have professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.~~]

(6) [~~(12)~~] "Occupational therapy assessment" means, within the scope of occupational therapy and the practice thereof, the process of determining the need for, nature of, and estimated time of treatment; determining the needed coordination with other persons involved; and the documentation of such activities with all assessments, including screening, patient-related consultation, evaluation, and reassessment.

[~~(13) "Occupational therapy assistant" means a person licensed in accordance with the provisions of the Act and regulations to assist in the practice of occupational therapy under this chapter, and who works under the supervision of an occupational therapist.~~]

(7) [~~(14)~~](a) "Occupational therapy treatment" means in its broadest sense the use of specific activities, methods or exercises which are intended to develop, improve, restore the skills in performance areas of function, compensate for dysfunction or minimize debilitation, and also means the planning and documentation of treatment performances.

(b) Within the context of occupational therapy treatment, the following definitions shall apply:

1. "Independent and daily living skills" means the skill and performance of functions which are treated, including but not limited to: physical daily living skills (grooming and hygiene, feeding and eating, dressing, functional mobility, functional communication, object manipulation), psychological or emotional daily living skills (self-concept and self-identity, situational coping, community involvement), work (homemaking, child care/parenting, dependent care, and employment preparation), and play or leisure.

2. "Sensorimotor components" means the skill and performance of patterns of sensory and motor behavior of a person undergoing treatment with such skills, including but not limited to: neuromuscular activity (reflex integration, range of [e]motion, gross and fine motor coordination, strength and endurance), and sensory integration (sensory awareness, visual-spatial awareness, body integration).

3. "Cognitive components" means the skill and performance of the mental processes necessary to know or comprehend by understanding with such skills including but not limited to: orientation, conceptualization, and comprehension (concentration, attention span, memory), and cognitive integration (generalization, problem-solving).

4. "Psychosocial component" means the skill and performance in self-management and [,] interaction skills with such skills including but not limited to: self-expression, self-control, interaction with another person, and interaction with groups of three (3) or more people.

5. "Therapeutic adaptation" means the selecting, obtaining, fitting, and fabricating of equipment by an O.T.R./L. [~~L.O.T.R.~~] or a C.O.T.A. [~~L.O.T.A.~~]; the instruction of the person undergoing treatment, family or staff in the proper use and care of such equipment; and minor repair of such equipment; and minor modification to correct fit, position or use. This term encompasses orthotics, prosthetics, and assistive equipment, their application, instruction, and use.

6. "Prevention" means the skill and the performance of the person to minimize debilitation with such treatment focusing on energy conservation (activity restriction, work simplification, time management), joint protection and body mechanics (proper posture and body mechanics, avoidance of excessive weight bearing), positioning and coordination of daily living activities.

(8) [~~(15)~~] "Person(s)" means any individual, partnership, unincorporated organization or corporation.

(9) [~~(16)~~] "Postural or biomechanical analysis" means the evaluation of posture with respect to spinal alignment, and gait pattern for the purpose of observing or determining:

(a) Malalignment of body segments;

(b) Distorted weight bearing line;

(c) Identification of presence of lordosis, kyphosis or scoliosis; and

(d) Identification of structural back disorders, but such analysis as defined herein does not include the treatment of postural and biomechanical deficiencies by splinting, positioning, use or fitting of adaptive equipment or determinations of a person's strength or endurance.

(10) [~~(17)~~] "Rules" as used in Chapter 319A means those administrative regulations as promulgated in accordance with the provisions of Chapter 13A of the Kentucky Revised Statutes.

[~~(18) "States" means any states of the United States of America, its territories, treaty mandates or the District of Columbia.~~]

(11) [~~(19)~~] "Substantially equal" or "At least as stringent as," within the context of KRS 319A.090 and KRS 319A.140, both mean, whichever is applicable, those states which have a licensure law requiring for licensure the following:

(a) An attestment as to good moral character.

(b) Evidence of satisfactorily completing the academic requirements of an educational program in occupational therapy with such

program being accredited by the [~~Committee on Allied Health, Education, and Accreditation of the American Medical Association or approved by the~~] American Occupational Therapy Association.

(c) A minimum of six (6) months of supervised field work for an occupational therapist or a minimum of four (4) months of supervised field work for an occupational therapy assistant.

(d) Evidence that the applicant has successfully completed or passed the A.O.T.C.B. [~~National~~] certification examination for the occupational therapist registered or the certified occupational therapy assistant[~~s as prepared and administered by a duly authorized agent of the board~~].

(12) [~~(20)~~] "supervised field work" means the clinical training and direct contact with patients as a part of an A.O.T.A., O.T. or O.T.A. [~~under the direct supervision of an occupational therapist registered or in an approved~~] educational program.

(13) [~~(21)~~] "Therapeutic activities" means those activities which encompass a variety of exercises or other practices, training or regimes which are used in the normal course of occupational therapy treatment and which for the purposes of compensation by any state or federal agency or by a private health services organization or insurance company are its functional or compensatory equivalent.

(14) [~~(22)~~] "Written examination approved by a board" means the A.O.T.C.B. [~~National~~] certification examination for the occupational therapist or the [~~registered and certified~~] occupational therapy assistant[~~s as prepared by an authorized agent of the board or as certified and approved by the board~~].

Section 2. Abbreviations. As used in Title 201, Chapter 28, the following abbreviations shall have the meanings given below:

(1) "A.O.T.A." - American Occupational Therapy Association.

(2) "A.O.T.C.B." - American Occupational Therapy Certification Board.

(3) "O.T.R./L. - occupational therapist registered/licensed. [~~"L.O.T.R." - licensed occupational therapist registered.~~]

(4) "C.O.T.A./L. - certified occupational therapy assistant/licensed. [~~(3) "L.O.T.A." - licensed occupational therapy assistant.~~]

(5) [~~(4)~~] "O.T." - occupational therapy.

(6) "O.T.A." - occupational therapy assistant.

(7) [~~(5)~~] "O.T.R." - occupational therapist registered.

(8) [~~(6)~~] "C.O.T.A." - certified occupational therapy assistant.

CONSTANCE HEROLD, Chairman

APPROVED BY AGENCY: September 24, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 22, 1993, at 9 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 November 17, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed occupational therapists and certified OT assistants.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Provides definitions of terms.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:020. General provisions.

RELATES TO: KRS 319A.080, 319A.110, 319A.120, 319A.130, 319A.140

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY AND FUNCTION: KRS 319A.070(3) authorizes the board to promulgate such administrative regulations as are needed to enforce the provisions of KRS Chapter 319A [~~which makes illegal, except in certain specific instances, the practice of occupational therapy without a license and requires the licensure of all persons desiring to practice occupational therapy~~]. This administrative regulation sets forth the [~~necessity of a license and the~~] minimum requirements of the approved forms to be used in applying for a license.

Section 1. [~~License Required. Except as provided in KRS 319A.090, any individual desiring to practice as a L.O.T.R. or a L.O.T.A. in the Commonwealth of Kentucky shall, prior to practicing occupational therapy, apply to the board for a license, pay the requisite fees, and pass a written examination as approved by the board. Any person practicing occupational therapy or engaging in occupational therapy treatment without a valid active license, in good standing, and who does not qualify for an exemption under KRS 319A.090, or does not have a temporary permit as required under KRS 319A.100, shall be subject to the penalties prescribed in KRS 319A.990.~~

~~Section 2. Forms.~~] All applicants for licensure shall submit to the board the information requested, [~~on the official forms as approved by the board~~] which at a minimum shall provide for:

(1) The name, business address, if any, permanent address, and

telephone number of the applicant;

(2) A statement as to whether the applicant has been convicted of any felony offense denominated as such in any state or has been convicted during the past five (5) years of a misdemeanor or civil violation denominated as such involving an offense of moral turpitude in any state;

(3) A statement as to whether the applicant has been adjudged guilty in a civil suit in [~~of~~] a court of [~~in~~] competent jurisdiction in any state of malpractice or negligence in the practice of occupational therapy; and

(4) A statement as to whether the applicant has had a license, registration, or certification as an O.T.R. or a [~~an~~] C.O.T.A., as issued by another state, revoked, suspended or probated during the past five (5) years or if there are any complaints currently pending.

[~~Section 3. Completion of Forms. Applications for licensure shall be personally completed by the applicant and signed by the applicant under oath with an acknowledgment that the making of a material false statement is subject to punishment as perjury in the second degree as defined in KRS 523.030.~~]

CONSTANCE HEROLD, Chairman

APPROVED BY AGENCY: September 24, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 22, 1993, at 9 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 November 17, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All persons wishing to become licensed occupational therapists and certified OT assistants.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Application form must be completed.

(2) Effects on the promulgating administrative body: Sets out general provisions for licensure.

(a) Direct and indirect costs or savings: There will not be any 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: Application must be reviewed.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:030. Short-term practice of occupational therapy [~~Exemptions from licensing~~].

RELATES TO: KRS 319A.090

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY AND FUNCTION: KRS 319A.090 provides that certain persons may be exempt from the licensure requirements of KRS Chapter 319A. This administrative regulation sets forth the requirements for persons to follow who wish to engage in the practice of occupational therapy for no more than sixty (60) days in a calendar year pursuant to KRS 319A.090(5). [~~determining whether a person is exempt from obtaining a license.~~]

Section 1. (1) [~~Exemptions. The requirement for a license as a L.O.T.R. or a L.O.T.A. does not apply to a person who is:~~

~~(1) Licensed in accordance with the provisions of another law of this Commonwealth and is practicing a profession or occupation for which the person is licensed;~~

~~(2) Directly employed as an O.T.R. or a C.O.T.A. in a full time capacity by the United States Government, is solely under the direction or control of the federal organization by which an individual is employed, and is not practicing occupational therapy outside the scope of employment of the federal organization by which the individual is employed;~~

~~(3) A person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, provided the activities and services are part of the supervised course study and the person is wearing a badge or other emblem designating by title the fact that such person is a student or trainee and not a licensed occupational therapist or occupational therapy assistant;~~

~~(4) A person fulfilling the supervised field work experience requirements of KRS 319A.110 provided that such activities and services constitute a part of the experience necessary to meet the requirements of the educational program; and~~

~~(5) Any person employed as an occupational therapy aide.~~

~~Section 2. Exemption for Limited Practice. (1) The requirement for a license as an occupational therapist registered or an occupational therapy assistant does not apply to an individual who is performing occupational therapy services in the Commonwealth for no more than sixty (60) days in a calendar year in association with a L.O.T.R. provided that such person is licensed under the laws of another state which has licensure requirements at least as stringent as or substantially equal to the requirements of KRS Chapter 319A, and who meets the requirements for certification as an O.T.R. or a C.O.T.A. as established by the American Occupational Therapy Association.~~

~~(2)~~] Any individual who intends to practice occupational therapy in the Commonwealth of Kentucky, in association with a Kentucky

O.T.R./L., under the provisions of KRS 319A.090(5) [~~subsection (1) of this section~~] shall submit to the board [~~on a form approved by the board~~] all of the following information:

(a) Name, permanent address, address in Kentucky, and telephone number or number where the individual can be reached;

(b) The name, business address, and phone number of the O.T.R./L. [~~L.O.T.R.~~] with whom the individual is associated;

(c) The estimated number of calendar days the individual intends [~~intended~~] to practice in Kentucky;

(d) A copy of the current [~~individual's~~] license from the state in which the individual is licensed along with a statement from the licensing authority that the individual is in good standing;

(e) A copy of the administrative regulations or state law under which the individual is licensed; and

(f) A copy of the certificate issued by the A.O.T.C.B. [~~American Occupational Therapy Association~~] stating that the individual meets the requirements for certification as an O.T.R. or a C.O.T.A.

(2) [~~(3)~~] The [~~form and~~] information as described in subsection (1) [~~(2)~~] of this section shall be submitted to the board prior to the commencement of practice. [~~and shall be sent certified mail, return receipt requested, to the office of the board whose address is P.O. Box 23562, Lexington, Kentucky 40523. If after seven (7) working days from the delivery of the signed receipt~~] The [~~request for exemption is not disapproved, the~~] individual may commence occupational therapy practice upon notification by the board, provided that such practice does not last more than sixty (60) calendar days.

CONSTANCE HEROLD, Chairman

APPROVED BY AGENCY: September 24, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 22, 1993, at 9 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 November 17, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed occupational therapists and certified OT assistants from other states wishing to practice in Kentucky for a short period of time.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Persons must furnish required information to the board.

(2) Effects on the promulgating administrative body: Sets requirements for short-term practice.

(a) Direct and indirect costs or savings: There will not be any 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: Information must be reviewed.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:050. Special licensure requirements.

RELATES TO: KRS 319A.110, 319A.120, 319A.140

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY AND FUNCTION: KRS Chapter 319A and pertinent parts of KRS 319A.070(3) require the board to establish a procedure for the licensure of those persons who [~~either have been practicing as an O.T.R. or a C.O.T.A. and were certified by the A.O.T.A. prior to the effective date of this Act or~~] have been licensed as an O.T.R./L. or a C.O.T.A./L. by another state with licensure requirements substantially equal to, or at least as stringent as, those [~~that~~] of KRS Chapter 319A [~~the Act~~]. This administrative regulation sets forth the procedures by which such applicants shall apply for a license under the provisions of KRS Chapter 319A.

Section 1. [~~Licensure of an O.T.R. or a C.O.T.A. Any individual who was certified as an O.T.R. or a C.O.T.A. by the A.O.T.A. prior to July 15, 1986, and who desires to be licensed as an L.O.T.R. or an L.O.T.A. under the provisions of KRS 319A.140(1) must by no later than July 15, 1987, fulfill the following requirements:~~

~~(1) Submit to the board an application for licensure on a form approved by the board;~~

~~(2) Submit to the board a certified or true copy of the applicant certificate as an O.T.R. or a C.O.T.A. as issued prior to July 15, 1986, by the A.O.T.A.;~~

~~(3) Submit a statement from an authorized agent of the A.O.T.A. that the applicant is a member and is in good standing with the association.~~

~~Section 2.~~] Persons Licensed by Another State. Any individual desiring to be licensed as an O.T.R./L. [~~L.O.T.R.~~] or a C.O.T.A./L. [~~L.O.T.A.~~] under the provisions of KRS 319A.140(2) shall fulfill the following requirements:

(1) Submit to the board an application for licensure [~~on a form approved by the board~~];

(2) Submit a certified copy of the individual's current license, registration or certification from the state in which the individual has been credentialed [~~was licensed~~] along with a statement from the credentialling [~~licensing~~] authority that the individual is in good standing as either an O.T.R. or an C.O.T.A.;

(3) Submit a current copy of the administrative regulations and state law under which the individual is credentialed [~~licensed~~]; [~~and~~]

(4) [~~These persons certified by A.O.T.A. in another state as an O.T.R. or as a C.O.T.A.~~] Submit a current copy of the certificate issued by the A.O.T.C.B. [~~A.O.T.A.~~] stating that the individual meets the requirements of [a] certification as an O.T.R. or a C.O.T.A; and

(5) Submit the appropriate fee for licensure as required by 201 KAR 28:110.

[~~Section 3. Waiver of Examination. Any provision to the contrary notwithstanding in 201 KAR 28:040, any individual who qualifies for licensure under the provisions of this regulation shall be exempt from taking a written examination.~~

~~Section 4. Approval Required. Any application submitted by an applicant in accordance with these regulations shall be approved if the board believes that applicant qualifies for licensure under the provisions of KRS 319A.140(1) or (2). The board shall give notice in writing to the applicant of its decision and if approved, a license shall be issued in accordance with the provisions of 201 KAR 28:080 and upon payment to the Kentucky State Treasurer of the appropriate licensing fee.~~]

CONSTANCE HEROLD, Chairman

APPROVED BY AGENCY: September 24, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 22, 1993, at 9 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 November 17, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All persons requesting licensure or certification who are credentialed in another state.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Applications must be filed.

(2) Effects on the promulgating administrative body: Requirements for persons holding licenses in another state.

(a) Direct and indirect costs or savings: There will not be any 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: Applications must be reviewed.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:060. Regular licensure requirements/temporary permits of O.T.R./L.s and C.O.T.A.s [~~L.O.T.R.s and L.O.T.A.s~~].

RELATES TO: KRS 319A.100, 319A.110, 319A.130

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY AND FUNCTION: KRS Chapter 319A and pertinent parts of KRS 319A.070(3) require the board to establish a procedure for the licensure of persons who wish to practice in this state as an O.T.R./L. [~~occupational therapist registered~~] and a C.O.T.A./L. [~~a occupational therapy assistant~~]. This administrative regulation sets forth the procedure by which such applicants shall apply for a license under the provisions of Chapter 319A, and the procedure for the issuance of a temporary permit by the board to an applicant.

Section 1. Licensure of an O.T.R./L. Applicants [~~L.O.T.R.s. (1) All individuals who do not qualify~~] for licensure as an O.T.R./L. [~~L.O.T.R. under the provisions of 201 KAR 28:050~~] shall[~~, in order to be licensed as a L.O.T.R.,~~] meet [~~all of~~] the following requirements:

(1) [~~(a)~~] Submit a completed [~~an~~] application [~~on a form approved by the board~~];

(2) [~~(b)~~] Submit a certified copy of the applicant's transcript indicating that the applicant for an O.T.R./L. [~~L.O.T.R.~~] has a baccalaureate degree, postbaccalaureate certificate, or master's degree [~~in occupational therapy~~] from an occupational therapy program accredited by the A.O.T.A. or has successfully completed the A.O.T.A. Career Mobility Program; [~~Committee on Allied Health, Education, and Accreditation of the American Medical Association and approved by the American Occupational Therapy Association.~~

~~(c) Submit a statement by the applicant's supervisor in the applicant's educational program that the applicant has successfully completed a minimum of six (6) months of supervised field work.~~

~~(d) Pass a written examination approved by the board.~~

~~(e) Submit a statement of recommendation from two (2) L.O.T.R.s in this state or two (2) O.T.R.s as licensed in states with licensing requirements as stringent as those of this state attesting to the applicant's good moral character.~~]

(3) Submit a current copy of the certificate issued by the A.O.T.C.B. stating that the applicant meets the requirements of certification as an O.T.R.; and

(4) Submit the appropriate fee for licensure as required by 201 KAR 28:110.

[~~(2) An applicant for licensure as an O.T.R. may in lieu of submitting a transcript as set forth in subsection (1)(b) of this section submit to the board a certified copy of the applicant's certification by the A.O.T.A. as an occupational therapy assistant (C.O.T.A.) demonstrating that the applicant has been practicing as a certified occupational therapy assistant for four (4) years.~~]

Section 2. Licensure of C.O.T.A./L.s. Applicants [~~L.O.T.A.s. All~~

~~individuals who do not qualify~~] for licensure as a C.O.T.A./L. [~~L.O.T.A. under the provisions of 201 KAR 28:050~~] shall[~~, in order to be licensed as a L.O.T.A.,~~] meet [~~all of~~] the following requirements:

(1) Submit a completed [~~an~~] application [~~on a form approved by the board~~];

(2) Submit a certified copy of the applicant's transcript indicating that the applicant [~~for a L.O.T.A.~~] has [~~successfully~~] graduated from an educational program approved by the A.O.T.A.; [~~American Occupational Therapy Association;~~

~~(3) Submit a statement by the applicant's supervisor in the education program that the applicant has successfully completed a minimum of four (4) months of supervised field work.~~

~~(4) Pass a written examination approved by the board.~~

~~(5) Submit a statement of recommendation from two (2) L.O.T.R.s licensed in this state or two (2) O.T.R.s as licensed in states with licensing requirements as stringent as those of this state attesting to the applicant's good moral character.~~]

(3) Submit a current copy of the certificate issued by the A.O.T.C.B. stating that the applicant meets the requirements of certification as a C.O.T.A.; and

(4) Submit the appropriate fee for licensure as required by 201 KAR 28:110.

Section 3. Temporary Permit. (1) A temporary permit may be granted to applicants who are eligible to sit for the A.O.T.C.B. certification examination for either the O.T. or the O.T.A.

(2) Upon submission of the application [~~on a form approved by the board~~] as provided in Section 1 or 2 of this administrative regulation, the board upon payment of the initial application fee may issue to the applicant a temporary permit which shall allow the applicant for licensure to practice occupational therapy under the supervision of an O.T.R./L. [~~L.O.T.R.~~] in accordance with the applicable provisions of 201 KAR 28:130.

(3) Applicants for a temporary permit shall meet the following requirements:

(a) Submit a completed application form;

(b) Submit official verification of the completion of educational requirements and field work requirements from a program approved by the A.O.T.A.; and

(c) Submit a letter from an O.T.R./L. who is currently licensed and in good standing in Kentucky, indicating that the O.T.R./L. is willing to assume responsibility for the supervision of the applicant.

[~~(2) Temporary permits shall be valid until the application for licensure is approved or denied by the board but shall in any event expire thirty (30) days following the first examination offered (whether taken or not) subsequent to the filing of the application for licensure.~~

~~(3) No more than one (1) temporary permit shall be granted per applicant regardless of the number of times an applicant may file for licensure as a L.O.T.R. or L.O.T.A.~~

~~Section 4. Approval Required. Any application submitted by an applicant in accordance with these regulations shall be approved if the board believes that applicant qualifies for licensure under the provisions of KRS 319A.110. The board shall give notice in writing to the applicant of its decision and if approved, a license shall be issued in accordance with the provisions of 201 KAR 28:080 and upon payment to the Kentucky State Treasurer of the appropriate licensing fee.~~]

CONSTANCE HEROLD, Chairman

APPROVED BY AGENCY: September 24, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 22, 1993, at 9 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 November 17, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All persons wishing to become licensed occupational therapists and certified OT assistants.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Applications must be completed.

(2) Effects on the promulgating administrative body: Requirements for regular licensure or temporary permission to practice.

(a) Direct and indirect costs or savings: There will not be any 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: Applications must be reviewed.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:070. Examination.

RELATES TO: KRS 319A.120

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.120(4)

NECESSITY AND FUNCTION: KRS Chapter 319A[~~, in pertinent part,~~] requires the board to promulgate administrative [~~establish~~] regulations establishing the requirements for an examination to be taken by an applicant for licensure [~~for the taking of an examination by an applicant for licensure~~]. This administrative regulation establishes those requirements [~~describes the procedure by which an applicant shall fulfill the requirements and necessity for taking of an examina-~~

~~tion~~].

Section 1. [~~Necessity of Examination. (1) Except as provided in 201 KAR 28:040 and 201 KAR 28:050, any~~] An applicant for licensure [~~as a L.O.T.R. or a L.O.T.A.~~] shall take the appropriate [~~an~~] examination as administered by the A.O.T.C.B. [~~a duly authorized agent of the board~~] and shall receive a [~~minimum~~] passing score[~~, as established by the board,~~] on the [~~such~~] examination [~~in order to qualify for licensure~~].

Section 2. [~~(2)~~] It shall be the responsibility of the applicant to make arrangements to:

(1) Sit for the examination;

(2) Pay the requisite examination fee; and

(3) Ensure that the board receives evidence of successful completion for the examination. [~~to ensure that the board receives the result of the examination.~~

~~(3) An applicant may retake the examination by sitting for the examination, paying the requisite fee, and ensuring the forwarding of the examination results to the board. An applicant may not take an exam more than two (2) times every two (2) years.~~

~~Section 2. Review of Tests. Applicants for licensure may review the results of the examination as administered by the duly authorized agent of the board at the office of the board by requesting such a review in writing. Requests shall be mailed to P.O. Box 23562, Lexington, Kentucky 40523. Upon receipt of the request, the executive secretary or the secretary of the board shall arrange for a mutually convenient time not to exceed ten (10) calendar days from the date of the request for the applicant to review the examination, the results, provided a copy has been obtained by applicant from the authorized agent of the board, and, if in the possession of the board, the graded examination paper.~~]

CONSTANCE HEROLD, Chairman

APPROVED BY AGENCY: September 24, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 22, 1993, at 9 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 November 17, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All persons wishing to become licensed occupational therapists and certified OT assistants.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Examination must be taken.

(2) Effects on the promulgating administrative body: Requirements for examination.

(a) Direct and indirect costs or savings: There will not be any 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: Examination scores must be reviewed.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:090. Renewals.

RELATES TO: KRS 319A.160

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.160(1)

NECESSITY AND FUNCTION: KRS Chapter 319A provides[~~, in pertinent part,~~] that the board shall promulgate administrative [~~establish~~] regulations establishing procedures for [~~the~~] annual renewal of licenses. This administrative regulation establishes those procedures. [~~provides for a procedure by which such licenses shall be renewed.~~]

Section 1. Persons licensed as an O.T.R./L. or a C.O.T.A./L. shall annually, before July 1, pay to the board a renewal fee as set forth in 201 KAR 28:110 for the renewal of the license. Licenses not renewed before July 1 of each year shall expire. [~~General Provisions. In order to continue the practice of occupational therapy as a L.O.T.R. or a L.O.T.A., each license as issued by the board must be annually renewed by the board.~~]

Section 2. A sixty (60) day grace period shall be allowed beginning July 1, during which time individuals may renew their licenses upon payment of the late renewal fee as set forth in 201 KAR 28:110. Licenses not renewed before August 30, shall terminate based on the failure of the individual to renew in a timely manner. Upon termination, the licensee is no longer eligible to practice occupational therapy in the Commonwealth and shall be sent notice at the last known address available to the board of termination, and to cease and desist practice. [~~Requisites for Renewal. To qualify for a renewal of licenses previously issued by the board, the license holder, sixty (60) calendar days prior to the expiration of the license, shall comply with all of the following requirements:~~

~~(1) File with the board a properly completed application for renewal on a form approved by the board and mail the application to the office of the board whose address is P.O. Box 23562, Lexington, Kentucky 40523.~~

~~(a) An application for renewal shall be deemed timely received if~~

~~the envelope contains a properly completed application for renewal and bears a postmark indicating the application was mailed at least sixty (60) calendar days prior to the expiration of the license.~~

~~(b) Failure to timely file an application or to properly complete the application shall result in the rejection of the application and may submit the license holder to the provisions of 201 KAR 28:100.~~

~~(2) File with the application a check payable to the board in the amount of fifty (50) dollars for renewal of the license.~~]

Section 3. After the sixty (60) day grace period, individuals with a terminated license may have their licenses reinstated upon:

(1) Payment of the late renewal fee plus a reinstatement fee as set forth by 201 KAR 28:110;

(2) Documentation of employment from the time of termination until the present;

(3) Documentation that licensure, certification, or registration in other states are in good standing; and

(4) Documentation of current certification by the A.O.T.C.B. [~~Issuance of Renewal License. Upon receipt of a timely filed, properly completed application and upon presentment and honoring of the tendered check, the board, after a review of the application for renewal and the requirements of KRS 319A.190, shall notify the applicant within sixty (60) calendar days of the receipt of the application whether the license will be renewed.~~

~~Section 4. Denial of Renewals. (1) In the event the board, for whatever reason, denies a timely application for renewal, the board shall notify the licensee, in writing, and shall send such notice, certified mail, return receipt requested, to the address given by the applicant in the application for renewal. The notice of denial shall state the reasons for the denial of the application of renewal, the right of the license holder to request a hearing within thirty (30) calendar days from receipt of the notice, and a warning that if a hearing is not requested, the license is subject to being revoked.~~

~~(2) If after thirty (30) calendar days from the return of the certified receipt notifying the applicant that the application for renewal has been denied, a request for a hearing is not timely filed, the board shall issue an order, signed by the chairman, revoking the license. A copy of the order shall be mailed to the license holder and to his employer, if any.~~

~~(3) If a hearing is requested, the license holder may continue to practice as a L.O.T.R. or a L.O.T.A. until a final order of the board is entered disposing the matter.~~

~~(4) The provisions of this regulation shall not apply to the denial of an application for late renewal as provided in 201 KAR 28:100.~~

~~Section 5. Suspended Licenses. Suspended licenses or licenses on probation shall be subject to the provisions of this regulation, but the issuance of a renewal license during the period of suspension shall not permit the license holder to practice occupational therapy as a L.O.T.R. or a L.O.T.A. until such time as the terms of the suspension have been satisfied or the period of probation has expired or the license has been reinstated.~~]

CONSTANCE HEROLD, Chairman

APPROVED BY AGENCY: September 24, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

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REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed occupational therapists and certified OT assistants.

(a) Direct and indirect costs or savings to those affected: There are no costs contained in this administrative regulation.

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: Renewal forms must be sent in.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will not be any 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: Renewal forms must be processed.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:110. Fees.

RELATES TO: KRS 319A.170

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.170

NECESSITY AND FUNCTION: KRS Chapter 319A provides[~~, in pertinent part,~~] for the assessment of fees for the application and [~~,~~] licensure of occupational therapists registered and certified occupational therapy assistants, and other fees [~~as~~] deemed appropriate by the board. This administrative regulation establishes those [~~provides for such~~] fees.

Section 1. Original License Fees. The following [~~are the~~] fees shall be paid in connection with all types of occupational therapy licenses: [~~, payable to the Kentucky State Treasurer, which shall be collected by the board:~~]

(1) The fee for initial licensure as [~~of~~] an O.T.R./L. shall [~~occupational therapist registered is to~~] be fifty (50) dollars; and

(2) The fee for initial licensure as a C.O.T.A./L. [~~of an occupational therapy assistant~~] shall be thirty-five (35) dollars.

[~~(3) Applications for renewal shall be fifty (50) dollars.~~

~~(4) Applications for late renewal shall be seventy-five (75) dollars.~~]

Section 2. Renewal Fees and Penalties. The following fees shall be paid in connection with licensure renewals and late renewal penalties:

(1) The renewal fee for licensure as an O.T.R./L. shall be fifty (50) dollars;

(2) The renewal fee for licensure as a C.O.T.A./L. shall be thirty-five (35) dollars;

(3) The late renewal fee, including penalty, for late renewal during the grace period extending from July 1 to August 29 shall be seventy-five (75) dollars; and

(4) The reinstatement fee shall be seventy-five (75) dollars. [~~Miscellaneous Costs. The following shall be the costs assigned by the board for the following activities:~~

~~(1) Issuance of a duplicate license - five (5) dollars.~~

~~(2) Photocopying of any material not otherwise privileged and in the custody of the board - twenty five (25) cents per page.~~]

Section 3. Duplicate License Fee. The fee for a duplicate license shall be ten (10) dollars.

CONSTANCE HEROLD, Chairman

APPROVED BY AGENCY: September 24, 1993

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REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed occupational therapists and certified OT assistants.

(a) Direct and indirect costs or savings to those affected: There are no costs increased in this administrative regulation.

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: Fees are paid in conjunction with application or renewal.

(2) Effects on the promulgating administrative body: Sets forth all fees charged by the board.

(a) Direct and indirect costs or savings: There will not be any 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: Reporting requirements will be the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:120. Applications by foreign trained O.T.R.s and O.T.A.s.

RELATES TO: KRS 319A.180

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY AND FUNCTION: KRS Chapter 319A[~~, in pertinent part,~~] provides for the licensure of foreign trained occupational therapists [~~registered~~] and occupational therapy assistants [~~who are either licensed in a country other than the United States or who have completed their education requirements and training at an educational institution located in a country other than the United States~~]. This administrative regulation provides for licensure of those [~~such~~] applicants.

Section 1. Scope. The provisions of this administrative regulation shall apply to all applicants for licensure as an O.T.R./L. [~~L.O.T.R.~~] or as a C.O.T.A/L. [~~L.O.T.A.~~] who have been [~~are:~~

~~(1) Of foreign nationality; or~~

~~(2) Educated or~~] trained at an educational facility in a country or nation other than the United States. [~~This regulation also applies to any citizen of the United States who received training in occupational therapy at an educational facility in a country or nation other than the United States.~~]

Section 2. Requirements for Licensure. [~~(1)~~] All applicants applying for a license under this administrative regulation shall meet all of the requirements set forth in 201 KAR 28:060. Additionally, they shall provide evidence of legal permission, as furnished by the U.S. Department of Immigration and Naturalization, for employment in the United States. This documentation may take any of the following forms:

(1) I-94 form;

(2) Alien registration card;

(3) Temporary resident card; or

(4) A stamp on their passport. [~~section shall:~~

~~(a) Complete an application on a form approved by the board.~~

~~(b) Present proof of a good moral character as set forth in 201 KAR 28:060.~~

~~(c) Present proof of having completed an educational program substantially similar to the requirements of 201 KAR 28:060.~~

~~(d) If English is not the native language of the applicant, submit the results of a Test of English as a Foreign Language (TOEFL) with a score of at least 550 or the Test of Spoken English (TSE) with a total score of at least 220.~~

~~(e) Provide evidence of legal permission as furnished by the U.S.~~

~~Department of Immigration for employment in the United States or submit evidence, such as a birth certificate or certificate of naturalization, that the applicant is a United States citizen.~~

~~(f) Successfully pass an examination approved by the board as required under 201 KAR 28:070.~~]

Section 3. [~~(2)~~] Any applicant who files for a license under the provisions of this administrative regulation may satisfy the educational requirement of 201 KAR 28:060, Section 2, [~~subsection 1(c) of this section~~] by:

(1) Submitting a current copy of their A.O.T.C.B. certificate; [~~(a) Submitting with the application a certified copy of the applicant's degree in an education program approved by the World Federation of Occupational Therapists;~~] or

(2) Submitting a letter from the A.O.T.C.B. documenting eligibility to sit for the A.O.T.C.B. certification examination.

[~~(b) Submitting a certified copy of a transcript and a certified copy of a degree in an educational program having the minimum educational requirements required for certification as an O.T.R. or a C.O.T.A. by the A.O.T.A. Applications filed under this provision shall be reviewed by the board for comparison to the educational program approved by the A.O.T.A.~~

~~(3) Issuance of licenses and temporary permits shall be in accordance with the provisions of 201 KAR 28:080 and 201 KAR 28:060, Section 3. Once licensed, licenses issued pursuant to this regulation shall be subject to all provisions of Chapter 28 and KRS Chapter 319A.~~

~~Section 3. Exemptions. Any applicant who satisfies the criteria of KRS 319A.140 may, in lieu of applying for a license under this regulation, apply for a license under the provisions of 201 KAR 28:050.~~]

CONSTANCE HEROLD, Chairman

APPROVED BY AGENCY: September 24, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

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REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All foreign trained occupational therapists and certified OT assistants.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Documentation must be furnished.

(2) Effects on the promulgating administrative body: Requirements for persons trained outside of the United States.

(a) Direct and indirect costs or savings: There will not be any 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: Documentation must be reviewed.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:130. Supervision of occupational therapy assistants, [~~and~~] occupational therapy aides, occupational therapy students, and temporary permit holders.

RELATES TO: KRS 319A.010(4), (5), 319A.100

STATUTORY AUTHORITY: KRS 319A.070(3)

NECESSITY AND FUNCTION: KRS Chapter 319A provides[~~, in pertinent part,~~] that a C.O.T.A./L., [~~L.O.T.A.,~~] an occupational therapy aide or an individual issued a temporary permit may only practice occupational therapy under [~~the~~] supervision [~~of a L.O.T.R~~]. This administrative regulation establishes the [~~sets forth the terms and~~] requirements of such supervision. General policy statement for supervision: The O.T.R./L. shall have the ultimate responsibility for occupational therapy treatment outcomes. Supervision shall be a shared responsibility. The supervising O.T.R./L. shall have a legal and ethical responsibility to provide supervision and the supervisee shall have a legal and ethical responsibility to obtain supervision. Supervision by the O.T.R./L. of the supervisee's provision of occupational therapy services shall always be required, even when the supervisee is experienced and highly skilled in a particular practice area.

Section 1. Supervision of Licensed Certified Occupational Therapy Assistants. (1) C.O.T.A./L.s [~~All L.O.T.A.s~~] shall assist in the practice of occupational therapy only under the supervision of an O.T.R./L. [~~L.O.T.R.~~]

(2) Supervision by an O.T.R./L. of a C.O.T.A./L. [~~L.O.T.R. of a L.O.T.A.~~] shall consist of no less than three (3) direct contact [~~at least eight (8)~~] hours per week [~~month~~] of [~~one to one~~] supervision for each occupational therapy assistant; the amount of supervision time shall be prorated for the part-time C.O.T.A./L. Supervision shall be an interactive process between the O.T.R./L. and the C.O.T.A./L. It shall be more than a paper review or cosignature.

(a) Assessment/reassessment. Patient evaluation is the responsibility of the O.T.R./L. The C.O.T.A./L. may contribute to the evaluation process by gathering data, administering structured tests, and reporting observations. The C.O.T.A./L. may not evaluate independently or initiate treatment prior to the O.T.R./L.'s evaluation.

(b) Treatment planning. The O.T.R./L. shall take primary responsibility for the treatment planning. The C.O.T.A./L. may contribute to the treatment planning as directed by the O.T.R./L.

(c) Intervention. The O.T.R./L. shall be responsible for the outcome of the occupational therapy intervention and for assigning appropriate intervention components to the C.O.T.A./L.

(d) Discontinuation of intervention. The O.T.R./L. shall be responsible for the outcome of occupational therapy. The C.O.T.A./L. may contribute to the discontinuation of intervention as directed by the O.T.R./L. [~~with such supervision including:~~

~~(a) The evaluation of each patient by a L.O.T.R. prior to treatment by the L.O.T.A.~~

~~(b) A treatment plan written by the supervising L.O.T.R. outlining the elements which have been delegated to the L.O.T.A.~~

~~(c) The monitoring of a patient's progress by the L.O.T.R.~~

~~(d) Evaluation of the treatment plan and determination of treatment termination by the L.O.T.R.~~]

(3) The O.T.R./L. [~~L.O.T.R.~~] shall assign and [~~ensure that~~] the C.O.T.A./L. shall accept [~~L.O.T.A. is assigned~~] only those duties and responsibilities for which the C.O.T.A./L. [~~assistant~~] has been specifically trained and which the C.O.T.A./L. [~~L.O.T.A.~~] is qualified to perform.

(4) In extenuating circumstances, when the O.T.R./L. is absent from the job, the C.O.T.A./L. may continue carrying out established programs for up to thirty (30) calendar days under agency supervision while appropriate occupational therapy supervision is sought. It shall be the responsibility of the C.O.T.A./L. to notify the board of these circumstances and to submit, in writing, a plan for resolution of the situation. [~~The provisions as enumerated in subsections (1), (2), and (3) shall apply to any individual holding a temporary permit as issued by the board.~~]

Section 2. Supervision of Occupational Therapy Aides. (1) Occupational therapy aides shall assist in the practice of occupational therapy only under the direct supervision of an O.T.R./L. or a C.O.T.A./L. [~~A L.O.T.R. shall perform the following functions with respect to an occupational therapy aide who meets the qualifications set forth in KRS 319A.010(5) and 201 KAR 28:010(11):~~

~~(a) Evaluation of each patient by the L.O.T.R.~~

~~(b) Determination of the treatment plan with delegation of such treatment set forth in writing.~~

~~(c) Availability at all times on the premises for purposes of rendering advice, instruction, and assistance to the occupational therapy aide.~~

~~(d) Monitoring of patient progress, change of treatment plan as indicated, and termination of the treatment with written report indicating evaluation data and progress made.~~]

(2) The supervising O.T.R./L. or C.O.T.A./L. shall be in direct verbal and visual contact with the supervisee, at all times, for all treatment-related activities. [~~Care rendered by an occupational therapy aide shall not be held out as and shall not be charged as occupational therapy unless on premises supervision is provided by the L.O.T.R.~~]

Section 3. Occupational Therapy Students. The occupational therapy student is an unlicensed person. However, in accordance with KRS 319A.090(3), students enrolled in an A.O.T.A. occupational therapy or occupational therapy assistant educational program, when participating in supervised fieldwork education experiences, may, at the discretion of the supervising O.T.R./L. or C.O.T.A./L., be assigned duties or functions commensurate with their education and training.

Section 4. Temporary Permits. (1) Holders of temporary permits shall be supervised by an O.T.R./L. The O.T.R./L. shall be responsible for all occupational therapy treatment outcomes.

(2) The supervising O.T.R./L. shall be available at all times to provide supervision.

(3) Face-to-face supervision shall be provided for at least thirty (30) minutes daily.

(4) The temporary permit holder who is applying for a license as an O.T.R./L. may perform all of the functions of the O.T.R./L., with the exception of supervision.

(5) A temporary permit holder who is applying for a license as a C.O.T.A./L. may perform all of the functions of a C.O.T.A./L., with the exception of supervision. [~~Any individual issued a temporary permit under the provisions of 201 KAR 28:060, Section 3, shall be supervised in accordance with the requirements of Section 1 of this regulation.~~]

CONSTANCE HEROLD, Chairman

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FILED WITH LRC: October 14, 1993 at 9 a.m.

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REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed occupational therapists and certified OT assistants providing supervision, all OT aides, and all persons with temporary permits.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Supervision requirements set forth.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and

applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:140. Unprofessional conduct and code of ethics. [~~Grounds for denial, refusal to renew, suspension, revocation, or imposition of probationary conditions.~~]

RELATES TO: KRS 319A.160, 319A.190
STATUTORY AUTHORITY: KRS 319A.070(3), 319A.190(1), (6)
NECESSITY AND FUNCTION: KRS Chapter 319A provides[~~, in part,~~] for the denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license for various violations of the Act and [~~or~~] violation of the administrative regulations promulgated pursuant thereto. This administrative regulation sets forth a description of unprofessional conduct and also a code of ethics. [~~describes the type of conduct which may result in the denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license and the application of appropriate sanctions and the procedure for reinstatement of a license.~~]

Section 1. [~~Grounds for Denial, Refusal to Renew Suspension, Revocation, or Imposition of Probationary Conditions. (1) The board may deny, refuse to renew, suspend, revoke, or impose probationary conditions where the licensee or applicant for licensure has engaged in unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct shall include:~~

~~(a) Engaging in fraud, misrepresentation or concealment of material facts in the obtaining of the license.~~

~~(b) Engaging in unprofessional conduct as defined in Section 1(2) of this regulation or violating the code of ethics as adopted and published by the board in Section 1(3) of this regulation.~~

~~(c) Being convicted of a felony offense in any court if the act for which the licensee or applicant for licensure was convicted is determined by the board to have a direct bearing on whether the licensee or applicant for licensure should be entrusted to serve the public in the capacity of a L.O.T.R. or a L.O.T.A.~~

~~(d) Violating any lawful order or regulation rendered or promulgated by the board.~~

~~(e) Violating any provision of KRS Chapter 319A.~~

~~(2)~~] Unprofessional conduct in the practice of occupational therapy shall include, but shall not be limited to, the following acts: [~~as used in 201 KAR 28:140 Section 1(1)(b) is defined as violation of any of the following provisions:~~]

(1) [~~(a)~~] An O.T.R./L. or a C.O.T.A./L. shall not delegate to an unlicensed employee or person [~~under his or her control or supervision~~] a service which requires the skill, knowledge or judgment of an O.T.R./L. or a C.O.T.A./L.;

(2) An O.T.R./L. shall address goals identified in the evaluation and treatment plan;

(3) [~~(b)~~] An O.T.R./L. or an O.T.R./L. shall inform the referring source when any requested occupational therapy service [~~treatment procedure~~] is [~~inadvisable or~~] contraindicated, in the professional judgment of the licensee, and may [~~shall~~] refuse to carry out that request; [~~the orders of a referring practitioner when the requested treatment is inadvisable or contraindicated.~~]

(4) [~~(c)~~] An O.T.R./L. or a C.O.T.A./L. shall not continue occupational therapy services [~~treatment~~] beyond the point of possible benefit to the patient or [~~by~~] treat[~~ing~~] the patient more frequently than necessary to obtain the maximum therapeutic effect;

(5) [~~(d)~~] An O.T.R./L. or a C.O.T.A./L. shall not directly or indirectly request, receive or participate in the dividing, transferring, assigning, rebating or refunding of an unearned fee or [~~nor shall an O.T.R./L. or a C.O.T.A./L.~~] profit by means of a credit or other valuable consideration as an unearned commission, discount or gratuity in connection with the furnishing of occupational therapy services; [~~assessment or treatment.~~

~~(e) An O.T.R./L. or a C.O.T.A./L. shall not exercise influence on patients to purchase equipment produced or supplied by a company in which the L.O.T.R. or the L.O.T.A. owns stock or has any other direct or indirect financial interest.~~]

(6) [~~(f)~~] An O.T.R./L. or a C.O.T.R./L. shall not permit another person to use his [~~or her~~] license for any purpose;

(7) [~~(g)~~] An O.T.R./L. or a C.O.T.R./L. shall not abuse alcohol or any controlled substance while engaged [~~obtain, possess, or attempt to obtain or possess a controlled substance without lawful authority, nor shall an O.T.R./L. or a C.O.T.R./L. sell, prescribe, give away, or administer controlled substances~~] in the practice of occupational therapy;

(8) [~~(h)~~] An O.T.R./L. or a C.O.T.R./L. shall not verbally or physically abuse a patient;

(9) [~~(i)~~] An O.T.R./L. or a C.O.T.R./L. shall not engage in false or misleading advertising, betrayal of a professional confidence, or falsification of patients' records;

(10) [~~(j)~~] An O.T.R./L. or a C.O.T.R./L. shall report a change of name or address to the board within thirty (30) days after a change of name or address occurs;

[~~(k) An O.T.R./L. or a C.O.T.R./L. shall not submit a false report of continuing education or fail to submit the annual report on continuing education.~~]

(11) [~~(l)~~] An O.T.R./L. or a C.O.T.A./L. shall notify the board within thirty (30) days after being adjudged guilty of malpractice by a court of competent jurisdiction; [~~occurrence of any judgment or settlement of a malpractice claim or action.~~]

(12) [~~(m)~~] An O.T.R./L. or a C.O.T.A./L. shall comply with any subpoena issued by the board; and

(13) [~~(n)~~] An O.T.R./L. or a C.O.T.A./L. shall report to the board any violation of the Act or these administrative regulations.

Section 2. The following code of ethics consists of general guidelines for occupational therapy practice. The code of ethics shall be as follows:

(1) [~~(3) Unethical conduct as used in 201 KAR 28:140 Section 1(1)(b) is defined as violation of any of the following provisions:~~

~~(a)~~] An O.T.R./L. or a C.O.T.A./L. shall be [~~is~~] responsible for providing services without regard to race, creed, national origin, sex, age, handicap, disease, entity, social status, financial status or religious affiliation;

(2) [~~(b)~~] An O.T.R./L. or a C.O.T.A./L. shall inform those people served of the nature and potential outcomes of treatment and shall respect the right of potential recipients of service to refuse treatment;

(3) [~~(c)~~] An O.T.R./L. or a C.O.T.A./L. shall inform subjects involved in education or research activities of the potential outcome of those activities;

(4) [~~(d)~~] An O.T.R./L. or C.O.T.A./L. shall include those people served in the treatment planning process;

(5) [~~(e)~~] An O.T.R./L. or a C.O.T.A./L. shall maintain goal-directed and objective relationships with all people served;

(6) [~~(f)~~] An O.T.R./L. or a C.O.T.A./L. shall protect the confidential nature of information gained from educational, practice, and investigational activities unless sharing such information is necessary to protect the well-being of a third party;

(7) [~~(g)~~] An O.T.R./L. or a C.O.T.A./L. shall take all reasonable precautions to avoid harm to the recipient of services or detriment to the recipient's property;

(8) [~~(h)~~] An O.T.R./L. or a C.O.T.A./L. shall establish fees, based on cost analysis, that are commensurate with services rendered;

(9) [~~(i)~~] An O.T.R./L. or a C.O.T.A./L. shall hold the appropriate credentials for providing service;

(10) [(j)] An O.T.R./L. or a C.O.T.A./L. shall function within the parameters of his or her competence and the standards of the profession;

(11) An O.T.R./L. or a C.O.T.A./L. shall actively maintain high standards of professional competence;

(12) [(k)] An O.T.R./L. or a C.O.T.A./L. shall refer clients to other service providers or consult with other service providers when additional knowledge and expertise is required;

(13) [(l)] An O.T.R./L. or a C.O.T.A./L. shall be acquainted with applicable local, state, federal, and institutional rules and shall function accordingly;

(14) [(m)] An O.T.R./L. or a C.O.T.A./L. shall inform employers, employees and colleagues about those laws and policies that apply to the profession of occupational therapy;

(15) [(n)] An O.T.R./L. or a C.O.T.A./L. shall require those whom they supervise to adhere to ethical standards of conduct;

(16) [(o)] An O.T.R./L. or a C.O.T.A./L. shall accurately record and report client information;

(17) [(p)] An O.T.R./L. or a C.O.T.A./L. shall accurately represent his or her competence and training to the public;

(18) [(q)] An O.T.R./L. or a C.O.T.A./L. shall not use or participate in the use of any form of communication that contains a false, fraudulent, deceptive, or unfair statement or claim;

(19) [(r)] An O.T.R./L. or a C.O.T.A./L. shall report any illegal, incompetent or unethical practice to the appropriate authority;

(20) [(s)] An O.T.R./L. or a C.O.T.A./L. shall not disclose privileged information when participating in reviews of peers, programs, or systems;

(21) [(t)] An O.T.R./L. or a C.O.T.A./L. who employs or supervises colleagues shall provide appropriate supervision; and

(22) [(u)] An O.T.R./L. or a C.O.T.A./L. shall recognize the contributions of colleagues when disseminating professional information.

~~[Section 2. Sanctions. (1) After a hearing, as provided under 201 KAR 28:150 and 201 KAR 28:160, the board may, in its discretion, revoke or suspend a license for such period of time as the board believes to be warranted by the facts and circumstances of the violation. Such findings and determinations shall be rendered in accordance with the provisions of 201 KAR 28:160.~~

~~(2) After a hearing, as provided under 201 KAR 28:150 and 201 KAR 28:160, the board may, in lieu of revoking or suspending a license, place the licensee on probation for a period not to exceed one (1) year, except that if the adjudication of the violation is the second such adjudication within five (5) years, the licensee shall not be entitled to probation.~~

~~Section 3. Reinstatement. (1) A suspended license shall be reinstated upon the filing of an application for reinstatement by the licensee and a determination by the board that the period of suspension has expired and, if applicable, that the licensee has renewed his license in accordance with the provisions of 201 KAR 28:090.~~

~~(2)(a) A revoked license shall only be reinstated if the applicant has fully complied with all of the provisions of 201 KAR 28:060.~~

~~(b) An individual whose license has been revoked may not apply for reinstatement under the provisions of this regulation for a period of one (1) year from the entry of the order of the board or, if the decision is appealed, from the date the appeal is finally resolved or an endorsement of finality is entered by the appropriate appellate court. Hearings upon application for reinstatement shall be held in accordance with the provisions of 201 KAR 28:160.]~~

CONSTANCE HEROLD, Chairman

APPROVED BY AGENCY: September 24, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 22, 1993, at 9 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 November 17, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed occupational therapists and certified OT assistants.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Violations should be reported.

(2) Effects on the promulgating administrative body: Sets up code of ethics and unethical conduct.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:150. Disciplinary proceedings.

RELATES TO: KRS 319A.190

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.190

NECESSITY AND FUNCTION: KRS Chapter 319A authorizes ~~[, in pertinent parts, requires]~~ the board to promulgate administrative regulations establishing a procedure by which the board will institute actions against an O.T.R./L. ~~[L.O.T.R.]~~ or a C.O.T.A./L. ~~[L.O.T.A.]~~ for violation of the Act, and the administrative regulations promulgated

thereto or for professional misconduct. This administrative regulation sets forth the procedure and process by which such complaints shall be instituted.

Section 1. Definitions. The following definitions, in conjunction with the provisions of 201 KAR 28:010, shall apply to this administrative regulation as well as 201 KAR 28:160:

(1) "Chairman" means the chairman of the board.

(2) "Investigative assistant" means an appropriately licensed 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. [~~"Committee" means the L.O.T.R. or the L.O.T.A. review advisory committee appointed by the board, unless otherwise indicated from the context.~~]

(3) "Complaint" [~~"Board" means the Kentucky Occupational Therapy Board.~~

~~(4) "Grievance"~~] means any written allegation [~~in whatever form~~] alleging misconduct which might constitute a violation of KRS Chapter 319A or the administrative regulations promulgated thereunder by a licensed individual or other person [~~L.O.T.R. or a L.O.T.A~~].

(4) [~~(5)~~] "Charge" means a specific allegation contained in a formal complaint [~~any document~~] issued by the board [~~or its committees~~] alleging a violation of a specified provision of KRS Chapter 319A [~~the Kentucky Occupational Therapy Act~~] or the administrative regulations promulgated thereunder.

(5) "Formal [~~(6) "~~] complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person [~~L.O.T.R. or a L.O.T.A., the relief requested,~~] and commences a formal disciplinary proceeding.

(6) [~~(7)~~] "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) [~~(8)~~] "Informal proceedings" means 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 [~~Grievances; Investigations~~]. (1) Complaints [~~Grievances~~] 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. [~~The board shall approve a written form upon which grievances may be made and any party submitting a grievance shall be required to complete the form and shall give an affidavit acknowledging the truth and veracity to the best of affiant's knowledge and belief of the information contained in the grievance.~~]

(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 licensed 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. [~~All grievances shall be investigated as necessary by the committee unless the circumstances of a particular grievance make it impossible for the committee to timely review a grievance. The committee shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations. The committee shall further be empowered to request the attendance of any person at any meeting of the committee in regard to the investigation of any grievance or consideration of any disciplinary matter. The failure, without good cause, of any L.O.T.R. or L.O.T.A. to appear before the committee when requested shall be considered unprofessional conduct.~~

~~(3) The committee shall be empowered to request compliance with the requirements of KRS 319A.010 et seq. and may pursue investigations on its own initiative in regard to acts of noncompliance or any other perceived violation of the Act including but not limited to professional misconduct and unauthorized practice of occupational therapy without a license.~~]

Section 3. Preliminary Recommendations and Initial Board Review. [~~Reports and Recommendations; Petitions.~~] (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 [~~committee~~] a complaint [~~grievance~~] does not warrant the formal investigation [~~issuance~~] of a complaint against an individual [~~L.O.T.R. or a L.O.T.A.~~], the board [~~committee~~] shall notify both the complaining party and the individual of the outcome of the complaint. [~~submit a written report to the board briefly denoting the committee's findings and recommending an appropriate course of action.~~]

(3) [~~(2)~~] When in the opinion of the board [~~committee~~] a complaint [~~grievance~~] warrants the formal investigation [~~issuance~~] of a complaint against either a licensed individual or a person who is practicing occupational therapy without a license, [~~L.O.T.R. or a L.O.T.A.,~~] the board [~~committee~~] 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. [~~cause a complaint to be prepared together with at petition requesting a hearing, signed by the chairman of the committee, stating the committee's belief that the charges are based upon reliable information and requesting the board to authorize the issuance of the complaint.~~

~~(3) When in the opinion of the chairman a grievance warrants the issuance of a complaint against a L.O.T.R. or a L.O.T.A. and circumstances do not allow the timely review of the grievance by the committee, the chairman shall cause a complaint to be prepared together with a petition requesting a hearing, signed by the chairman stating the chairman's belief that the charges are based upon reliable information and requesting the board to authorize the issuance of the complaint.~~

~~(4) When in the opinion of the committee a grievance warrants the issuance of a complaint against a person who is practicing occupational therapy without a license, the committee shall cause a complaint to be prepared together with a petition requesting a hearing, signed by the chairman of the committee, stating the committee's belief that the charges are based upon reliable information and requesting the board to authorize the issuance of the complaint. Such complaint shall be forwarded to the county attorney of the county of residence of the person allegedly practicing occupational therapy without a license with a request that appropriate action be taken under KRS 319A.090.~~

~~(5) Nothing in this section shall be construed to limit the board's power to deny a license to any applicant without a prior hearing upon a finding that the applicant has violated any provision of the Act.~~]

Section 4. Results of Formal Investigation; Board Decision on Hearing. [~~Complaints.~~] (1) Upon completion of the formal investigation, the board's attorney 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 administrative regulations may have occurred and that a hearing should be held. [~~The complaint shall be signed by the party petitioning the board for its issuance and shall be dated. The complaint shall be styled in regard to the matter of the license to~~

~~practice in the Commonwealth of Kentucky held by the named L.O.T.R. or L.O.T.A., shall state the relief requested of the board, and shall be designated by the secretary of the board with an appropriate case number.~~]

(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. [~~The complaint shall set forth the board's jurisdiction in regard to the subject matter of the complaint and shall further set forth, in numerical paragraphs, sufficient information to apprise the named L.O.T.R. or L.O.T.A. of the general nature of the charges.~~]

(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 administrative regulation.

(4) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who is practicing occupational therapy without a license, 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 appropriate county attorney with a request that appropriate action be taken under KRS 319A.990. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of occupational therapy.

Section 5. Settlement by Informal Proceedings; Letter of Admonishment. [~~Authorization of Complaint by Board; Orders to Respond.~~] (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. [~~Upon being presented with a petition requesting the issuance of a complaint, the board shall, within sixty (60) days, grant or deny the petition. If the petition is granted, the board shall issue an order and summons authorizing the complaint's issuance, directing the charged L.O.T.R. or L.O.T.A. to respond within thirty (30) days after receiving notice of the complaint, and informing the L.O.T.R. or the L.O.T.A. that failure to respond shall be taken by the board as an admission of the charges and the relief in the complaint shall be summarily imposed.~~]

(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. [~~If the board denies a petition, the board shall return the complaint to the committee, with or without directions as to the disposal of the complaint.~~

~~(3) The board may, in its discretion, grant a petition only in part and may modify a requested complaint prior to authorizing its issuance.~~]

Section 6. Notice and Service of Process. (1) Any notice required by the Act or this administrative regulation shall be in writing, dated and signed by the chairman of the board [~~appropriate person~~].

(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 [~~L.O.T.R.'s or the L.O.T.A.'s~~] last known address of which the board has record or, if known, by such service on the named individual's [~~L.O.T.R.'s or L.O.T.A.'s~~] attorney of record, if appropriate. Refusal of service if by certified mail; or avoidance of service if hand-delivered [~~or any failure of the named L.O.T.R. or L.O.T.A. to receive actual notice after execution of the prescribed service~~] 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 date of the hearing.

CONSTANCE HEROLD, Chairman

APPROVED BY AGENCY: September 24, 1993

FILED WITH LRC: October 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 22, 1993, at 9 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 November 17, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensed occupational therapists and certified OT assistants.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.

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: Information about a complaint must be furnished to the board upon request.

(2) Effects on the promulgating administrative body: Procedures for handling complaints.

(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

GENERAL GOVERNMENT CABINET
Kentucky Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:160. Administrative hearings.

RELATES TO: KRS 319A.190, 319A.200

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.190

NECESSITY AND FUNCTION: KRS Chapter 319A and [~~pertinent parts of~~] KRS 319A.190 provide for promulgation of administrative regulations governing the conduct of administrative hearings authorized by the Act. This administrative regulation sets forth the procedure by which such hearings are to be conducted.

Section 1. Composition of the Board for Purposes of a Hearing. (1) Disciplinary actions may 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 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.

(4) Staff members of the board, legal counsel for the board and a court stenographer may also be present for the hearing.

Section 2. Rights of the Licensee or Applicant. The licensee 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 licensee or applicant shall also have the right to have subpoenas issued in accordance with KRS 319A.070(2).

Section 3. 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 upon request of the licensee or applicant. 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 licensee 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 licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.

(2) By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall furnish to the investigator or legal counsel for the board copies of any documents which the licensee 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 licensee or applicant. The licensee or applicant shall also produce for inspection any items of tangible evidence within his possession or control which he intends to introduce at the hearing.

(3) Written response. At least ten (10) days prior to the scheduled hearing date, the licensee 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 which the party intends to introduce or witnesses the party intends to have testify. 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 4. 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 licensee 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 licensee or applicant shall call its witnesses. Such witnesses shall be examined first by the licensee 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 5. 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, and 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 6. 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 7. Final Approval by the Board. The board, at its next meeting, or as soon thereafter as may be arranged, shall review the proposed order and consider it for final approval.

Section 8. 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 licensee 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 licensee 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.

~~[Section 1. Procedure. (1)(a) The board shall appoint a hearing officer who will be empowered to preside at any and all proceedings to issue subpoenas, to rule upon all motions and objections, to prepare and submit proposed findings of fact, conclusions of law and disciplinary measures to the board, and to perform any other act necessary to the proper conduct of the proceedings.~~

~~(b) If in the discretion of the board it is determined that the case is of sufficient complexity and that the service of an attorney is needed, the board shall appoint an attorney who shall prosecute the complaint before the hearing officer; otherwise the board shall appoint a member of the committee to prosecute the complaint.~~

~~(2) Pleadings shall be in any form provided that all pleadings must be legible, dated, and signed by the offering party. The original of all pleadings must be filed with the executive director or secretary for entry into the official record and copies must be served on the hearing officer, the opposing party, and any other person who might be designated by the hearing officer.~~

~~(3) Upon motion of either party or upon the initiative of the hearing officer, a prehearing conference may be held. The prehearing conference shall be the forum for consideration of any matter properly before the hearing officer, including all motions, discovery, stipulations, identification of issues, dates of future proceedings, and objections.~~

~~(4)(a) Either party may at any time after the issuance of a complaint move the hearing officer to order that discovery from the other party be allowed, which shall be limited to the following methods:~~

~~1. Oral depositions;~~

~~2. Request for more definite statement;~~

~~3. Request for production of names of witnesses, documents and other demonstrative evidence; and~~

~~4. Request for a brief synopsis of the testimony expected to be given by any expert witness.~~

~~(b) The hearing officer may limit or allow discovery of any matter relevant to the issues and may issue protective orders as necessary. Material which is privileged or deemed confidential under the laws of the Commonwealth or which constitutes an attorney's work produce shall not be discoverable.~~

~~(c) Depositions, upon motion and upon good reason for the nonavailability of the deponent as a witness, may be used in lieu of the witness' testimony.~~

~~Section 2. Hearings. (1) At the hearing the defendant has the right to be present and to be represented by counsel. The hearing officer may or may not wish to follow formal rules of evidence, but the hearing officer may exclude irrelevant or repetitious evidence. The hearing may include the calling of witnesses and the production of pertinent documents. Testimony shall be under oath or affirmation and shall be recorded. All documents accepted by the hearing officer, including the investigative file, shall be made part of the record of the hearing.~~

~~(2)(a) The hearing officer shall be charged with the responsibility of compiling a written summary of the proceedings which shall contain all evidence introduced at the hearing and all pleas, motions, objections, responses, rulings, and other legal documents which the hearing officer deems properly part of the record.~~

~~(b) Transcripts of the proceedings shall not be prepared unless requested in writing by either of the parties. Any person or other interested party requesting a transcript shall be responsible for the cost of the transcript and shall make suitable arrangements with the court reporter for payment for such transcript or for copies of same.~~

~~Section 3. Hearing Officer's Proposed Findings, Conclusions, and Recommendations. (1) The hearing officer shall present the record, proposed findings of fact, conclusions of law, and recommendations to the chairman for deliberation by the board. The hearing officer shall serve a copy of such findings, conclusions, and recommendations on all parties or if represented by counsel, upon the parties' attorney, at least thirty (30) days from the date of the hearing, or if a transcript is requested, from the date the court reporter certified that the transcript is complete. All parties shall have the right to file exceptions to the hearing officer's findings, conclusions, and recommendations ten (10) days from the entry of the hearing officer's report.~~

~~(2) Any party to the proceeding may move the board to allow briefs to be filed with the board prior to the board's final determination. The hearing officer may grant the motion and establish a briefing schedule if the hearing officer believes that such a procedure would substantially aid the board in its deliberations. Briefs shall not exceed ten (10) pages in length unless otherwise allowed by the hearing officer.~~

~~(3) Oral argument. Any party to the proceeding may move the board to allow oral argument before the board prior to the board's final determination. The board may order oral arguments on its own initiative.~~

~~Section 4. Board's Findings of Fact, Conclusions of Law, and Final Order, Remand. Within sixty (60) days from the entry of the hearing officer's findings, conclusions, and recommendations, the board shall convene to consider the hearing officer's report. At the conclusion of its deliberations the board may adopt the hearing officer's proposed findings, conclusions, and recommendations of action in whole or in part or may reject them and prepare its own. The board shall enter a final order dated and signed by the chairman of the board stating its ultimate determination. Prior to, during or subsequent to any deliberations the board may remand the matter to the hearing officer for further proceedings as directed.~~

~~Section 5. Appeals. (1) Any person aggrieved by the final decision of the board may appeal, in accordance with KRS 319A.200, the board's determination to the Franklin Circuit Court. Such appeals must be filed with the Franklin Circuit Court within thirty (30) days of the entry of the board's final decision, and shall designate the board as the appellee in the appeal. If a transcript is requested, the aggrieved party shall pay for the preparation of the transcript and shall make suitable arrangements with the court reporter at the time the request for a transcript is made.~~

~~(2) All appeals shall be considered by the Franklin Circuit Court~~

~~in accordance with the provisions of KRS 319A.200.~~]

CONSTANCE HEROLD, Chairman
APPROVED BY AGENCY: September 24, 1993
FILED WITH LRC: October 14, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 22, 1993, at 9 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 November 17, 1993, 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 this 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas
(1) Type and number of entities affected: All licensed occupational therapists and certified OT assistants.
(a) Direct and indirect costs or savings to those affected: There are no costs associated with this administrative regulation.
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: Sets up hearing procedures.
(a) Direct and indirect costs or savings: There will not be any 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: The statute requires the promulgation of this administrative regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed administrative 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 and applicants will be subject to this administrative regulation in the same ways.

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

401 KAR 30:010. Definitions for 401 KAR Chapters 30 to 49.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99[~~, 40 CFR Part 260.11, 261 Appendix X, 268 Appendix I~~]
STATUTORY AUTHORITY: KRS 224.10-100[~~, 40 CFR Part 260.11, 261 Appendix X, 268 Appendix I~~]
NECESSITY AND FUNCTION: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the [~~Natural Resources and Environmental Protection~~] cabinet to adopt administrative regulations for the management of solid, special, and hazardous wastes. This chapter establishes the general administrative procedures that are applicable to 401 KAR Chapters 31 to 49. This administrative regulation defines essential terms used in connection with the waste management administrative regulations.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 [~~or otherwise clearly indicated by their context~~], terms in KRS Chapter 224 and in 401 KAR Chapters 30 to 49 shall have the meanings given in this administrative regulation.
(1) "Aboveground tank" see either "hazardous waste management unit-hazardous waste tanks-aboveground tank" or "solid waste site or facility-tank-aboveground tank."
(2) "Accumulated speculatively" see Section 1 of 401 KAR 31:010.
(3) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.
(4) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.
(5) "Active portion" means any area of a facility where treatment, storage or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.
(6) "Administrative application" see "application - administrative application."
(7) "Administrator" means the administrator of the United States Environmental Protection Agency, or his designee.
(8) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall [~~must~~] be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.
(9) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.
(10) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.
(11) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.
(12) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste

management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(13) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes the following:

(a) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(b) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(c) "Notice of intent" means the standard forms for applying for:

1. A solid waste site or facility permit as required by 401 KAR 47:160, 401 KAR 47:170 and 401 KAR 48:200; or

2. A special waste landfarming or composting permit as required by 401 KAR 45:030 and 401 KAR 45:100.

(d) "Administrative application" means the standard forms and format used for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:180.

(e) "Special waste application" means the forms approved by the cabinet for applying for a formal permit as specified in 401 KAR 45:030.

(f) "Technical application" means the standard format for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:190.

(14) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(15) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(16) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or [~~(i.e.,~~] part of a facility, such as [~~), e.g.,~~] the plant manager, superintendent, or person of equivalent responsibility.

(17) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(18) "Bird hazard" means an increase in the likelihood of bird or [~~/~~] aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(19) "Board" shall have the meaning specified in KRS 224.46-810.

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

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

(22) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(23) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(24) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(25) [~~(24)~~] "Cell" means a portion of any landfill which is isolated, usually by means of an approved barrier.

(26) [~~(25)~~] "Certificate" shall have the meaning specified in KRS 224.46-810.

(27) [~~(26)~~] "Certification" means a statement of professional opinion based upon knowledge and belief.

(28) [~~(27)~~] "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(29) [~~(28)~~] "Closed unit" means any solid waste unit that no longer receives waste as of May 8, 1990 and has received all required final layers of cover material, or a special waste unit that no longer receives waste and has received all required final layers of cover material.

(30) [~~(29)~~] "Closure" shall have the meaning specified in KRS 224.01-010.

(31) [~~(30)~~] "Closure care" or "postclosure" means the routine care, maintenance, monitoring, and any required corrective action of a special waste or solid waste disposal site or facility following certification of closure until the applicable requirements are met.

(32) [~~(31)~~] "Coal mining solid waste" means solid waste as defined by KRS 224.01-010 which is generated at, and is incidental to, a coal exploration operation or surface mining and reclamation operation regulated under KRS Chapter 350, and shall not include wastes generated by households, communities, cities, counties, or any person or business other than those regulated under KRS Chapter 350.

(33) [~~(32)~~] "Coal mining waste" means earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, that are generated during and incidental to the mining and extraction of coal and to the washing and crushing of coal. The term does not include used oil, paints or flammable liquids. The term includes the following:

(a) Refuse which is that waste material in the raw coal which it is the object of cleaning to remove;

(b) Overburden which includes all of the earth and other geologic materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of mining; and

(c) Coal mining by-products which include any material that is not one (1) of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by-product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later.

(34) [~~(33)~~] "Commercial solid waste" shall have the meaning specified in KRS 224.01-010.

(35) [~~(34)~~] "Component" see "hazardous waste management unit-hazardous waste tanks-component" or "solid waste site or facility-tank-component."

(36) [~~(35)~~] "Compost" shall have the meaning specified in KRS 224.01-010.

(37) [~~(36)~~] "Composting" shall have the meaning specified in KRS 224.01-010.

(38) [~~(37)~~] "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(39) [~~(38)~~] "Constituent" or "hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(40) [~~(39)~~] "Construction/demolition debris landfill" see "solid waste site or facility-construction/ demolition debris landfill."

(41) [~~(40)~~] "Construction/demolition waste" see "solid waste site or facility."

(42) [~~(41)~~] "Construction materials" means nonhazardous nonsoluble material, including but not limited to steel, concrete, brick, asphalt roofing material, or lumber from a construction or demolition project. Mixture of construction and demolition debris with any amount of other types of waste may cause it to be classified as other than

construction materials.

(43) [~~(42)~~] "Contained landfill" see "solid waste site or facility - contained landfill,"

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

(45) [~~(44)~~] "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060.

(c) For substances that do not have an established maximum contamination level, a significant increase above established background levels.

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

(47) [~~(46)~~] "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

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

(49) [~~(48)~~] "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(50) [~~(49)~~] "Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38, a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124, or that is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(51) [~~(50)~~] "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

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

(53) [~~(52)~~] "Director" means the director of the cabinet's division of waste management.

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

(55) [~~(54)~~] "Disposal" shall have the meaning specified in KRS 224.01-010.

(56) [~~(55)~~] "Disposal facility" see "hazardous waste site or facility - disposal facility" or "solid waste site or facility-disposal facility".

(57) "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(58) [~~(56)~~] "Elementary neutralization unit" see "hazardous waste site or facility - elementary neutralization unit."

(59) [~~(57)~~] "Emergency permit" see "permit-emergency/ permit".

(60) [~~(58)~~] "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(61) "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(62) [~~(59)~~] "Environmental emergency" shall have the meaning specified in KRS 224.01-400.

(63) [~~(60)~~] "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

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

(65) [~~(62)~~] "EPA region" means the states and territories found in any one (1) of the ten (10) regions recognized by the U.S. EPA.

(66) [~~(63)~~] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(67) [~~(64)~~] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(68) [~~(65)~~] "Existing hazardous waste site or facility" or "existing facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(69) [~~(66)~~] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(70) [~~(67)~~] "Existing tank system" see "hazardous waste management unit - hazardous waste tank-existing tank system."

(71) [~~(68)~~] "Explosive gas" means methane (CH_4).

(72) [~~(69)~~] "Existing unit" means any solid waste disposal unit that was receiving solid waste as of May 8, 1990, and any special waste site or facility that was receiving waste as of the effective date of this amendment, and has not received the final layers of cover material.

(73) [~~(70)~~] "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility may consist of several treatment, storage, or disposal operational units, such as [~~(e.g.,~~] one (1) or more landfills, surface impoundments, or combination of them[~~)~~].

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

(75) [~~(72)~~] "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(76) [~~(73)~~] "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(77) [~~(74)~~] "Final closure":

(a) Of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030;

(b) Of a solid waste site or facility means the approved closure of a solid waste site or facility in accordance with 401 KAR 30:031, 401 KAR 47:030 and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170, or 401 KAR 48:200; and

(c) Of a special waste site or facility means the approved closure of a special waste site or facility in accordance with the applicable requirements of 401 KAR 45:100, 401 KAR 45:110, and 401 KAR 30:031.

(78) [~~(75)~~] "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes:

(a) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(b) "100-year flood" means a flood that has a one (1) percent chance of being equalled or exceeded in any given year.

(c) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

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

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

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

(82) [~~(79)~~] "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in 401 KAR Chapter 31 or whose act first causes a hazardous waste to become subject to administrative regulation.

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

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

(c) If a limited quantity generator generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram, all quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 to 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510 to 224.46-580, and 224.50-130 to 224.50-413.

(83) [~~(80)~~] "Groundwater" means water which is in the zone of perennial saturation. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the perennially unsaturated zone, and from water held in chemical or electrostatic bondage. It is synonymous with the term "phreatic water."

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

(85) [~~(82)~~] "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.

(86) [~~(83)~~] "Hazardous substance" shall have the meaning specified in KRS 224.01-400.

(87) [~~(84)~~] "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

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

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

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

(b) "Component" means either the tank or ancillary equipment of a tank system.

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

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

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

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

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

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

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

(h) "Underground tank" means a device meeting the definition of

"tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

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

(90) [~~(87)~~] "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method.

(a) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

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

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

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

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

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

(b) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(c) "Elementary neutralization unit" means a device which:

1. Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, [~~Section 3,~~] or they are listed in 401 KAR 31:040 only for this reason; and

2. Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(d) "Incinerator" means any enclosed device that:

1. Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

2. Meets the definition of infrared incinerator or plasma arc incinerator. [~~using controlled flame combustion that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace.~~]

a. "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat and which is not listed as an industrial furnace.

b. "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat and which is not listed as an industrial furnace.

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

1. Cement kilns.
2. Lime kilns.
3. Aggregate kilns.
4. Phosphate kilns.
5. Coke ovens.
6. Blast furnaces.
7. Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces).
8. Titanium dioxide chloride process oxidation reactors.
9. Methane reforming furnaces.
10. Pulping liquor recovery furnaces.
11. Combustion devices used in the recovery of sulfur values from spent sulfuric acid.
12. Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated.
13. Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(f) "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

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

(h) [~~(g)~~] "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, or a cave.

(i) [~~(h)~~] "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(j) [~~(i)~~] "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060[~~, Section 6~~].

(k) [~~(j)~~] "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

(l) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(m) [~~(k)~~] "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage

facility.

(n) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu per pound of sludge treated on a wet-weight basis.

(o) [(l)] "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(p) [(m)] "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, [e.g.,] wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(q) [(n)] "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(r) [(o)] "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(s) [(p)] "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(t) [(q)] "Wastewater treatment unit" means a device that:

1. Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA; and

2. Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

3. Meets the definition of tank or tank system in this administrative regulation.

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

(92) [(89)] "Household solid waste" shall have the meaning specified in KRS 224.01-010.

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

(94) [(91)] "Incinerator" see "hazardous waste site or facility - incinerator" or "solid waste site or facility-incinerator".

(95) [(92)] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(96) [(93)] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

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

(98) [(95)] "Industrial solid waste" shall have the meaning specified in KRS 224.01-010.

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

(100) [(97)] "Infectious waste" means those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

(101) [(98)] "Inground tank" see "hazardous waste management unit - hazardous waste tank - inground tanks" or "solid waste site or facility-tanks-inground tanks".

(102) [(99)] "Injection well" see "hazardous waste site or facility-injection well", "solid waste site or facility-injection well", or "special waste site or facility-injection well".

(103) [(100)] "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

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

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

(106) [(103)] "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(107) [(104)] "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

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

(109) [(106)] "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(110) [(107)] "Key personnel" shall have the meaning specified in KRS 224.01-010.

(111) [(108)] "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(112) [(109)] "Land disposal" shall have the meaning specified in KRS 224.01-010.

(113) [(110)] "Landfarming facility" see "solid waste site or facility-landfarming facility" or "special waste site or facility-landfarming facility".

(114) [(111)] "Landfill" see "hazardous waste site or facility - landfill."

(115) [(112)] "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(116) [~~(113)~~] "Land treatment facility" see "hazardous waste site or facility-land treatment facility."

(117) [~~(114)~~] "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing special waste or solid waste landfill unit.

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

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

(120) [~~(117)~~] "Limited quantity generator" see "generator-limited quantity generator."

(121) [~~(118)~~] "Liner" means a continuous layer of natural or manmade material, beneath or on the sides of a waste site or facility, including but not limited to a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(122) [~~(119)~~] "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(123) [~~(121)~~] "Major modification" means:

(a) For hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040); and

(b) For solid waste sites and facilities, a change meeting the criteria in Section 3 of 401 KAR 47:130.

(124) [~~(120)~~] "Management facility" see "solid waste site or facility-management facility".

(125) [~~(122)~~] "Manifest" shall have the meaning specified in KRS 224.01-010.

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

(127) [~~(124)~~] "Materials recovery facility" shall have the meaning specified in KRS 224.01-010.

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

(129) [~~(126)~~] "Miscellaneous unit" see "hazardous waste site or facility - miscellaneous unit" or "solid waste site or facility - miscellaneous unit".

(130) [~~(127)~~] "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

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

(132) [~~(129)~~] "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(130) "Municipal solid waste" shall have the meaning specified in KRS 224.01-010.

(133) [~~(130)~~] "Municipal solid waste" shall have the meaning specified in KRS 224.01-010.

(134) [~~(131)~~] "Municipal solid waste reduction" shall have the meaning specified in KRS 224.01-010.

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

(136) [~~(133)~~] "New tank system" see "hazardous waste management unit-hazardous waste tank-new tank system".

(137) [~~(134)~~] "Notice of intent to apply for a solid waste permit" see "application - notice of intent to apply for a solid waste permit".

(138) [~~(135)~~] "Off-site" means properties noncontiguous to the generation site.

(139) [~~(136)~~] "Onground tanks" see "hazardous waste management unit - hazardous waste tanks - onground tanks" or "solid waste site or facility - tank - onground tanks".

(140) [~~(137)~~] "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(141) [~~(138)~~] "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(142) [~~(139)~~] "Open dump" shall have the meaning specified in KRS 224.01-010.

(143) [~~(140)~~] "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, and disposal of wastes.

(144) [~~(141)~~] "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(145) [~~(142)~~] "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(146) [~~(143)~~] "Part A of the application" or "Part A" see "application - Part A application".

(147) [~~(144)~~] "Part B of the application" or "Part B" see "application - Part B application".

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

(149) [~~(146)~~] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(150) [~~(147)~~] "Periodic application of cover material" means the application and compaction of soil or other suitable material over disposed waste at a solid waste site or facility at the end of each operating day or at such frequencies and in such a manner as to reduce the risks of fire and to impede disease vector's access to the waste.

(151) [~~(148)~~] "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the

waste management administrative regulations. The term "permit" includes "permit-by-rule," "registered permit-by-rule," "research, development, and demonstration permit", and "emergency permit." However, the term "permit" does not include "draft permit" or "proposed permit."

(a) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(b) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet.

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

2. Examples of solid waste sites or facilities which are permitted by rule include facilities identified in 401 KAR 47:150.

3. Examples of special waste sites or facilities which are permitted by rule include facilities identified in 401 KAR 45:060.

(c) "Registered permit by rule" means that certain classes of solid waste sites or facilities as specified in 401 KAR 47:080 have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200 or that certain classes of special waste sites or facilities as specified in 401 KAR 45:020 have a permit as provided in 401 KAR 45:070.

(d) "Research, development, and demonstration permit" means a special waste site or facility or solid waste treatment or disposal facility using innovative and experimental technology as specified in sections of 401 KAR 47:150.

(152) [~~(149)~~] "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(153) [~~(150)~~] "Person" shall have the meaning specified in KRS 224.01-010.

(154) [~~(151)~~] "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(155) [~~(152)~~] "Pile" or "waste pile" see "hazardous waste site or facility-pile" or "solid waste site or facility-pile" or "special waste site or facility-pile".

(156) [~~(153)~~] "Point of compliance" means for special waste sites or facilities or solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(157) [~~(154)~~] "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(158) [~~(155)~~] "Postclosure care" means the manner in which a facility shall [~~must~~] be maintained when it no longer accepts waste for disposal.

(159) [~~(156)~~] "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(160) [~~(157)~~] "Processing facility" see "solid waste site or facility - processing facility".

(161) [~~(158)~~] "Proposed permit" or "draft permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(162) [~~(159)~~] "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

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

(164) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(165) [~~(161)~~] "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(166) [~~(162)~~] "Reclaimed" see Section 1 of 401 KAR 31:010.

(167) [~~(163)~~] "Recovered material" shall have the meaning specified in KRS 224.01-010.

(168) [~~(164)~~] "Recovered material processing facility" shall have the meaning specified in KRS 224.01-010.

(169) [~~(165)~~] "Recycling" shall have the meaning specified in KRS 224.01-010.

(170) [~~(166)~~] "Recycling center" see "solid waste site or facility - recycling center".

(171) [~~(167)~~] "Recycling facility" see "solid waste site or facility - recycling facility".

(172) [~~(168)~~] "Refuge-derived fuel" shall have the meaning specified in KRS 224.01-010.

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

(174) [~~(170)~~] "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(175) [~~(171)~~] "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(176) [~~(172)~~] "Research, development and demonstration permit" see "permit - research, development and demonstration permit".

(177) [~~(173)~~] "Residential landfill" see "solid waste site or facility - residential landfill."

(178) [~~(174)~~] "Residual landfill" see "solid waste site or facility - residual landfill."

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

(180) [~~(176)~~] "Resource recovery" means the recovery of material or energy from waste.

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

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

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

(184) [~~(180)~~] "Sanitary landfill" see "solid waste site or facility - sanitary landfill".

(185) [~~(181)~~] "Saturated zone" or "zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

(186) [~~(182)~~] "Scavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.

(187) [~~(183)~~] "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(188) [~~(184)~~] "Scrap metal" see Section 1 of 401 KAR 31:010.

(189) [~~(185)~~] "Secretary" shall have the meaning specified in KRS 224.01-010.

(190) [~~(186)~~] "Sewage system" shall have the meaning specified

in KRS 224.01-010.

(191) [~~(187)~~] "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(192) [~~(188)~~] "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(193) [~~(189)~~] "Small quantity generator" see "generator - small quantity generator".

(194) [~~(190)~~] "Solid waste management" shall have the meaning specified in KRS 224.01-010.

(195) [~~(191)~~] "Solid waste management area" or "area" shall have the meaning specified in KRS 224.01-010.

(196) [~~(192)~~] "Solid waste management facility" shall have the meaning specified in KRS 224.01-010.

(197) [~~(193)~~] "Solid waste site or facility" means any place at which solid waste is managed, processed or disposed by landfilling, incineration, landfarming or any other method. The term includes the following:

(a) "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of solid waste resulting from the construction, remodeling, repair, and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance, and seasonal and storm related cleanup. The technical requirements for construction/ demolition debris landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:060.

(b) "Collection box" shall have the meaning specified in KRS 224.01-010.

(c) "Contained landfill" means a solid waste site or facility that accepts for disposal solid waste. The technical requirements for contained landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:070 to 401 KAR 48:090.

(d) "Convenience center" shall have the meaning specified in KRS 224.01-010.

(e) "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(f) "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

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

(h) "Landfarming facility" means a facility for land application of sludges or other solid waste by any method for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(i) "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(j) "Miscellaneous unit" means a solid waste management unit where waste is disposed of and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under Section 3 of 401 KAR 47:150.

(k) "Municipal solid waste disposal facility" shall have the meaning specified in KRS 224.01-010.

(l) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or management.

(m) "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for handling or reduced in volume.

(n) "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.

(o) "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.

(p) "Residual landfill" means a facility for the disposal of specific solid waste(s), including special waste, which is located, designed, constructed, operated, maintained, and closed in conformance with 401 KAR 30:031 and 401 KAR 47:030 and which receives a case-by-case design review by the cabinet.

(q) "Sanitary landfill" means a facility for the disposal of solid waste that complies with 401 KAR 30:031 and 401 KAR 47:030.

(r) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(s) "Tank" means a stationary device designed to contain an accumulation of leachate or liquid solid waste which is constructed primarily of nonearthen materials (for example, [~~e.g.,~~] wood, concrete, steel, or plastic) which provide structural support.

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

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

3. "Inground tank" means a device meeting the definition of "tank" in this subsection whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

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

5. "Tank system" means a solid waste tank and its associated piping, ancillary equipment, and containment system.

6. "Underground tank" means a device meeting the definition of "tank" in this subsection whose entire surface area is totally below the surface of and covered by the ground.

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

(t) "Transfer facility" shall have the meaning specified in KRS 224.01-010.

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

(v) "Wastewater treatment unit" means a tank which is part of a

wastewater treatment facility which is subject to administrative regulation under either Section 402 or Section 307(b) of the Clean Water Act of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, manages, processes, generates or accumulates wastewater treatment sludge, either of which is a solid waste.

(w)1. "Inert landfill" means a facility for the proper disposal of inert, nonsoluble and nonputrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, wood chips, and tree trimmings) may be considered by the cabinet for disposal at inert landfills.

2. "Residential landfill" means a facility for the proper disposal of solid waste including residential waste, commercial waste, institutional waste, and those sludges, industrial or special waste with specific approval from the cabinet.

(198) [~~(194)~~] "Solid waste unit" see "solid waste site or facility - unit".

(199) [~~(195)~~] "Special wastes" shall have the meaning specified in KRS 224.50-760.

(200) [~~(196)~~] "Special waste site or facility" means any place at which special waste is managed, processed, or disposed by landfilling, landfarming, composting, or any other method. The term includes:

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

(b) "Landfarming facility" means a facility for land application of sludges or other special waste for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(c) "Landfill" means a special waste site or facility for the disposal of specific wastes that is located, designated, constructed, operated, maintained, and closed in conformance with 401 KAR Chapter 45 and 401 KAR 30:031, and receives a case-by-case design review by the cabinet.

(d) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing special waste that is used for processing or management.

(e) "Surface impoundment" means a facility or part of a facility that is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, although it may be lined with manmade materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(201) [~~(197)~~] "Spent material" see Section 1 of 401 KAR 31:010.

(202) [~~(198)~~] "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(203) [~~(199)~~] "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(204) [~~(200)~~] "Storage" shall have the meaning specified in KRS 224.01-010.

(205) [~~(201)~~] "Storage facility" see "hazardous waste site or facility - storage facility."

(206) [~~(202)~~] "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(207) [~~(203)~~] "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and [/] trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system. [~~management units.~~]

(208) [~~(204)~~] "Surface impoundment" see "hazardous waste site or facility - surface impoundment", "solid waste site or facility - surface impoundment", or "special waste site or facility-surface impoundment".

(209) [~~(205)~~] "Tank" see "hazardous waste site or facility - tank" or "solid waste site or facility - tank".

(210) [~~(206)~~] "Tank system" see "hazardous waste management unit - hazardous waste tank - tank system" or "solid waste sites or facility - tank system".

(211) [~~(207)~~] "Technical application" see "application - technical application".

(212) [~~(208)~~] "Termination" shall have the meaning specified in KRS 224.01-010.

(213) [~~(209)~~] "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(214) [~~(210)~~] "Thermal treatment facility" see "hazardous waste site or facility - thermal treatment facility."

(215) [~~(211)~~] "Totally enclosed treatment facility" see "hazardous waste site or facility - totally enclosed treatment facility."

(216) [~~(212)~~] "Transfer facility" shall have the meaning specified in KRS 224.01-010.

(217) [~~(213)~~] "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(218) [~~(214)~~] "Transportation" shall have the meaning specified in KRS 224.01-010.

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

(220) [~~(216)~~] "Treatment" shall have the meaning specified in KRS 224.01-010.

(221) [~~(217)~~] "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(a) Whether the waste is amenable to the treatment process;

(b) What pretreatment, if any, is required;

(c) The optimal process conditions needed to achieve the desired treatment;

(d) The efficiency of a treatment process for a specific waste or wastes; or

(e) The characteristics and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(222) [~~(218)~~] "Treatment facility" see "hazardous waste site or facility - treatment facility."

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

(224) [~~(220)~~] "Trenching or burial operation" means the placement of sewage sludge or septic tank pumpings in a trench or other natural or manmade depression and the covering with soil or other suitable material at the end of each operating day such that the waste does not migrate to the surface.

(225) [~~(221)~~] "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption;

or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(226) [~~(222)~~] "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "hazardous waste site or facility, injection well.")

(227) [~~(223)~~] "Underground tank" see "hazardous waste management unit - hazardous waste tank - underground tank" or "solid waste site or facility-tank-underground tank".

(228) [~~(224)~~] "Universal collection" shall have the meaning specified in KRS 224.01-010.

(229) [~~(225)~~] "Unsaturated zone" or "zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(230) [~~(226)~~] "Unfit for use" see "hazardous waste management unit - hazardous waste tank - unfit for use" or "solid waste site or facility - tank - unfit for use".

(231) [~~(227)~~] "Unit" see "solid waste site" or "facility - unit".

(232) [~~(228)~~] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(233) [~~(229)~~] "Used or reused" see Section 1 of 401 KAR 31:010.

(234) [~~(230)~~] "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(235) [~~(231)~~] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(236) [~~(232)~~] "Washout" means the carrying away of waste by waters as a result of flooding.

(237) [~~(233)~~] "Waste" shall have the meaning specified in KRS 224.01-010.

(238) [~~(234)~~] "Waste boundary" means:

(a) The outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity; or

(b) An alternative boundary for a solid or special waste disposal facility which may be used in lieu of paragraph (a) when the cabinet finds that such a change would not result in the contamination of groundwater which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all the factors identified in the following subparagraphs of this paragraph that are relevant:

1. The hydrogeological characteristics of the facility and surrounding land including any natural attenuation and dilution characteristics of the aquifer;

2. The volume and physical and chemical characteristics of the leachate;

3. The quantity, quality, and direction of flow of groundwater underlying the facility;

4. The proximity and withdrawal rates of groundwater users;

5. The availability of alternative drinking water supplies;

6. The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater; and

7. Public health, safety, and welfare effects.

(239) [~~(235)~~] "Waste site or facility" shall have the meaning specified in KRS 224.01-010.

(240) [~~(236)~~] "Waste management district" shall have the meaning specified in KRS 224.01-010.

(241) [~~(237)~~] "Waste pile" see either "hazardous waste site or facility-pile" "solid waste site or facility-pile", or "special waste site or facility-pile".

(242) [~~(238)~~] "Wastewater treatment unit" see "hazardous waste site or facility - wastewater treatment unit" or "solid waste site or facility - wastewater treatment unit".

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

(244) [~~(240)~~] "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(245) [~~(241)~~] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(246) [~~(242)~~] "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, where:

(a) "Hydric soils" means soils that, in their undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing either in water, or in a substrate that is at least periodically deficient of oxygen during a growing season as a result of excessive water content.

(247) [~~(243)~~] "Water pollution" shall have the meaning specified in KRS 224.01-010.

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

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

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

Table 1. Acronyms and Abbreviations

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm^2	Centimeter squared
CO	Carbon monoxide
CO_2	Carbon dioxide
CWA	Clean Water Act, as amended
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
DOT	United States Department of Transportation
DRE	Destruction and removal efficiency
E	Explosive waste
eff.	Effective
EPA	United States Environmental Protection Agency
[~~EP Toxicity~~	~~Extraction procedure toxicity~~]
FIA	Federal Insurance Administration
FR	Federal Register
H	Acutely hazardous waste
ha	Hectare
I	Ignitable waste
KAR	Kentucky Administrative Regulation
kg	Kilogram
KPDES	Kentucky Pollution Discharge Elimination System
KRS	Kentucky Revised Statute
Ky.R.	Administrative Register of Kentucky

l	Liter
LC	Lethal concentration
LD	Lethal dose
ml	Milliliter
mm	Millimeter
N	Normal
NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NPDES	National Pollutant and Discharge Elimination System
PCB	Polychlorinated biphenyl
pCi/l	Picocuries per liter
PHC	Principal hazardous constituent
Permit POHC	Permitted principal organic hazardous constituent
POHC	Principal organic hazardous constituent
ppm	parts per million
Trial POHC	Trial burn principal organic hazardous constituent
POTW	Publicly owned treatment works
PSD	Prevention of significant deterioration
psi	Pounds per square inch
psig	Pounds per square inch gauge
R	Reactive waste
RCRA	Resource Conservation and Recovery Act, as amended
SDWA	Safe Drinking Water Act, as amended
SEC	Securities and Exchange Commission
SIC	Standard Industrial Classification Code
SPCC	Spill Prevention, Control, and Countermeasures Plan
T	Toxic waste
UIC	Underground Injection Control
UICP	Underground Injection Control Program
USC	United States Code
U.S. EPA	United States Environmental Protection Agency
USGS	United States Geological Survey
USPS	United States Postal Service

Section 3. References. (1) The following documents are hereby incorporated by reference:

(a) [~~The test methods cited in Title 401, Chapters 30 to 49, are those listed in~~] 40 CFR 260.11 as of February 21, 1991; and

(b) [~~June 21, 1990,~~] Appendix X of 40 CFR 261 as of January 14, 1985.

(2) The documents referenced in subsection (1) of this section may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays. [~~, Appendix I of 40 CFR 268 as of June 4, 1987, and 401 KAR Chapters 5 to 8.~~]

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This proposed amendment affects hazardous waste sites and hazardous waste facilities that include carbon regeneration units, drip pads, incinerators, industrial furnaces, sludge dryers, and sumps. In addition, definitions have been added or amended to clarify terms for all hazardous waste generators, transporters recyclers or facilities. There are currently 4229 entities that generate, recycle, transport or manage hazardous waste in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings associated with this proposed amendment (hereafter referred to as amendment).

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with this amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings associated with this amendment.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with this amendment.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations, or government policies that conflict with, overlap, or duplicate this amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The majority of the amendments to this administrative regulation are taken from 40 CFR 260.10; however, there is no actual federal

mandate to make these changes. There is a mandate to regulate the management of hazardous waste in KRS Chapter 224 and the Resource Conservation and Recovery Act provides for states to operate an equivalent or more stringent hazardous waste management program in lieu of the federal program within the state.

2. State compliance standards: This amendment includes new definitions for a series of incinerators, drip pad, sludge dryer, and qualified groundwater scientist. "Engineer" has also been defined to avoid the repetitious use of a long phrase in the body of administrative regulations in 401 KAR Chapters 30 to 49.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR Parts 260 to 299.

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: There are no stricter standards or additional responsibilities or requirements.

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

401 KAR 31:010. General provisions for hazardous wastes.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 224.99
STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3)
NECESSITY AND FUNCTION: KRS 224.46-510(3) requires the [~~Natural Resources and Environmental Protection~~] cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This administrative 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 administrative regulation as hazardous wastes under 401 KAR Chapters 32 to [~~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 administrative regulation defines the terms "waste" and "hazardous waste," identifies those wastes which are excluded from administrative regulation under 401 KAR Chapters 32 to [~~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 administrative 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 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 administrative 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 administrative 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 (for example, [~~e.g.,~~] bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, [~~e.g.,~~] radiators, scrap automobiles, or 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 administrative regulation under Section 4(3) of this administrative 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 administrative 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 administrative 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) to [~~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 to [~~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 to [~~through~~] 40 and KRS Chapter 224.

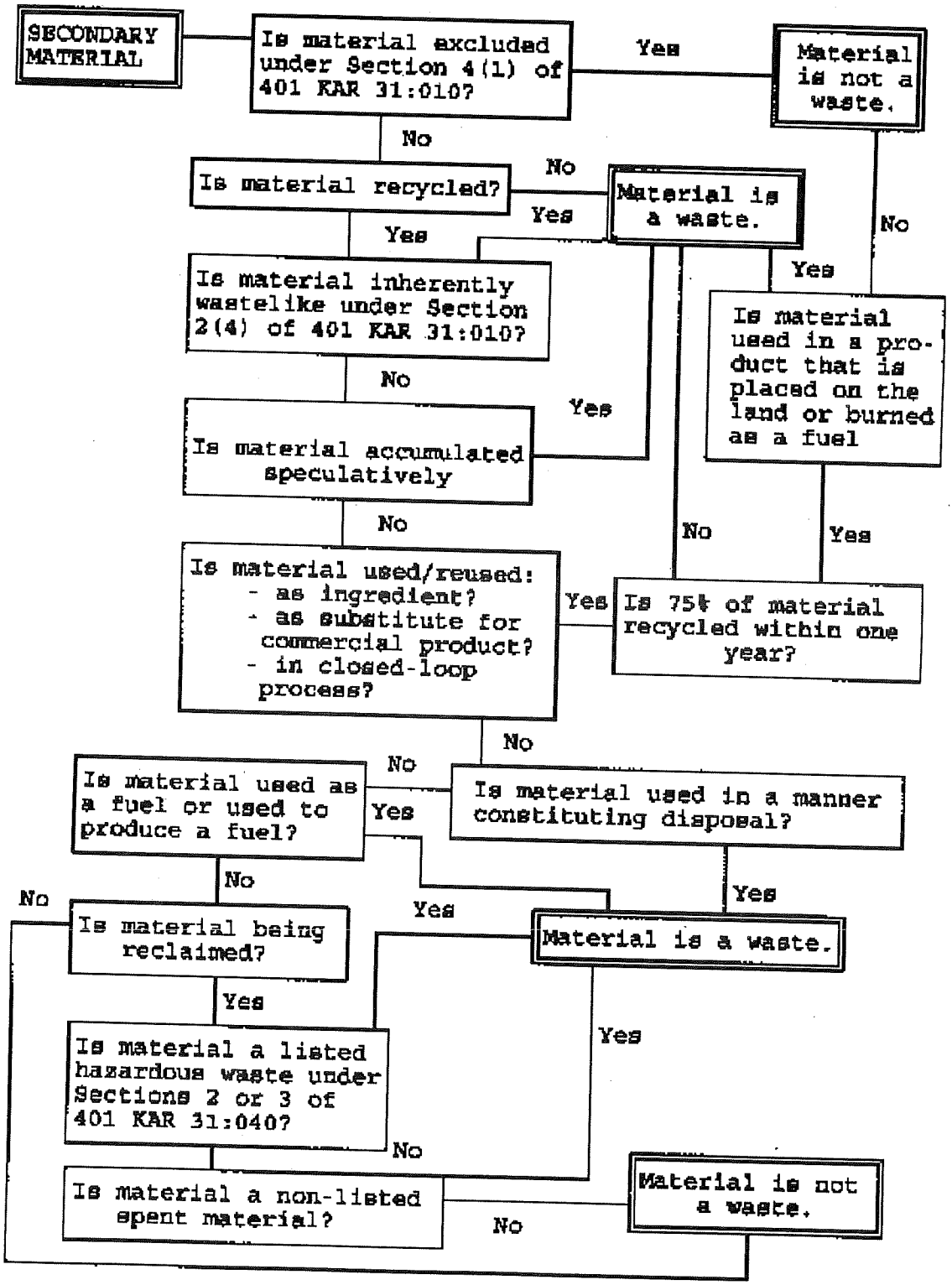
TABLE 1

	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 administrative 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) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in 401 KAR 31:030 and 31:040, except for brominated material that meets the following criteria:

1. The material shall contain a bromine concentration of at least forty-five (45) percent; and

2. The material shall contain less than a total of one (1) percent of toxic organic compounds listed in 401 KAR 31:120; and

3. The material is processed continually on-site via direct conveyance (hard piping).

(c) [~~(b)~~] The cabinet shall use the following criteria to add wastes to that [~~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 to [~~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 administrative 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 administrative 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 administrative 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 administrative regulation is a hazardous waste if:

(a) It is not excluded from administrative regulation as a hazardous waste under Section 4(2) of this administrative 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 except that any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals, excluded under Section 4 of this administrative regulation and any other waste exhibiting a characteristic of hazardous waste under 401 KAR Chapter 31 only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred or if it continues to exhibit any of the characteristics exhibited by the nonexcluded wastes prior to mixture. Further, for the purposes of applying the toxicity characteristic leaching procedure to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in Table I to Section 5 of 401 KAR 31:030 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

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 a solid 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 characteristic of hazardous waste identified in 401 KAR 31:030 or unless the solid waste is excluded from regulation under Section 4(2)(g) of this administrative regulation and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in 401 KAR 31:030 for which the hazardous waste listed in 401 KAR 31:040 was listed.

[~~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 administrative 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 (for example, [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 administrative 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 administrative 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 administrative regulation by Section 6(1)(c)5-9 of this administrative regulation.

c. Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth and electric furnace combinations or industrial furnaces (as defined in 401 KAR 30:010) that are disposed in solid waste sites or facilities, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a site or facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and when the process or operation generating the waste changes. The generic exclusions levels are:

Constituent	Maximum for any single composite sample (mg/1)
Antimony	0.063
Arsenic	0.055
Barium	6.3
Beryllium	0.0063
Cadmium	0.032
Chromium (total)	0.33
Lead	0.095
Mercury	0.009
Nickel	0.63
Selenium	0.16
Silver	0.30
Thallium	0.013
Vanadium	1.26

For each shipment of K061 HTMR residues sent to a solid waste site or facility that meets the generic exclusion levels for all constituents, and does not exhibit any characteristic, a notification and certification shall be sent to the cabinet. The notification shall include the following information:

(i) The name and address of the solid waste site or facility receiving the waste shipment;

(ii) The EPA hazardous waste number and treatability group at the initial point of generation; and

(iii) Treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows:

I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(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. (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of 401 KAR Chapter 38, even if they no longer exhibit a characteristic at the point of land disposal.)

(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. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system;

(b) Industrial wastewater discharges that are point source discharges subject to administrative 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 administrative 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 (that is, [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 administrative regulation.

(g) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Section 1(3) of this administrative 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.~~]

(h) [~~(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.

(i)1. Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

2. Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(j) EPA Hazardous Waste No. K087, and any wastes from the coke byproducts processes that are hazardous only because they exhibit the toxicity characteristic specified in Section 5 of 401 KAR 31:030, when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feed stock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar refining process.

(k) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(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 (for example, [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 administrative regulation under the waste management administrative 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, except as provided by Section 13 of 401 KAR 36:020 for facilities that burn or process hazardous waste.

(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), except as provided by Section 13 of 401 KAR 36:020 for facilities that burn or process hazardous waste. For the purpose of this paragraph, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water or carbon dioxide; roasting, autoclaving, or chlorination in preparation for leaching (except where the roasting (or autoclaving, or chlorina-

tion)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank and in situ leaching. For the purpose of this paragraph, waste from the processing of ores and minerals includes only the following wastes:

1. Slag from primary copper processing;
2. Slag from primary lead processing;
3. Red and brown muds from bauxite refining;
4. Phosphogypsum from phosphoric acid production;
5. Slag from elemental phosphorus production;
6. Gasifier ash from coal gasification;
7. Process wastewater from coal gasification;
8. Calcium sulfate wastewater treatment plant sludge from primary copper processing;
9. Slag tailings from primary copper processing;
10. Fluorogypsum from hydrofluoric acid production;
11. Process wastewater from hydrofluoric acid production;
12. Air pollution control dust or sludge from iron blast furnaces;
13. Iron blast furnace slag;
14. Treated residue from roasting or leaching of chrome ore;
15. Process wastewater from primary magnesium processing by the anhydrous process;
16. Process wastewater from phosphoric acid production;
17. Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
18. Basic oxygen furnace and open hearth furnace slag from carbon steel production;
19. Chloride process waste solids from titanium tetrachloride production; and
20. Slag from primary zinc processing. [~~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 except as provided by Section 13 of 401 KAR 36:020 for facilities that burn or process hazardous 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 to [~~through~~] D043 only) and are subject to the corrective action administrative regulations under 401 KAR Chapter 42.

(k) Injected groundwater that is hazardous only because it exhibits the toxicity characteristic (Hazardous Waste Codes D018 to D043 only) in Section 5 of 401 KAR 31:030 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells (beginning after March 25, 1991) will qualify for this compliance date extension (until January 25, 1993) only if:

1. Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

2. A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. EPA, 401 M Street SW, Washington, DC 20460.

(l) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(m) Nonterne plated used oil filters that are not mixed with wastes listed in 401 KAR 31:040 if these oil filters have been gravity hot-drained using one (1) of the following methods:

1. Puncturing the filter antidrain back valve or the filter dome end and hot-draining;
2. Hot-draining and crushing;
3. Dismantling and hot-draining; or
4. Any other equivalent hot-draining method which shall remove used oil.

(3) Hazardous wastes which are exempted from certain administrative regulations. 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 administrative regulation under 401 KAR Chapters 32 to [~~, 33, 34, 35, 37, 38 and~~] 39 or to the notification requirements of 401 KAR 32:010, 401 KAR 34:020, and 401 KAR 35:020 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 to [~~, 33, 34,~~] 35, and 37 to [~~, 38 and~~] 39; or to the notification requirements of 401 KAR Chapter 32 and 38 when:

1. The sample is being transported to a laboratory for the purpose of testing; or
2. The sample is being transported back to the sample collector after testing; or
3. The sample is being stored by the sample collector before transport to a laboratory for testing; or
4. The sample is being stored in a laboratory before testing; or
5. The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
6. The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(b) In order to qualify for the exemption in paragraphs (a)1 and 2 of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector 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 to [~~through~~] 33 or to the notification requirements of KRS 224.46-510(3) [~~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 administrative 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 administrative 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;

7. The generator reports the information required under Section 4(5)(b)6c of this administrative 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 administrative 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 to [~~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, the applicant shall include 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.

(6) [~~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 to [~~through~~] 38) shall not be subject to any requirements of Section 3010 of RCRA and 401 KAR Chapters 31 to [~~through~~] 38 provided that the conditions of paragraphs (a) to (k) of this subsection [~~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 paragraphs (a) to (k) of this subsection [~~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 paragraphs (a) to (k) of this subsection [~~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:

(a) [~~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;

(b) [~~2.~~] The laboratory or testing facility conducting the treatability study shall have an EPA identification number;

(c) [~~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;

(d) [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:

1. [a.] Treatability study residues; or

2. [b.] Treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste;

(e) [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;

(f) [6.] The treatability study shall not involve the placement of hazardous waste on the land or open burning of hazardous waste;

(g) [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:

1. [a.] The name, address, and EPA identification number of the generator or sample collector of each waste sample;

2. [b.] The date the shipment was received;

3. [c.] The quantity of waste accepted;

4. [d.] The quantity of "as received" waste in storage each day;

5. [e.] The date the treatment was initiated and the amount of "as received" waste introduced to treatment study each day;

6. [f.] The date the treatability study was concluded; and

7. [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;

(h) [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;

(i) [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:

1. [a.] The name, address, and EPA identification number of the facility conducting the treatability studies;

2. [b.] The types (by process) of treatability studies conducted;

3. [c.] The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

4. [d.] The total quantity of waste in storage each day;

5. [e.] The quantity and types of waste subjected to treatability studies;

6. [f.] The data on which each treatability study was conducted; and

7. [g.] The final disposition of residues and unused samples from each treatability study;

(j) [10.] The facility shall determine whether any unused samples or residues generated by the treatability study are hazardous wastes under Section 3 of this administrative 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 administrative regulation;

(k) [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 administrative regulation under 401 KAR Chapters 32 to [through] 39 and the notification requirements of KRS 224.46-510(3), provided the generator complies with the requirements [regulations] of subsections (6), (7), and (10) of this section.

(3) Hazardous waste that is not subject to administrative 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 to [through] 40 and is not subject to any requirements of those administrative regulations. Hazardous waste that is subject to the requirements of Section 6(2) and (3) of this administrative 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 to [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 hazardous waste in a calendar month in quantities greater than set forth in this subsection, all quantities of that acute hazardous waste are subject to administrative regulations applicable to generators of greater than 1,000 kilograms of nonacute hazardous waste in a calendar month under 401 KAR Chapters 32 to [through] 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510 to 224.46-580, and 224.50-130:

(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 administrative regulation under 401 KAR Chapters 32 to [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 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 administrative 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 administrative 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 administrative regulation under 401 KAR Chapters 32 to [~~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) to [~~through~~] (d), (f), (2) and 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 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

8. [~~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 to 401 KAR 34:280 [~~through 34:210~~], 401 KAR 35:010 to 401 KAR 35:280 [~~through 35:210~~], 401 KAR Chapters 36 to [~~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 administrative regulation except as provided in subsection (4) of this section.)

(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 administrative 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); and

3. Subsection (4) of this section.

(4) Owners or operators of facilities subject to permitting requirements in 401 KAR Chapters 34, 35, and 38 with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 401 KAR 34:275 and 401 KAR 34:280, or 401 KAR 35:275 and 401 KAR 35:280.

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 to [~~, 33, 34,~~] 35, and 37 to [~~, 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 to [~~, 33, 34,~~] 35, and 37 to [~~, 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, (for example, [~~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 to [~~through~~] D043 only) are exempt from 401 KAR Chapters 31 to [~~through~~] 35, 37, and 38, including the notification requirements of these chapters.

Section 9. Additional Administrative 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 administrative regulation shall be regulated under Section 6(2) and (3) of this administrative 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 administrative regulation.

Section 10. Procedures for Case-by-case Administrative 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 administrative regulation under the provisions of Section 6(2) and (3) of this administrative 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. Administrative 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 to [~~through~~] 40 and the Atomic Energy Act.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the

address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This proposed amendment affects hazardous waste generators, transporters, recyclers and management facilities. There are 4229 entities currently regulated in Kentucky for their hazardous waste activities. Facilities engaged in burning hazardous waste for energy recovery will be directly affected by the amendments to this administrative regulation. Currently there are 8 hazardous waste fuel burners operating in Kentucky. In addition, facilities engaged in high temperature metals recovery, wood preserving, ore and mineral processing and petroleum refining will be affected by the revisions. There are an unknown number of high temperature metal recovery facilities, 14 wood preservers, an unknown number of ore and mineral processing facilities and 3 petroleum refineries in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no additional cost or savings to affected entities because the majority of the amendments are identical to the federal regulatory standards. However, for Kentucky industries, adoption of these amendments will clarify existing requirements and result in an indirect savings. Several of the amendments include exclusions from the existing regulatory requirements. However, several changes have also been made to this administrative regulation as a result of the states decision to adopt wood preserving facility standards and hazardous waste fuel burning requirements which are equivalent to those promulgated by the US EPA.

2. Continuing costs or savings: No costs or savings are anticipated beyond those already anticipated for the equivalent federal standards.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Because the majority of the amendments made to this administrative regulation are comparable to federal standards, there are no additional costs or savings to Kentucky industries. However, there is a substantial savings to industry from the adoption of these requirements by Kentucky since operation of an authorized hazardous waste management program within the state minimizes dual enforcement and clarifies the responsible authority to which industry must respond.

(b) Reporting and paperwork requirements: The amendments made to this administrative regulation will result in no new paperwork or reporting burden.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional cost or savings by promulgating the amendments to this administrative regulation. However, the combined effect of adopting the entire set of regulatory amendments will result in an increased workload on existing staff. Partial funding via EPA grants is anticipated to cover the increased costs associated especially with the wood preserving standards and the boiler and industrial furnace requirements.

2. Continuing costs or savings: Until processing is complete for all entities that are newly regulated by the combined regulatory amendments, the agency will continue to experience an increased workload as a result of the amendments. In addition, due to the need to impact newly regulated facilities on a regular basis, there will be continuing cost to the agency.

3. Additional factors increasing or decreasing costs: Additional factors increasing the cost of these amendments include confirmatory sampling and analysis costs, indirect costs (that is, vehicles, telephone usage, etc.) associated with regulating additional entities. However, much of the increased cost will be defrayed by grant monies received from the US EPA to operate an authorized state program in lieu of the federal hazardous waste program.

(b) Reporting and paperwork requirements: Recordkeeping and reporting requirements for the agency include grant accounting, document processing and filing and data base maintenance. None of these actions are anticipated to result in a significant increase in the exiting workload.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this administrative regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(a) The proposed amendments primarily adopt regulatory changes to federal regulations which will keep the Kentucky hazardous waste program consistent with the federal program. The majority of these amendments are the result of substantial changes made to the technical standards for hazardous waste facilities and simply provide consistency. Exclusions have been adopted and cross references to new regulatory requirements have been amended. In addition, clarification language has been inserted (or in some cases clarification has been accomplished by deletion of phrases).

Alternative: 1. Less stringent: The cabinet cannot adopt regulatory amendments which are less stringent than regulatory standards promulgated by the US EPA and maintain authorization to operate the state program in lieu of the federal hazardous waste management program in the state.

2. More stringent: The cabinet evaluated the proposed amendments and believe that they are adequate to protect human health and the environment.

3. Present proposal: The present proposal adopts numerous changes made to the federal regulations:

FEDERAL REGULATION CITE	EFFECTIVE DATE
40 CFR 261.2	8-27-91
40 CFR 261.3	6-1-92
40 CFR 261.4	7-1-92*
40 CFR 261.6	7-17-91

*All amendments promulgated to this date were adopted.

In addition, amendments were made to correct or clarify existing language and to make the administrative regulation consistent with KRS Chapter 13A.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statutes, administrative regulations or policies were identified that conflict with, overlap

or duplicate the proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable, there is no conflict.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable. There is no conflict.

(6) Any additional information or comments: There are no additional comments.

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The proposed amendments adopt changes made to the federal regulations from 40 CFR 261.2 to 40 CFR 261.6 as of July 1, 1992, and December, 1992 for wood preservers.

2. State compliance standards: The proposed amendment adopts a variety of conforming changes that include standards for wood preserving facilities, petroleum refineries, high temperature metal recovery facilities, ore and mineral processing sites and hazardous waste fuel burning boilers and industrial furnaces. These changes are necessary to maintain consistency between the state and federal programs. Several exclusions have been added which clarify the applicability of technical standards to the types of facilities listed above. Clarifying language has been added regarding the applicability of standards to waste mixtures. In addition, the administrative regulation has been modified to reflect the requirements of administrative regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: The federal regulations provide exemptions for certain activities associated with wood preserving facilities; ore and mineral processing sites; hazardous waste burning industrial furnaces and boilers; and petroleum refineries. These exclusions allow specific activities to be conducted at a facility in the absence of or with only limited regulatory controls. Conforming language has also been provided to make references between administrative regulations clear and consistent. This includes clarifying instances where industries are newly regulated.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendments are identical to those promulgated by the US EPA, except that statutory constraints (that is KRS Chapter 13A) have been incorporated. Thus, some of the text varies from the federal text; however, the meaning of the requirements has not been substantively changed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

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

RELATES TO: KRS 224.46, 224.50

STATUTORY AUTHORITY: KRS 46.510

NECESSITY AND FUNCTION: KRS 224.510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This administrative regulation establishes the criteria for identifying the characteristics of hazardous waste. It also establishes the criteria for listing a hazardous waste.

Section 1. Criteria for Identifying the Characteristics of Hazardous Waste. The cabinet shall identify and define a characteristic of hazardous waste in 401 KAR 31:030 only upon determining that:

(1) A waste that exhibits the characteristic may:

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

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

(2) The characteristic can be:

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

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

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

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

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

(c) It contains any of the toxic constituents listed in 401 KAR 31:170 and, after considering the following factors, the cabinet concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

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

2. The concentration of the constituent in the waste.

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

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

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

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

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

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

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

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

11. Such other factors as may be appropriate. Substances shall be listed in 401 KAR 31:170 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects

on humans or other life forms.

(2) The cabinet may list classes or types of waste as hazardous waste if the cabinet has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in KRS 224.01-010(24)(b).

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

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

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REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This proposed amendment affects all persons who generate a waste since it provides the criteria for listing new wastes as hazardous. There are currently 4229 entities that are regulated for their hazardous waste management activities. However, there is no estimate of the number of entities that will be affected by the amendment. The actual impacts would occur when the agency uses the criteria established by this amendment to list a new hazardous waste. However, the agency would be required to amend 401 KAR 31:040 to adopt a new listing. Thus, the impact would be addressed at that time through administrative regulation development procedures.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings associated with the adoption of this amendment.

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 for industry associated with the proposed amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None. It is noted that these amendments simply clarify the authority of the cabinet and specify the procedures that could be used to list a new waste as hazardous. However, the amendments will result in neither costs or savings unless the agency implements the administrative regulation for a particular waste.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Kentucky seeks to maintain authorization to operate the state program in lieu of the federal hazardous waste program. Thus, the agency will benefit with grant monies from the U.S. EPA for adopting these requirements, as well as other federal requirements designed to maintain a program that is at least as stringent as the federal program.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with this amendment.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Due to the mandate in KRS 224.46-510(3), to promulgate a list and criteria for identifying hazardous waste that is identical to those promulgated by the U.S. EPA, no alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statutes, administrative regulations or government policies were identified which conflict with, overlap or duplicate this amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The amendments to this administrative regulation adopt changes made to 40 CFR 261.11 on January 2, 1992. As required by the Resource Conservation and Recovery Act, states must adopt hazardous waste requirements which are consistent with and at least as stringent as those adopted by the federal government, if the state wishes to seek authorization to operate the state program in lieu of the federal hazardous waste program within the state.

2. State compliance standards: This amendment includes new criteria for listing a particular waste as hazardous. KRS 224.46-510(3) stipulates that the Cabinet must promulgate administrative regulations specifying the criteria by which wastes may be determined to be hazardous. This statute also requires that criteria and lists promulgated by the Cabinet must be identical to those promulgated by the U.S. EPA.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the minimum standard contained in 40 CFR 261.11.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 31:030. Characteristics of hazardous waste.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46
STATUTORY AUTHORITY: KRS 224.46-510
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 administrative regulation establishes the characteristics of a hazardous waste.

Section 1. General. (1) A waste, as defined in Section 2 of 401 KAR 31:010 which is not excluded from administrative regulation as a hazardous waste under Section 4(2) of 401 KAR 31:010, is a hazardous waste if it exhibits any of the characteristics identified in this administrative regulation.

(2) A hazardous waste which is identified by a characteristic in this administrative regulation[~~, but is not listed as a hazardous waste in 401 KAR 31:040,~~] is assigned every [~~the~~] EPA Hazardous Waste Number that is applicable as set forth in the respective characteristics in this administrative regulation. These [~~This~~] numbers shall be used in complying with the notification requirements of 401 KAR Chapters 32, 34, 35, and 38 and all applicable [~~the~~] recordkeeping and reporting requirements under 401 KAR Chapters 32 to 35, 37, and 38 [~~31 through 40~~].

(3) For purposes of this administrative regulation, the cabinet shall consider a sample obtained using any of the applicable sampling methods specified in 401 KAR 31:100 to be a representative sample within the meaning of 401 KAR 30:010.

Section 2. Characteristic of Ignitability. (1) A waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(a) It is a liquid, other than an aqueous solution containing less than twenty-four (24) percent alcohol by volume and has a flash point less than sixty (60) degrees C (140 degrees Fahrenheit), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80 (see Section 3 of 401 KAR 30:010), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78 (see Section 3 of 401 KAR 30:010), or as determined by an equivalent test method approved by the cabinet and the administrator under procedures set forth in Section 2 of 401 KAR 30:020.

(b) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(c) It is an ignitable compressed gas as defined in 49 CFR 173.300 (1990) and as determined by the test methods described in that administrative regulation or equivalent test methods approved by the cabinet and the administrator under Section 2 of 401 KAR 30:020.

(d) It is an oxidizer as defined in 49 CFR 173.151 (1990).

(2) A waste that exhibits the characteristic of ignitability[~~, but is not listed as a hazardous waste in 401 KAR 31:040,~~] has the EPA hazardous waste number of D001.

Section 3. Characteristic of Corrosivity. (1) A waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(a) It is aqueous and has a pH less than or equal to two (2) or greater than or equal to twelve and five-tenths (12.5), as determined by a pH meter using either an EPA test method or an equivalent test method approved by the cabinet and the administrator under the procedures set forth in Section 2 of 401 KAR 30:020. The EPA test method for pH is specified as Method 5.2 in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (see Section 3 of 401 KAR 30:010).

(b) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (approximately 0.250 inch) per year at a test temperature of fifty-five (55) degrees Centigrade (approximately 130 degrees Fahrenheit) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (see Section 3 of 401 KAR 30:010) or an equivalent test method approved by the cabinet and the administrator under the procedures set forth in Section 2 of 401 KAR 30:020.

(2) A waste that exhibits the characteristic of corrosivity[~~, but is not listed as a hazardous waste in 401 KAR 31:040,~~] has the EPA Hazardous Waste Number of D002.

Section 4. Characteristic of Reactivity. (1) A waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(a) It is normally unstable and readily undergoes violent change without detonating.

(b) It reacts violently with water.

(c) It forms potentially explosive mixtures with water.

(d) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(e) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between two (2) or twelve and five-tenths (12.5), can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(f) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(g) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(h) It is a forbidden explosive as defined in 49 CFR 173.51 (1990), or a Class A explosive as defined in 49 CFR 173.53 (1990), or a Class B explosive as defined in 49 CFR 173.88 (1990).

(2) A waste that exhibits the characteristic of reactivity[~~, but is not listed as a hazardous waste in 401 KAR 31:040,~~] has the EPA Hazardous Waste Number of D003.

Section 5. Toxicity Characteristic. (1) A waste exhibits the characteristic of toxicity if, using the test methods described in 401 KAR 31:110 or equivalent methods approved by the cabinet and the administrator under the procedures set forth in Section 2 of 401 KAR 30:020 and 31:060, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 (see subsection (3) of this section) at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than five-tenths (0.5) percent filterable solids, the waste itself, after filtering using methodology outlined in 401 KAR 31:110, is considered to be the extract for the purposes of this section.

(2) A waste that exhibits the characteristic of toxicity[~~, but is not listed as a hazardous waste in 401 KAR 31:040,~~] has the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.

(3) Table 1. Maximum Concentration of Contaminants for the Toxicity Characteristic

EPA Hazardous Waste Number	Contaminant	Chemical Abstract Service Number	Regulatory Level (mg/L)
D004	Arsenic	7440-38-2	5.0
D005	Barium	7440-39-3	100.0

D018	Benzene	71-43-2	0.5
D006	Cadmium	7440-43-9	1.0
D019	Carbon tetra-chloride	56-23-5	0.5
D020	Chlordane	57-74-9	0.03
D021	Chlorobenzene	108-90-7	100.0
D022	Chloroform	67-66-3	6.0
D007	Chromium	7440-47-3	5.0
D023	o-Cresol	95-48-7	200.0[2]
D024	m-Cresol	108-39-4	200.0[2]
D025	p-Cresol	106-44-5	200.0[2]
D026	Cresol	------	200.0[2]
D016	2,4-D	94-75-7	10.0
D027	1,4-Dichloro-benzene	106-46-7	7.5
D028	1,2-Dichloro-ethane	107-06-2	0.5
D029	1,1-Dichloro-ethylene	75-35-4	0.7
D030	2,4-Dinitro-toluene	121-14-2	0.13[1]
D012	Endrin	72-20-8	0.02
D031	Heptachlor (and its epoxide)	76-44-8	0.008
D032	Hexachloro-benzene	118-74-1	0.13[1]
D033	Hexachloro-butadiene	87-68-3	0.5
D034	Hexachloro-ethane	67-72-1	3.0
D008	Lead	7439-92-1	5.0
D013	Lindane	58-89-9	0.4
D009	Mercury	7439-97-6	0.2
D014	Methoxychlor	72-43-5	10.0
D035	Methyl ethyl ketone	78-93-3	200.0
D036	Nitrobenzene	98-95-3	2.0
D037	Pentachloro-phenol	87-86-5	100.0
D038	Pyridiene	110-86-1	5.0[1]
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D039	Tetrachloro-ethylene	127-18-4	0.7
D015	Toxaphene	8001-35-2	0.5
D040	Trichloro-ethylene	79-01-6	0.5
D041	2,4,5-tri-chlorophenol	95-95-4	400.0
D042	2,4,6-tri-chlorophenol	88-06-2	2.0
D017	2,4,5-TP (Silvex)	93-72-1	1.0
D043	Vinyl chlor-ide	75-01-4	0.2

1 - Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.
2 - If o-, m- and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

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CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This proposed amendment affects all entities that generate, transport or manage hazardous waste. Currently there are 4229 entities that are regulated under the hazardous waste management program.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no new direct costs to the regulated community due to these amendments. It is noted that the requirements being amended are required by the federal hazardous waste program. However, regulated entities may find that minor costs are associated with implementing the amended requirements. Prior to this amendment, entities that generated a listed waste were not obligated to identify the characteristics associated with their waste. However, this amendment will require identifying both the listed waste and its characteristics on paperwork and reports. Because 401 KAR 31:040 identifies the characteristic of each listed waste in the "Hazard Code" column, any additional cost anticipated to comply with this amendment will be minimal.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: This amendment will result in changes to the reporting and paperwork requirements. However, these changes are insignificant.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs to the agency that will result from promulgating this amendment.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no new reporting or paperwork requirements anticipated with this amendment.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on local or state revenues as the result of promulgating this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The agency could have opted not to adopt the federal

changes, however, that would have made the state program inconsistent with the federal hazardous waste management program. Kentucky must adopt a program at least as stringent as the federal program to maintain authorization to operate the state program in lieu of the federal program. Thus, alternatives that would have made the state program inconsistent with the federal program were rejected.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statutes, administrative regulations or government policies were identified that conflict with, overlap or duplicate this amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The amendments made to this administrative regulation are identical to 40 CFR 261.20, effective January 31, 1991; 40 CFR 261.21, effective June 1, 1990; 40 CFR 261.22, effective June 1, 1990; 40 CFR 261.23, effective June 1, 1990; and 40 CFR 261.24, effective June 29, 1990. The Resource Conservation and Recovery Act stipulates that a state may be authorized to operate the state program in lieu of the federal hazardous waste program, if the state program is consistent with and no less stringent than the federal program. In addition, KRS 224.46-510(3) requires the agency to adopt a list and criteria for identifying a hazardous waste that is identical to the one use by the U.S. EPA.

2. State compliance standards: This amendment requires the use of EPA waste numbers to designate the characteristic of all listed hazardous wastes on all paperwork, recordkeeping and reporting. The result will be that on all paperwork, every EPA waste number that applies to a specific waste will be identified. This will improve the accuracy of records kept by entities managing hazardous waste.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR Parts 261.20 through 261.24.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 31:040. Lists of hazardous wastes.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3), 224.46-530 [~~, 224.50-100~~]

NECESSITY AND FUNCTION: KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This administrative 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 administrative 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 administrative 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 administrative regulation.

(3) Each hazardous waste listed in this administrative 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 to [~~through~~] 40.

(4) The following hazardous wastes listed in Section 2 or 3 of this administrative 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. (1) 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	(T)

	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.	
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, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents, or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I,T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)
F007	Spent cyanide plating bath solutions from electroplating operations.	(R,T)
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	(R,T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	(R,T)
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	(R,T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	(R,T)
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	(T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum <u>except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process</u>.	(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	(H)

	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.)	
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by [~~, having carbon content from one (1) to five (5), utilizing~~] free radical catalyzed processes. These chlorinated hydrocarbons are those having carbon chain lengths ranging from one (1) to and including five (5), with varying amounts and positions of chloring substitution. (This listing does not include [~~light ends, spent filters and filter aids, spent desiccants,~~] wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Sections 2 and 3 of this administrative regulation.)	(T)
F025	Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one (1) to and including five (5), with varying amounts and positions of chlorine substitution.	(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)
F032	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with Section 6 of this administrative regulation or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (For example, F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol.	(T)
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol.	(T)
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol.	(T)
F037	Petroleum refinery primary oil/water/solids separation sludge - Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from	(T)

	other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in subsection (2)(b) of this section (including sludges generated in one (1) or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge - Any sludge and float generated from the physical and chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in subsection (2) of this section (including sludges and floats generated in one (1) or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.	(T)
F039	Leachate (liquids that have percolated through land disposal wastes) resulting from the disposal of more than one (1) restricted waste classified as hazardous under this administrative regulation. (Leachate resulting from the disposal of one (1) or more of the following EPA Hazardous Wastes and no other hazardous wastes retains its EPA Hazardous Waste Number: F020, F021, F022, F026, F027, and F028.).	(T)

*(I,T) shall be used to specify mixtures containing ignitable and toxic constituents.

(2) Listing specific definitions.

(a) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and water and solids.

(b)1. For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one (1) of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity; and

a. The units employs a minimum of six (6) hp per million gallons of treatment volume, and either:

b. The hydraulic retention time of the unit is no longer than five (5) days; or

c. The hydraulic retention time is no longer than thirty (30) days and the unit does not generate a sludge that is a hazardous waste by the toxicity characteristic.

2. Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities shall maintain, in their operating or other on-site records, documents and data sufficient to prove that:

a. The unit is an aggressive biological treatment unit as defined in this subsection; and

b. The sludges sought to be exempted from the definitions of F037 or F038 were actually generated in the aggressive biological treatment unit.

(c)1. For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

2. For the purposes of the F038 listing:

a. Sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement; and

b. Floats are considered to be generated at the moment they are formed in the top of the unit.

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)
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)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.	(T)
K083	Distillation bottoms from aniline production.	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	(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 perchloroethylene.~~	~~(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)
K107	Column bottoms from product separation from the production of 1,1-dimethyl-hydrazine (UDMH) from carboxylic acid hydrazines.	(C, T)
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(I, T)
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(T)
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(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	(T)

	toluenediamine via hydrogenation of dinitrotoluene.	
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	(T)
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	(T)
K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
Inorganic Chemicals:		
K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)
K106	Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)
Pesticides:		
K031	By-product salts generated in the production of MSMA and cacodylic acid.	(T)
K032	Wastewater treatment sludge from the production of chlordane.	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)
~~[K097~~	~~Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.]~~	~~(T)~~
K035	Wastewater treatment sludges generated in the production of creosote.	(T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)
K037	Wastewater treatment sludges from the production of disulfoton.	(T)
K038	Wastewater from the washing and stripping of phorate production.	(T)
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)
K040	Wastewater treatment sludge from the production of phorate.	(T)
K041	Wastewater treatment sludge from the production of toxaphene.	(T)
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 production of 2,4-Dichlorophenol.	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(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)
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	(C,T)
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	(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	(T)

	industry.	
K049	Slop oil emulsion solids from the petroleum refining industry.	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)
K051	API separator sludge from the petroleum refining industry.	(T)
K052	Tank bottoms (leaded) from the petroleum refining industry.	(T)
Iron and Steel:		
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	(T)
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	(C,T)
Primary Copper:		
K064	Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.	(T)
Primary Lead:		
K065	Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.	(T)
Primary Zinc:		
K066	Sludge from treatment of process wastewater and 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 administrative 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) or (6) 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) to [~~through~~] (4) of this section, are identified as acute hazardous wastes (H) and are subject to the limited quantity generator exclusion in Section 5 of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence

of a letter indicates that the compound is only listed for acute toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance	Chemical Abstracts No.
P023	Acetaldehyde, chloro-	107-20-0
P002	Acetamide, N-(aminothioxomethyl)-	591-08-2
P057	Acetamide, 2-fluoro-	640-19-7
P058	Acetic acid, fluoro-, sodium salt	62-74-8
P002	1-Acetyl-2-thiourea	591-08-2
P003	Acrolein	107-02-8
P070	Aldicarb	116-06-3
P004	Aldrin	309-00-2
P005	Allyl alcohol	107-18-6
P006	Aluminum phosphide (R,T)	20859-73-8
P007	5-(Aminomethyl)-3-isoxazolol	2763-96-4
P008	4-Aminopyridine	504-24-5
P009	Ammonium picrate (R)	131-74-8
P119	Ammonium vanadate	7803-55-6
P099	Argentate (1-), bis(cyano-C)-, potassium	506-61-6
P010	Arsenic acid H_3AsO_4	7778-39-4
P012	Arsenic oxide As_2O_3	1327-53-3
P011	Arsenic oxide As_2O_5	1303-28-2
P011	Arsenic pentoxide	1303-28-2
P012	Arsenic trioxide	1327-53-3
P038	Arsine, diethyl-	692-42-2
P036	Arsonous dichloride, phenyl-	696-28-6
P054	Aziridine	151-56-4
P067	Aziridine, 2-methyl-	75-55-8
P013	Barium cyanide	542-62-1
P024	Benzenamine, 4-chloro-	106-47-8
P077	Benzenamine, 4-nitro-	100-01-6
P028	Benzene, (chloromethyl)-	100-44-7
P042	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-	51-43-4
P046	Benzeneethanamine, alpha, alpha-dimethyl-	122-09-8
P014	Benzenethiol	108-98-5
P028	Benzyl chloride	100-44-7
P015	Beryllium	7440-41-7
P017	Bromoacetone	598-31-2
P018	Brucine	357-57-3
P045	2-Butanone, 3,3-dimethyl-1-(methylthio)-,O-(methylamino) carbonyl) oxime	39196-18-4
P021	Calcium cyanide	592-01-8
P021	Calcium cyanide $Ca(CN)_2$	592-01-8
P022	Carbon disulfide	75-15-0
P095	Carbonic dichloride	75-44-5
P023	Chloroacetaldehyde	107-20-0
P024	p-Chloroaniline	106-47-8
P026	1-(o-Chlorophenyl)thiourea	5344-82-1
P027	3-Chloropropionitrile	542-76-7
P029	Copper cyanide	544-92-3
P029	Copper cyanide Cu(CN)	544-92-3
P030	Cyanides (soluble cyanide salts), not otherwise specified	--------
P031	Cyanogen	460-19-5
P033	Cyanogen chloride	506-77-4
P033	Cyanogen chloride (CN)Cl	506-77-4
P034	2-Cyclohexyl-4,6-dinitrophenol	131-89-5
P016	Dichloromethyl ether	542-88-1
P036	Dichlorophenylarsine	696-28-6
P037	Dieldrin	60-57-1
P038	Diethylarsine	692-42-2
P041	Diethyl-p-nitrophenyl phosphate	311-45-5
P040	O,O-Diethyl O-pyrazinyl phosphorothioate	297-97-2
P043	Diisopropylfluorophosphate (DFP)	55-91-4
P004	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4, 4a,5,8,8a,- hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha, 8abeta)-	309-00-2
P060	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4, 4a,5,8,8a- hexahydro-, (1alpha, 4alpha, 4abeta, 5beta, 8beta, 8abeta)-	465-73-6
P037	2,7:3,6-Dimethanonaphth(2,3-b) oxirene,3,4,5,6,9,9-hexa-chloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha, 2beta, 2aalpha, 3beta, 6beta, 6aalpha, 7beta, 7aalpha)-	60-57-1
P051	2,7:3,6-Dimethanonaphth(2,3-b),oxirene, 3,4,5,6,9,9-hexa-chloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha, 2beta, 2abeta,3alpha, 6alpha, 6abeta,7beta, 7aalpha)-, and metabolites	*72-20-8
P044	Dimethoate	60-51-5
P046	alpha, alpha-Dimethylphenethy lamine	122-09-8
P047	4,6-Dinitro-o-cresol, and salts	*534-52-1
P048	2,4-Dinitrophenol	51-28-5
P020	Dinoseb	88-85-7
P085	Diphosphoramide, octamethyl-	152-16-9
P111	Diphosphoric acid, tetraethyl ester	107-49-3
P039	Disulfoton	298-04-4
P049	Dithiobiuret	541-53-7
P050	Endosulfan	115-29-7
P088	Endothal	145-73-3
P051	Endrin	72-20-8
P051	Endrin, and metabolites	72-20-8
P042	Epinephrine	51-43-4
P031	Ethanedinitrile	460-19-5
P066	Ethanimidothioic acid, N-(((methylamino)carbonyl) oxy)-,methyl ester	16752-77-5
P101	Ethyl cyanide	107-12-0
P054	Ethyleneimine	151-56-4
P097	Famphur	52-85-7
P056	Fluorine	7782-41-4
P057	Fluoroacetamide	640-19-7
P058	Fluoroacetic acid, sodium salt	62-74-8
P065	Fulminic acid, mercury (2+) salt (R,T)	628-86-4
P059	Heptachlor	76-44-8
P062	Hexaethyl tetraphosphate	757-58-4
P116	Hydrazinecarbothioamide	79-19-6
P068	Hydrazine, methyl-	60-34-4
P063	Hydrocyanic acid	74-90-8
P063	Hydrogen cyanide	74-90-8
P096	Hydrogen phosphide	7803-51-2
P060	Isodrin	465-73-6
P007	3(2H)-Isoxazolone,5-(aminomethyl)-	2763-96-4
P092	Mercury, (acetato-O) phenyl-	62-38-4
P065	Mercury fulminate (R,T)	628-86-4
P082	Methanamine,N-methyl-N-nitroso-	62-75-9

P064	Methane, isocyanato-	624-83-9
P016	Methane, oxybis (chloro-	542-88-1
P112	Methane, tetranitro-(R)	509-14-8
P118	Methanethiol, trichloro-	75-70-7
P050	6,9-Methano-2,4,3-benzodio-xathiepen, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-,3-oxide	115-29-7
P059	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8
P066	Methomyl	16752-77-5
P068	Methyl hydrazine	60-34-4
P064	Methyl isocyanate	624-83-9
P069	2-Methyllactonitrile	75-86-5
P071	Methyl parathion	298-00-0
P072	alpha-Naphthylthiourea	86-88-4
P073	Nickel carbonyl	13463-39-3
P073	Nickel carbonyl $Ni(CO)_4$, (T-4)-	13463-39-3
P074	Nickel cyanide	557-19-7
P074	Nickel cyanide $Ni(CN)_2$	557-19-7
P075	Nicotine, and salts	*54-11-5
P076	Nitric oxide	10102-43-9
P077	p-Nitroaniline	100-01-6
P078	Nitrogen dioxide	10102-44-0
P076	Nitrogen oxide NO	10102-43-9
P078	Nitrogen oxide NO_2	10102-44-0
P081	Nitroglycerine (R)	55-63-0
P082	N-Nitrosodimethylamine	62-75-9
P084	N-Nitrosomethylvinylamine	4549-40-0
P085	Octamethylpyrophosphoramide	152-16-9
P087	Osmium oxide OsO_4, (T-4)-	20816-12-0
P087	Osmium tetroxide	20816-12-0
P088	7-Oxabicyclo (2.2.1)heptane-2,3-dicarboxylic acid	145-73-3
P089	Parathion	56-38-2
P034	Phenol, 2-cyclohexyl-4, 6-dinitro-	131-89-5
P048	Phenol, 2, 4-dinitro	51-28-5
P047	Phenol, 2-methyl-4,6-dinitro-, and salts	*534-52-1
P020	Phenol, 2-(1-methylpropyl)-4, 6-dinitro-	88-85-7
P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)	131-74-8
P092	Phenylmercury acetate	62-38-4
P093	Phenylthiourea	103-85-5
P094	Phorate	298-02-2
P095	Phosgene	75-44-5
P096	Phosphine	7803-51-2
P041	Phosphoric acid, diethyl 4 -nitrophenyl ester	311-45-5
P039	Phosphorodithioic acid, 0,0-diethyl S-(2-(ethylthio)ethyl) ester	298-04-4
P094	Phosphorodithioic acid, 0,0-diethyl S-((ethylthio)methyl) ester	298-02-2
P044	Phosphorodithioic acid, O, O-dimethyl S-(2-(methylamino)-2-oxoethyl) ester	60-51-5
P043	Phosphorofluoridic acid, bis (1-methylethyl) ester	55-91-4
P089	Phosphorothioic acid, O, O-diethyl O-(4-nitrophenyl) ester	56-38-2
P040	Phosphorothioic acid, O, O-diethyl O-pyrazinyl ester	297-97-2
P097	Phosphorothioic acid, O-(4-((dimethylamino) sulfonyl) phenyl) 0,0-dimethyl ester	52-85-7
P071	Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	298-00-0
P110	Plumbane, tetraethyl-	78-00-2
P098	Potassium cyanide	151-50-8
P098	Potassium cyanide K(CN)	151-50-8
P099	Potassium silver cyanide	506-61-6
P070	Propanal, 2-methyl-2-(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-ol	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
P108	Strychnidin-10-one, and salts	*57-24-9
P018	Strychnidin-10-one, 2, 3-dimethoxy-	357-57-3
P108	Strychnine, and salts	*57-24-9
P115	Sulfuric acid, dithallium (1+)salt	7446-18-6
P109	Tetraethyldithiopyrophosphate	3689-24-5
P110	Tetraethyl lead	78-00-2
P111	Tetraethyl pyrophosphate	107-49-3
P112	Tetranitromethane (R)	509-14-8
P062	Tetraphosphoric acid, hexa-ethyl ester	757-58-4
P113	Thallic oxide	1314-32-5
P113	Thallium oxide $T1_20_3$	1314-32-5
P114	Thallium (I) selenite	12039-52-0
P115	Thallium (I) sulfate	7446-18-6
P109	Thiodiphosphoric acid, tetra-ethyl ester	3689-24-5
P045	Thiofanox	39196-18-4
P049	Thioimidodicarbonic diamide $((H_2N)C(S))_2NH$	541-53-7
P014	Thiophenol	108-98-5
P116	Thiosemicarbazide	79-19-6
P026	Thiourea, (2-chlorophenyl)-	5344-82-1
P072	Thiourea, 1-naphthalenyl-	86-88-4
P093	Thiourea, phenyl-	103-85-5
P123	Toxaphene	8001-35-2
P118	Trichloromethanethiol	75-70-7
P119	Vanadic acid, ammonium salt	7803-55-6
P120	Vanadium oxide V_20_5	1314-62-1
P120	Vanadium pentoxide	1314-62-1
P084	Vinylamine, N-methyl-N-nitroso-	4549-40-0
P001	Warfarin, and salts, when present at concentrations greater than 0.3%	*81-81-2
P121	Zinc cyanide	557-21-1
P121	Zinc cyanide $Zn(CN)_2$	557-21-1
P122	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10% (R,T)	1314-84-7

*CAS number given for parent compound only

(6) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in subsections (1) to ~~[through]~~ (4) of this section, are identified as toxic wastes (T), unless otherwise designated, and are subject to the limited quantity generator exclusion in Section 5(1), (6), and (7) of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance	Chemical Abstracts No.
U001	Acetaldehyde (I)	75-07-0
U034	Acetaldehyde, trichloro-	75-87-6
U187	Acetamide, N-(4-ethoxyphenyl)-	62-44-2
U005	Acetamide, N-9H-fluoren-2-yl-	53-96-3
U240	Acetic acid, (2,4-dichloro-phenoxy)-, salts and esters	*94-75-7
U112	Acetic acid ethyl ester (I)	141-78-6
U144	Acetic acid, lead (2+) salt	301-04-2
U214	Acetic acid, thallium (1+) salt	563-68-8
See F027	Acetic acid, (2,4,5-trichlorophenoxy)-	93-76-5
U002	Acetone (I)	67-64-1
U003	Acetonitrile (I,T)	75-05-8
U004	Acetophenone	98-86-2
U005	2-Acetylaminofluorene	53-96-3
U006	Acetyl chloride (C,R,T)	75-36-5
U007	Acrylamide	79-06-1
U008	Acrylic acid (I)	79-10-7
U009	Acrylonitrile	107-13-1
U011	Amitrole	61-82-5
U012	Aniline (I,T)	62-53-3
U136	Arsinic acid, dimethyl-	75-60-5
U014	Auramine	492-80-8
U015	Azaserine	115-02-6
U010	Azirino (2',3':3,4) pyrrolo (1,2-a) indole-4, 7-dione, 6-amino-8-(((aminocarbonyl) oxy) methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, (1aS- (1aalpha, 8beta, 8aalpha, 8balpha))-	50-07-7
U157	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-	56-49-5
U016	Benz(c)acridine	225-51-4
U017	Benzal chloride	98-87-3
U192	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5
U018	Benz(a)anthracene	56-55-3
U094	Benz(a)anthracene, 7,12-dimethyl-	57-97-6
U012	Benzenamine (I,T)	62-53-3
U014	Benzenamine, 4,4'-carbon-imidoylbis (N,N-dimethyl-	492-80-8
U049	Benzenamine, 4-chloro-2-methyl-,hydrochloride	3165-93-3
U093	Benzenamine, N, N-dimethyl-4-(phenylazo)-	60-11-7
U328	Benzenamine, 2-methyl-	95-53-4
U353	Benzenamine, 4-methyl-	106-49-0
U158	Benzenamine, 4,4'-methylenebis (2-chloro-	101-14-4
U222	Benzenamine, 2-methyl-, hydrochloride	636-21-5
U181	Benzenamine, 2-methyl-5-nitro	99-55-8
U019	Benzene (I,T)	71-43-2
U038	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510-15-6
U030	Benzene, 1-bromo-4-phenoxy-	101-55-3
U035	Benzenebutanoic acid, 4-(bis (2-chloroethyl)amino)-	305-03-3
U037	Benzene, chloro-	108-90-7
U221	Benzenediamine, ar-methyl-	25376-45-8
U028	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7
U069	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2
U088	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2
U102	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3
U107	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0
U070	Benzene, 1,2-dichloro-	95-50-1
U071	Benzene, 1,3-dichloro-	541-73-1
U072	Benzene, 1,4-dichloro-	106-46-7
U060	Benzene, 1,1'-(2,2-dichloro-ethylidene)bis(4-chloro-	72-54-8
U017	Benzene, (dichloromethyl)-	98-87-3
U223	Benzene, 1,3-diisocyanato-methyl- (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-tri-chloroethylidene)bis(4-chloro-	50-29-3
U247	Benzene, 1,1'-(2,2,2-tri-chloroethylidene)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-phenylbutyl)-, 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,	91-94-1

U091	3,3'-dichloro-(1,1'-Biphenyl)-4,4'-diamine,	119-90-4
U095	3,3'-dimethoxy-(1,1'-Biphenyl)-4,4'-diamine,	119-93-7
U225	3,3'-dimethyl-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-ethane-diylbis-, 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
U117	Ethyl ether (I)	60-29-7
U114	Ethylenebisdithiocarbamic acid, salts and esters	*111-54-6
U067	Ethylene dibromide	106-93-4
U077	Ethylene dichloride	107-06-2
U359	Ethylene glycol monoethyl ether	110-80-5
U115	Ethylene oxide (1,T)	75-21-8
U116	Ethylenethiourea	96-45-7
U117	Ethyl ether (I)	60-29-7
U076	Ethylidene dichloride	75-34-3
U118	Ethyl methacrylate	97-63-2
U119	Ethyl methanesulfonate	62-50-0
U120	Fluoranthene	206-44-0
U122	Formaldehyde	50-00-0
U123	Formic acid (C,T)	64-18-6
U124	Furan (I)	110-00-9
U125	2-Furancarboxaldehyde (I)	98-01-1
U147	2,5-Furandione	108-31-6
U213	Furan, tetrahydro- (I)	109-99-9
U125	Furfural (I)	98-01-1
U124	Furfuran (I)	110-00-9
U206	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-,D-	18883-66-4
U206	D-Glucose, 2-deoxy-2-(((methylnitrosoamino)-carbonyl(amino)-	18883-66-4
U126	Glycidylaldehyde	765-34-4
U163	Guanidine, N-methyl-N'-nitro-N-nitroso-	70-25-7
U127	Hexachlorobenzene	118-74-1
U128	Hexachlorobutadiene	87-68-3
U130	Hexachlorocyclopentadiene	77-47-4
U131	Hexachloroethane	67-72-1
U132	Hexachlorophene	70-30-4
U243	Hexachloropropene	1888-71-7
U133	Hydrazine (R,T)	302-01-2
U086	Hydrazine,1,2-diethyl-	1615-80-1
U098	Hydrazine,1,1-dimethyl-	57-14-7
U099	Hydrazine,1,2-dimethyl-	540-73-8
U109	Hydrazine,1,2-diphenyl-	122-66-7
U134	Hydrofluoric acid (C,T)	7664-39-3
U134	Hydrogen fluoride (C,T)	7664-39-3
U135	Hydrogen sulfide	7783-06-4
U135	Hydrogen sulfide H_2S	7783-06-4
U096	Hydroperoxide, 1-methyl-1-phenylethyl-(R)	80-15-9
U116	2-Imidazolidinethione	96-45-7
U137	Indeno(1,2,3-cd) pyrene	193-39-5
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-trihydroxy-1-methoxy-, (8S-cis)-	20830-81-3
U167	1-Naphthalenamine	134-32-7
U168	2-Naphthalenamine	91-59-8
U026	Naphthalenamine,N,N'-bis	494-03-1

	(2-chloroethyl)-	
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
U215	Thallium (I) carbonate	6533-73-9
U216	Thallium (I) chloride	7791-12-0
U216	Thallium chloride Tlcl	7791-12-0
U217	Thallium (I) nitrate	10102-45-1
U218	Thioacetamide	62-55-5
U153	Thiomethanol (I,T)	74-93-1
U244	Thioperoxydicarbonic diamide $((H_2N)C(S))_2S_2$, tetramethyl-	137-26-8
U219	Thiourea	62-56-6
U244	Thiram	137-26-8

U220	Toluene	108-88-3
U221	Toluenediamine	25376-45-8
U223	Toluene diisocyantate (R,T)	26471-62-5
U328	o-Toluidine	95-53-4
U353	p-Toluidine	106-49-0
U222	o-Toluidine hydrochloride	636-21-5
U011	1H-1,2,4-Triazol-3-amine	61-82-5
U227	1,1,2-Trichloroethane	79-00-5
U228	Trichloroethylene	79-01-6
U121	Trichloromonofluoromethane	75-69-4
See F027	2,4,5-Trichlorophenol	95-95-4
See F027	2,4,6-Trichlorophenol	88-06-2
U234	1,3,5-Trinitrobenzene (R,T)	99-35-4
U182	1,3,5-Trioxane,2,4,6-trimethyl-	123-63-7
U235	Tris(2,3-dibromopropyl) phosphate	126-72-7
U236	Trypan blue	72-57-1
U237	Uracil mustard	66-75-1
U176	Urea, N-ethyl-N-nitroso-	759-73-9
U177	Urea, N-methyl-N-nitroso-	684-93-5
U043	Vinyl chloride	75-01-4
U248	Warfarin, and salts, when present at concentrations of 0.3% or less	*81-81-2
U239	Xylene (I)	1330-20-7
U200	Yohimban-16-carboxylic acid, 11, 17-dimethoxy-18((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester, (3beta,16beta, 17alpha,18beta,20alpha)-	50-55-5
U249	Zinc phosphide Zn_3P_2, when present at concentrations of 10% or less	1314-84-7

*CAS number given for parent compound only.

Section 5. Nerve and Blister Agents. The following substances are listed as hazardous wastes:

Kentucky Waste Number	Substance	Chemical Abstracts Number
N001	GB (isopropyl methyl phosphonoflouridate) (H)	107-44-8
N002	VX (0-ethyl-S-(2-diisopropyl-aminoethyl) -methyl phosphonothiolate) (H)	50782-69-9
N003	H (bis(2-chloroethyl) sulfide) and related compounds (H)	505-60-2

Section 6. Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement. (1) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives shall not meet the listing definition of F032 once the generator has met all of the requirements of subsection (2) and (3) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one (1) or more of the hazardous waste characteristics.

(2) Generators shall either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(a) Generators shall do one (1) of the following:

1. Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

2. Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

3. Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservations.

(b) Cleaning requirements.

1. Prepare and sign a written equipment cleaning plan that describes:

a. The equipment to be cleaned;

b. How the equipment will be cleaned;

c. The solvent to be used in cleaning;

d. How solvent rinses shall be tested; and

e. How cleaning residues shall be disposed.

2. Equipment shall be cleaned as follows:

a. Remove all visible residues from process equipment;

b. Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

3. Analytical requirements.

a. Rinses shall be tested in accordance with SW-846, Method 8290.

b. "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

4. The generator shall manage all residues from the cleaning process as F032 waste.

(c) Replacement requirements.

1. Prepare and sign a written equipment replacement plan that describes:

a. The equipment to be replaced;

b. How the equipment shall be replaced; and

c. How the equipment shall be disposed.

2. The generator shall manage the discarded equipment as F032 waste.

(d) Documentation requirements. Document that previous equipment cleaning or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(3) The generator shall maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(a) The name and address of the facility;

(b) Formulations previously used and the date on which their use ceased in each process at the plant;

(c) Formulations currently used in each process at the plant;

(d) The equipment cleaning or replacement plan;

(e) The name and address of any persons who conducted the cleaning and replacement;

(f) The dates on which cleaning and replacement were accomplished;

(g) The dates of sampling and testing;

(h) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(i) A description of the tests performed, the date the tests were performed, and the results of the tests;

(j) The name and model numbers of the instrument(s) used in performing the tests;

(k) QA/QC documentation; and

(l) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under Section 6 of 401 KAR 31:040 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: The amendments to this administrative regulation affect entities generating, transporting or managing wastes from the chemical conversion coating of aluminum process; chlorinated aliphatic hydrocarbons production; wood preserving process; petroleum refining; land disposal; and organic chemicals manufacture. There are currently 4229 entities that generate or manage hazardous wastes in Kentucky. However, only a few entities will be affected by this amendment. There are 14 wood preserving companies and 4 petroleum refineries in Kentucky. An unknown number of other entities will be affected by this rule.

(a) Direct and indirect costs or savings to those affected:

1. First year: The amendments to this administrative regulation were promulgated by the US EPA and would apply to Kentucky's industries whether or not the cabinet adopts them. Thus, there are no new costs or savings to the regulated community that will result from promulgation of this amendment.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The amendments to this administrative regulation do not directly affect reporting or paperwork requirements. However, indirectly, newly listed wastes will be required (by other administrative regulations) to be recorded or reported.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The promulgation of newly listed wastes will increase the existing workload on the administrative body through inspections and review of documents. However, this cost will be offset by grant monies received from the US EPA to operate the state program in lieu of the federal hazardous waste program.

2. Continuing costs or savings: Entities newly regulated by the promulgation of this amendment will continue to be monitored, inspection and require reviews by the state agency. However, these costs should be offset by grant monies.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No new reporting or paperwork requirements are anticipated as the result of this amendment.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet did not consider any alternatives to the proposed amendment. In order to maintain authorization to operate the state program in lieu of the federal hazardous waste program, Kentucky must adopt lists of hazardous waste that are consistent with and no less stringent than the federal list. KRS 224.46-510(3) stipulates that Kentucky must adopt a list of hazardous wastes that is identical to the federal list.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No administrative regulation, statute or government policy was identified which may conflict, overlap or duplicate this amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The lists of hazardous wastes are contained in Subpart D of 40 CFR Part 261 (40 CFR 261.30 through 261.33) effective July 1, 1992.

2. State compliance standards: KRS 224.46-510(3) requires the cabinet to adopt a list of hazardous wastes that is identical to the federal list.

3. Minimum or uniform standards contained in the federal mandate: The amendment to this administrative regulation adopts the changes to the federal list of hazardous waste effective July 1, 1992. The changes include reorganizing the lists so that EPA Waste Numbers are in numerical order within each category and adopting new listings for wood preserving chemicals and organic chemicals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 31:060. Rulemaking petitions for hazardous waste.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.50, 224.99[~~, 40 CFR 261.11(a)(3)~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3)[~~, 40 CFR 261.11(e)(3)~~]

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510(3) and to [~~requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous wastes. This regulation~~] establish[~~es~~] the procedures to add a testing or analytical method to 401 KAR Chapters 31, 34, or 35[~~, or 37,~~] or to exclude a waste at a particular site or facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040.

Section 1. General Procedures. (1) This administrative regulation sets forth requirements for petitions to add a testing or analytical method to 401 KAR Chapters 31, 34, or 35[~~, or 37,~~] or to exclude a waste at a particular facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040.

(2) Each petition shall be submitted to the cabinet by certified mail and shall include:

(a) The petitioner's name and address;

(b) A statement of the petitioner's interest in the proposed action;

(c) A description of the proposed action, including (where appropriate) suggested regulatory language;

(d) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information; and

(e) A check payable to the Kentucky State Treasurer in the amount required by 401 KAR Chapter 39.

(3) The cabinet shall make a tentative decision to grant or deny a petition. If the tentative decision is to deny, the cabinet shall notify the petitioner. If the tentative decision is to grant the petition, the cabinet shall propose an amendment to 401 KAR 31:070, and file the proposed amendment with the Legislative Research Commission pursuant to KRS Chapter 13A.

Section 2. Petitions to Amend 401 KAR Chapter 31 to Exclude a Waste Produced at a Particular Facility. (1) Any person seeking to exclude a waste at a particular generating facility from the lists in 401 KAR 31:040 may petition for an amendment to the administrative regulation under this section and Section 1 of this administrative regulation. To be successful:

(a) The petitioner shall demonstrate to the satisfaction of the cabinet that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste or an acutely hazardous waste; and

(b) Based on a complete application the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed shall cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(2) The procedures in this section and Section 1 of this administrative regulation may also be used to petition the cabinet for a regulatory amendment to exclude from Section 3(1)(b)2 or (3) of 401 KAR 31:010, a waste which is described in these subsections [~~that section~~] and is either a waste listed in 401 KAR 31:040, or is derived from a waste listed in 401 KAR 31:040. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner shall make the same demonstration as required by subsection (1) of this section. [~~, except that~~] Where the waste is a mixture of solid waste and one (1) or more listed hazardous wastes or is derived from one (1) or more hazardous wastes, his demonstration shall be made with respect to the waste mixture as a whole; analysis shall be conducted for not only those constituents of [~~for which~~] the listed waste(s) contained within the mixture [~~was listed as hazardous,~~] but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste in accordance with 401 KAR 31:030.

(3) If the waste is listed with codes "I," "C," "R," or "E" in 401 KAR 31:040:

(a) The petitioner shall show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in Sections 2, 3, 4, or 5 of 401 KAR 31:030 using any applicable methods prescribed therein. The petitioner also shall show that the waste does not exhibit any of the other characteristics defined in Sections 2, 3, 4, or 5 of 401 KAR 31:030 using any applicable methods prescribed therein; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed shall cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(4) If the waste is listed with code "T" in 401 KAR 31:040:

(a) The petitioner shall demonstrate that the waste:

1. Does not contain the constituent or constituents (as defined in 401 KAR 31:160) that caused the cabinet to list the waste, using the appropriate test methods prescribed in 401 KAR 31:120; or

2. Although containing one (1) or more of the hazardous constituents (as defined in 401 KAR 31:160) that caused the cabinet to list the waste, does not meet the criterion of 40 CFR 261.11(a)(3), (1990) when considering the factors used by the cabinet in 40 CFR 261.11(a)(3)(i) to [~~through~~] (xi), (1990) under which the waste was listed as hazardous; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(c) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections 2, 3, 4 and 5 of 401 KAR 31:030 using any applicable methods prescribed therein;

(d) A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(5) If the waste is listed with the code "H" in 401 KAR 31:040:

(a) The petitioner shall demonstrate that the waste does not meet criterion of subsection (1)(b) of 401 KAR 31:020; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed shall cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(c) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections 2, 3, 4, and 5 of 401 KAR 31:030 using any applicable methods prescribed therein;

(d) A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(6) Demonstration samples shall consist of enough representative samples, but in no case less than four (4) samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(7) Each petition shall include, in addition to the information required by Section 1(2) of this administrative regulation:

(a) The name and address of the laboratory facility performing the sampling or tests of the waste;

(b) The names and qualifications of the persons sampling and testing the waste;

(c) The dates of sampling and testing;

(d) The location of the generating facility;

(e) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(f) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(g) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in Section 2(1)(c) of 401 KAR 31:020;

(h) A description of the methodologies and equipment used to obtain the representative samples;

(i) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;

(j) A description of the tests performed (including results);

(k) The names and model numbers of the instruments used in performing the tests; and

(l) The following statement signed by the generator of the waste or his authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(8) After receiving a petition for an exclusion, the cabinet may request any additional information which the cabinet may reasonably require to evaluate the petition.

(9) An exclusion shall only apply to the waste generated at the individual facility covered by the demonstration and shall not apply to waste from any other facility.

(10) The cabinet may exclude only the part of the waste for which the demonstration is submitted where the cabinet has [~~there is~~] reason to believe that variability of the waste justifies a partial exclusion.

Section 3. Requirements for Excluded Wastes. Upon approval by the cabinet of a petition to exclude waste from a particular facility, the excluded waste shall thereby be listed as a solid waste and be subject to the requirements for solid waste disposal in 401 KAR Chapter 47 and the conditions as specified in the approved exclusion.

Section 4. Repeal or Modification of an Exclusion. The cabinet shall repeal or modify an exclusion granted to any generator or petitioner for a waste or to any generator or petitioner for an equivalent testing or analytical method whenever:

(1) The cabinet has obtained information, which was not available at the time the petition for exclusion was granted, which leads [~~leaves~~] the cabinet to believe that reasonable probability exists that the waste:

(a) Was erroneously excluded from administrative regulation in accordance with Section 2 of this administrative regulation;

(b) Shall be regulated as a hazardous waste because it contains a hazardous constituent which was listed as a hazardous waste subsequent to approval of a petition to delist the waste at a particular facility; or

(c) Shall be regulated as a hazardous waste because new studies or analysis have been performed which indicate the waste meets the definition of a hazardous waste in KRS 224.01-010.

(2) The cabinet has obtained information, which was not available at the time the petition for an equivalent testing or analytical method was granted, which leaves the cabinet to believe that reasonable probability exists that the equivalent testing or analytical method was erroneously approved in accordance with Section 6 of this administrative regulation.

(3) The cabinet has obtained information that a petition for an exclusion or an equivalent testing or analytical method was incomplete, inaccurate, or based on erroneous data or calculations.

(4) The cabinet has obtained information from any other agency of state or federal government, including the EPA, that the waste shall be regulated as a hazardous waste consistent with the Resource Conservation and Recovery Act (PL 94-580), as amended (including PL 98-616, the 1984 Hazardous and Solid Waste Amendments), and pursuant to KRS Chapter 224.

(5) The cabinet has obtained information from any other agency of a state or the federal government, including the EPA, that the testing or analytical method is not equal to or superior to the corresponding method prescribed in 401 KAR Chapter 31, 34, 35, or 37 in terms of its sensitivity, accuracy, and precision.

Section 5. Requirements for Approval. In accordance with Section 3 of 401 KAR 30:020, the cabinet shall not approve a petition to exclude a waste at a particular facility unless:

(1) Exclusion of the waste is consistent with the requirements in KRS 224.46-510(3);

(2) Petitioning fees have been paid in accordance with 401 KAR 39:020; and

(3) All the requirements of this administrative regulation are satisfied.

Section 6. Petitions for Equivalent Testing or Analytical Methods. (1) Any person seeking to add a testing or analytical method to 401 KAR Chapter 31, 34, 35, or 37 may petition for a regulatory amendment under this section and Section 1 of this administrative regulation. To be successful, the person shall demonstrate to the satisfaction of the cabinet that the proposed method is equal to or superior to the corresponding method prescribed in 401 KAR Chapter 31, 34, 35, or 37 in terms of its sensitivity, accuracy, and precision ([~~i.e.,~~] reproducibility).

(2) Each petition shall include, in addition to the information required by Section 1(2) of this administrative regulation:

(a) A full description of the proposed method, including all procedural steps and equipment used in the method;

(b) A description of the types of wastes or waste matrices for which the proposed method may be used;

(c) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in 401 KAR Chapter 31, 34, 35, or 37;

(d) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(e) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(3) After receiving a petition for an equivalent method, the cabinet may request any additional information on the proposed method which is reasonably required to evaluate the method.

(4) If the cabinet amends the hazardous waste administrative regulations to permit use of a new testing method, the method shall be referenced in Section 3 of 401 KAR 30:010.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the

department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: There are currently 4229 entities generating, transporting or managing hazardous waste. Few, if any, entities may choose to utilize the procedures identified in this amendment to propose delisting a hazardous waste. Only five companies have been granted temporary delistings (all now expired) and very few companies ever pursue delisting.

(a) Direct and indirect costs or savings to those affected:

1. First year: No new costs or savings are anticipated to result from this amendment since the proposal is only adopting existing federal requirements.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The amendment will require anyone wishing to delist a mixture of hazardous wastes to conduct additional analytical tests to fully characterize the hazardous characteristics of the waste.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None. Very few delisting petitions have ever been received by the cabinet. The additional workload to evaluate additional sample results will be negligible.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet would be required to review and evaluate the additional analytical results required by the amendment.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet did not consider any alternatives to the proposed amendment. In order to maintain authorization to operate the state program in lieu of the federal hazardous waste program, Kentucky must adopt criteria for identifying hazardous waste that is consistent with and no less stringent than the federal criteria. KRS 224.46-510(3) stipulates that the cabinet must adopt a list and criteria for identifying hazardous wastes that is identical to the federal list and criteria.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified that may conflict, overlap or duplicate this amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment contains wording equivalent to 40 CFR 260.20, effective November 7, 1986; and 40 CFR 260.22, effective June 27, 1989. The Resource Conservation and Recovery Act mandates that authorized state programs must be consistent with and at least as stringent as the federal program.

2. State compliance standards: The amendment to this administrative regulation corrects an erroneous cite and adds language requiring comprehensive analysis of a waste stream prior to the agency's consideration of a petition to delist the waste. KRS 224.46-510(3) requires the cabinet to adopt a list and criteria for identifying hazardous waste that is identical to the federal list and criteria.

3. Minimum or uniform standards contained in the federal mandate: The amendment adopts changes made to 40 CFR 260.20 and 260.22, effective June 27, 1989.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, although state procedures are followed rather than federal procedures.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 31:120. Appendix on chemical analysis test methods.

RELATES TO: KRS 224.01, 224.40, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3), 224.46-530

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510(3), 224.46-530, and [~~requires the cabinet~~] to identify the characteristics of and to list hazardous wastes and to establish [~~. This chapter identifies and lists hazardous waste. This regulation contains the appendix to this chapter concerning the~~] chemical analysis test methods.

Section 1. Chemical Analysis Test Methods. (1) Tables 1, 2, and 3 specify the appropriate analytical procedures described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," SW-846, (incorporated by reference in Section 3 of 401 KAR 30:010), which shall be used in determining whether the waste in question contains a toxic constituent given in 401 KAR 31:160 or 31:170.

(2) Table 1 identifies each organic constituent in 401 KAR 31:160 or 31:170 along with the approved measurement method. Table 2 identifies the corresponding methods for the inorganic species. Table 3 summarizes the contents of SW-846 and supplies specific section and method numbers for sampling and analysis methods.

(3) Prior to final sampling and analysis method selection the analyst should consult the specific section or method described in SW-846 for additional guidance on which of the approved methods

should be employed for a specific sample analysis situation.

(4) Table 1. Analysis Methods for [~~Analytical Characteristics of~~] Organic Chemicals contained in SW-846

Compound	Method Numbers
Acetonitrile	8030, 8240
Acrolein	8030, 8240
Acrylamide	8015, 8240
Acrylonitrile	8030, 8240
2-Amino-1-methylbenzene (o-Toluidine)	8250
4-Amino-1-methylbenzene (p-Toluidine)	8250
Aniline	8250
Benzene	8020, 8024
Benz(a)anthracene	8100, 8250, 8310
Benzo(a)pyrene	8100, 8250, 8310
Benzotrichloride	8120, 8250
Benzyl chloride	8120, 8250
Benzo(b)fluoanthene	8100, 8250, 8310
Benzo(k)fluoranthene	8100,8250,8270,8310
Bis(2-chloroethoxymethane)	8010, 8240
Bis(2-chloroethyl)ether	8010, 8240
Bis(2-chloroisopropyl)ether	8010, 8240
Carbon disulfide	8015, 8240
Carbon tetrachloride	8010, 8240
Chlordane	8080, 8250
Chlorinated biphenyls	8080, 8250
Chlorinated dibenzo-p-dioxins	8280
Chlorinated dibenzofurans	8280
Chloroacetaldehyde	8010, 8240
Chlorobenzene	8020, 8240
Chloroform	8010, 8240
Chloromethane	8010, 8240
2-Chlorophenol	8040, 8250
Chrysene	8100, 8250, 8310
Creosote*	8100, 8250
Cresol(s)	8040, 8250
Cresylic acid(s)	8040, 8250
Dichlorobenzene(s)	8010, 8120, 8250
Dichloroethane(s)	8010, 8240
Dichloromethane	8010, 8240
Dichlorophenoxy-acetic acid	8150, 8250
Dichloropropanol	8120, 8250
Dimethyl sulfate	8250, 8270
1,1-Dimethylhydrazine (UDMH)	8250
2,4-Dimethylphenol	8040, 8250
Dinitrobenzene	8090, 8250
4,6-Dinitro-o-cresol	8040, 8250
2,4-Dinitrotoluene	8090, 8250
2,6-Dinitrotoluene	8060, 8250
Endrin	8080, 8250
2-Ethoxyethanol	8030, 8240
Ethyl ether	8015, 8240
Ethylene dibromide	8010, 8240
Ethylene thiourea	8250, 8330
Formaldehyde	8015, 8240
Formic acid	8250
Heptachlor	8080, 8250
Hexachlorobenzene	8120, 8250
Hexachlorobutadiene	8120, 8250
Hexachloroethane	8010, 8240
Hexachlorocyclopentadiene	8120, 8250
Lindane	8080, 8250
Maleic anhydride	8250
Methanol	8010, 8240
Methomyl	8250
Methyl bromide	8010, 8240, 8260
Methyl ethyl ketone	8015, 8240
Methyl isobutyl ketone	8015, 8240
Napththalene	8100, 8250
Napthoquinone	8090, 8250
Nitrobenzene	8090, 8250
4-Nitrophenol	8040, 8240
2-Nitropropane	8030, 8240
Paraldehyde (trimer of acetaldehyde)	8015, 8240
Pentachlorophenol	8040, 8250
Phenol	8040, 8250
Phorate	8140
Phosphorodithioic acid esters	8140
Phthalic anhydride	8090, 8250
2-Picoline	8090, 8250
Pyridine	8090, 8250
Tetrachlorobenzene(s)	8120, 8250
Tetrachloroethane(s)	8010, 8240
Tetrachloroethene	8010, 8240
Tetrachlorophenol	8040, 8250
Toluene	8020, 8024
Toluene diisocyanate(s)	8250
Toluenediamine	8250
2,4-Toluenediamine	8250
2,6-Toluenediamine	8250
3,4-Toluenediamine	8250
[~~Toluene diisocyanate(s)~~	~~8250~~]
Toxaphene	8080, 8250
Trichloroethane	8010, 8240
Trichloroethene(s)	8010, 8240
Trichlorofluoromethane	8010, 8240
Trichlorophenol(s)	8040, 8250
2,4,5-Trichlorophenoxy propionic acid	8150, 8250
Trichloropropane	8010, 8240
Vinyl chloride	8010, 8240
Vinylidene chloride	8010, 8240
Xylene	8020, 8240

Analyze for phenanthrene and carbazole; if these are present in ratio between 1.4:1 and 5:1, creosote should be considered present.

(5) Table 2. Analysis Methods for [~~Analytical Characteristics of~~] Inorganic Chemicals and Miscellaneous Groups of Analytes [~~Species~~] Contained in SW-846

Species	Second Edition Methods	Third Edition Methods
Aluminum		6010
Antimony	7040, 7041	6010
Arsenic	7060, 7061	6010
Barium	7080, 7081	6010
Beryllium		6010,7090,7091
Boron		6010
Cadmium	7090, 7091	6010
Calcium		6010
Chromium	7190, 7191	6010
Chromium: hexavalent	7195, 7196, 7197	7198
Cobalt		6010
Copper		6010,7210,7211
Iron		6010,7380,7381
[~~Cyanides~~	~~9010~~]	
Lead	7420, 7421	
Magnesium		6010
Manganese		6010,7460,7461
Mercury	7470, 7471	
Molybdenum		6010
Nickel	7520, 7521	
Osmium	------	7550

Potassium	------	6010
Selenium	7740, 7741	6010
Silicon	------	6010
Silver	7760, 7761	6010
Sodium	------	6010,7770
Thallium	------	6010,7840,7841
Vanadium	------	6010,7910,7911
Zinc	------	6010,7950,7951
Cyanides	------	9010
total organic halides	9022	9020
Sulfides	------	9030
Sulfates	------	9035,9036,9038,9060
Total organic carbon	------	9060
Phenolics	------	9065,9066*,9067
Oil and grease	------	9070,9071
Total coliform	------	9131,9132
Nitrate	------	9200
Chlorides	------	9250,9251,9252
Gross alpha and gross beta	------	9310
Alpha-emitting radium isotopes	------	9315
Radium-228	------	9320
[~~Total organic halogen 9020~~]		

[a]The Third Edition of SW-846 and its Revision I are available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202)783-3238, document number 955-001-00000-1.

*When Method 9066 is used it must be preceeded by the manual distillation specified in procedure 7.1 of Method 9065. Just prior to distillation in Method 9065, adjust the sulfuric acid-preserved sample to pH with 1=9 NaOH. After the manual distillation is completed, the auto analyzer manifold is simplified by connecting the resample line directly to the sampler.

(6) Table 3. Sampling and Analysis Methods Contained in SW-846

COMPILER'S NOTE: The following table, Table 3, is new. However, due to the size and format of the table, we are not able to underline it.

Table 3 -- Sampling and Analysis Methods Contained in SW-846[a]

Title	Third Edition		Second Edition	
	Section No.	Method No.	Section No.	Method No.
QUALITY CONTROL	1.0		10.0	
Introduction	1.1		10.1	
Quality Control	1.2			
Method Detection Limit	1.3			
Data Reporting	1.4			
Quality Control Documentation	1.5			
References	1.6			
CHOOSING THE CORRECT PROCEDURE	2.0			
Purpose	2.1			
Required Information	2.2			
Implementing the Guidance	2.3			
Characteristics	2.4			
Ground Water	2.5			
References	2.6			
METALLIC ANALYTES	3.0			
Sampling Considerations	3.1			
Sample Preparation Methods	3.2			
Acid Digestion of Waters for Total Recoverable or Dissolved Metals for Analysis by Flame AAS or ICP	3.2	3005		
Acid Digestion of Aqueous Samples and Extracts for Total Metals for Analysis by Flame AAS or ICP	3.2	3010	4.1	3010

Acid Digestion of Aqueous Samples and Extracts for Total Metals for Analysis by Furnace AAS	3.2	3020	4.1	3020
Dissolution Procedure for Oils, Greases, or Waxes	3.2	3040	4.1	3040
Acid Digestion of Sediments, Sludges and Soils	3.2	3050	4.1	3050
METHODS FOR THE DETERMINATION OF METALS	3.3			
Inductively Coupled Plasma Atomic Emissions Spectroscopy	3.3	*6010		
Atomic Absorption Methods	3.3	7000		
Aluminum, Flame AAS	3.3	7020		
Antimony, Flame AAS	3.3	7040	7.0	7040
Antimony, Furnace AAS	3.3	7041	7.0	7041
Arsenic, Furnace AAS	3.3	7060	7.0	7060
Arsenic, Gaseous Hydride AAS	3.3	7061	7.0	7061
Barium, Flame AAS	3.3	7080	7.0	7080
Barium, Furnace AAS	3.3	7081	7.0	7081
Beryllium, Flame AAS	3.3	*7090		
Beryllium, Furnace AAS	3.3	*7091		
Cadmium, Flame AAS	3.3	7130	7.0	7130
Cadmium, Furnace AAS	3.3	7131	7.0	7131
Calcium, Flame AAS	3.3	7140		
Chromium, Flame AAS	3.3	7190	7.0	7190
Chromium, Furnace AAS	3.3	7191	7.0	7191
Chromium, Hexavalent, Coprecipitation	3.3	7195	7.0	7195
Chromium, Hexavalent, Colorimetric	3.3	7196	7.0	7196
Chromium, Hexavalent, Chelation/Extraction	3.3	7197	7.0	7197
Chromium, Hexavalent, Differential Pulse Polarography	3.3	*7198		
Cobalt, Flame AAS	3.3	7200		
Cobalt, Furnace AAS	3.3	7201		
Copper, Flame AAS	3.3	*7210		
Copper, Furnace AAS	3.3	*7211		
Iron, Flame AAS	3.3	*7380		
Iron, Furnace AAS	3.3	*7381		
Lead, Flame AAS	3.3	7420	7.0	7420
Lead, Furnace AAS	3.3	7421	5.0	7421
Magnesium, Flame AAS	3.3	7450		
Manganese, Flame AAS	3.3	*7460		
Manganese, Furnace AAS	3.3	*7461		
Mercury in Liquid Waste, Manual Cold Vapor Technique	3.3	7470	7.0	7470
Mercury in Solid or Semisolid Waste, Manual Cold Vapor Technique	3.3	7471	7.0	7471
Molybdenum, Flame AAS	3.3	7480		

Molybdenum, Furnace AAS	3.3	7481		
Nickel, Flame AAS	3.3	7520	7.0	7520
Osmium, Flame AAS	3.3	*7550		
Potassium, Flame AAS	3.3	7610		
Selenium, Furnace AAS	3.3	7740	7.0	7740
Selenium, Gaseous Hydride AAS	3.3	7741	7.0	7741
Silver, Flame AAS	3.3	7760	7.0	7760
Silver, Furnace AAS	3.3	7761	7.0	7761
Sodium, Flame AAS	3.3	*7770		
Thallium, Flame AAS	3.3	*7840		
Thallium, Furnace AAS	3.3	*7841		
Tin, Flame AAS	3.3	7870		
Vanadium, Flame AAS	3.3	*7910		
Vanadium, Furnace AAS	3.3	*7911		
Zinc, Flame AAS	3.3	*7950		
Zinc, Furnace AAS	3.3	*7951		
ORGANIC ANALYTES	4.0		8.0	
Sampling Considerations	4.1			
Sample Preparation Methods	4.2			
Extractions and Preparations	4.2.1			
Organic Extraction and Sample Preparation	4.2.1	3500		
Separatory Funnel Liquid-Liquid Extraction	4.2.1	3510	4.2	3510
Continuous Liquid-Liquid Extraction	4.2.1	3520	4.2	3520
Soxhlet Extraction	4.2.1	3540	4.2	3540
Ultrasonic Extraction	4.2.1	3550	4.2	3550
Waste Dilution	4.2.1	3580		
Purge-and-Trap	4.2.1	5030	5.0	5030
Protocol for Analysis of Sorbent Cartridges from VOST	4.2.1	*5040		
Cleanup	4.2.2			
Cleanup	4.2.2	3600		
Alumina Column Cleanup	4.2.2	3610		
Alumina Column Cleanup and Separation of Petroleum Wastes	4.2.2	*3611		
Florisil Column Cleanup	4.2.2	3620		
Silica Gel Cleanup	4.2.2	3630		
Gel-Permeation Cleanup	4.2.2	3640		
Acid-Base Partition Cleanup	4.2.2	3650	4.2	3530
Sulfur Cleanup	4.2.2	3660		
DETERMINATION OF ORGANIC ANALYTES	4.3			
Gas Chromatographic Methods	4.3.1		8.1	

Gas Chromatography	4.3.1	8000		
Halogenated Volatile Organics	4.3.1	8010	8.1	8010
EDB and DBCP	4.3.1	8011		
Nonhalogenated Volatile Organics	4.3.1	8015	8.1	8015
Aromatic Volatile Organics	4.3.1	8020	8.1	8020
Volatile Organic Compounds in Water by Purge-and-Trap Capillary Column GC with PID and Electrolytic Conductivity Detector in Series	4.3.1	8021		
Acrolein, Acrylonitrile, Acetonitrile	4.3.1	8030	8.1	8030
Phenols	4.3.1	8040	8.1	8040
Phthalate Esters	4.3.1	8060	8.1	8060
Nitrosamines	4.3.1	8070		
Organochlorine Pesticides and PCBs as Aroclors	4.3.1	8080	8.1	8080
Nitroaromatics and Cyclic Ketones	4.3.1	8090	8.1	8090
Polynuclear Aromatic Hydrocarbons	4.3.1	8100	8.1	8100
Haloethers	4.3.1	8110		
Chlorinated Hydrocarbons	4.3.1	8120	8.1	8120
Organophosphorus Pesticides	4.3.1	8140	8.1	8140
Organophosphorus Pesticides: Capillary Column	4.3.1	8141		
Chlorinated Herbicides	4.3.1	8150	8.1	8150
Gas Chromatographic/Mass Spectroscopic Methods	4.3.2		8.2	
GC/MS Volatiles	4.3.2	8240	8.2	8240
GC/MS Semivolatiles, Packed Column	4.3.2	8250	8.2	8250
GC/MS for Volatiles Capillary Column	4.3.2	8260		
GC/MS Semivolatiles, Capillary Column	4.3.2	8270	8.2	8270
Analysis of Chlorinated Dioxins and Dibenzofurans	4.3.2	8280		
High Performance Liquid Chromatographic Methods (HPLC)	4.3.3		8.3	
Polynuclear Aromatic Hydrocarbons	4.3.3	8310	8.3	8310
MISCELLANEOUS SCREENING METHODS	4.4			
Headspace	4.4	3810	5.0	5020
Hexadecane Extraction and Screening of Purgeable Organics	4.4	3820		
MISCELLANEOUS TEST METHODS	5.0		9.0	
Total and Amenable Cyanide (Colorimetric, Manual)	5.0	9010	9.0	9010
Total and Amenable Cyanide (Colorimetric, Automated)	5.0	9012		
Total Organic Halides (TOX)	5.0	9020	9.0	9020
Purgeable Organic Halides (POX)	5.0	9021		
Total Organic Halides (TOX) by Neutron Activation Analysis	5.0	*9022		
Acid-Soluble and Acid-Insoluble Sulfides	5.0	9030	9.0	9030
Extractable Sulfides	5.0	9031		
Sulfate, (Colorimetric, Automated, Chloranilate)	5.0	*9035		

Sulfate, (Colorimetric, Automated, Methylthymol Blue, AA II)	5.0	*9036		
Sulfate, (Turbidimetric)	5.0	*9038		
Total Organic Carbon	5.0	*9060		
Phenolics, (Spectrophotometric, Manual 4-AAP)	5.0	*9065		
Phenolics, (Colorimetric, Automated 4-AAP)	5.0	*9066		
Phenolics, (Spectrophotometric, MBTH)	5.0	*9067		
Total Recoverable Oil and Grease (Gravimetric, Separatory Funnel Extraction)	5.0	*9070		
Oil and Grease Extraction Method for Sludge Samples	5.0	*9071		
Total Coliform: Multiple Tube Fermentation	5.0	*9131		
Total Coliform: Membrane Filter	5.0	*9132		
Nitrate	5.0	*9200		
Chloride (Colorimetric, Automated Ferricyanide AAI)	5.0	*9250		
Chloride (Colorimetric, Automated Ferricyanide AAII)	5.0	*9251		
Chloride (Titrimetric, Mercuric Nitrate)	5.0	*9252		
PROPERTIES	6.0			
Multiple Extraction Procedure	6.0	*1320		
Extraction Procedure for Oily Wastes	6.0	*1330		
pH Electrometric Measurement	6.0	9040	9.0	9040
pH Paper Method	6.0	9041		
Soil pH	6.0	9045		
Specific Conductance	6.0	9050		
Cation-Exchange Capacity of Soils (Ammonium Acetate)	6.0	*9080		
Cation-Exchange Capacity of Soils (Sodium Acetate)	6.0	*9081		
Compatibility Test for Wastes and Membrane Liners	6.0	9090		
Paint Filter Liquids Test	6.0	9095	9.0	9095
Saturated Hydraulic Conductivity, Saturated Leachate Conductivity, and Intrinsic Permeability	6.0	*9100		
Gross Alpha and Gross Beta	6.0	*9310		
Alpha-Emitting Radium Isotopes	6.0	*9315		
Radium-228	6.0	*9320		
INTRODUCTION AND REGULATORY DEFINITIONS	7.0		2.0	
Ignitability	7.1		2.1.1	
Corrosivity	7.2		2.1.2	
Reactivity	7.3		2.1.3	
Test Method to Determine Hydrogen Cyanide Released from Wastes	7.3			
Test Method to Determine Hydrogen Sulfide Released from Wastes	7.3			
Extraction Procedure Toxicity	7.4		2.1.4	
METHODS FOR DETERMINING CHARACTERISTICS	8.0		2.0	

Ignitability	8.1		2.1.1	
Pensky-Martens Closed-Cup Method	8.1	1010	2.1.1	1010
Setaflash Closed-Cup Method	8.1	1020	2.1.1	1020
Corrosivity	8.2		2.1.2	
Corrosivity Toward Steel	8.2	1110	2.1.2	1110
Reactivity	8.3		2.1.3	
Toxicity	8.4		2.1.4	
Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test	8.4	1310	2.1.4	1310
SAMPLING PLAN	9.0		1.0	
Design and Development	9.1		1.0, 1.1	
Implementation	9.2		1.2, 1.3, 1.4	
SAMPLING METHODS	10.0			
Modified Method 5 Sampling Train, Appendix A and B	10.0	*0010		
Source Assessment Sampling System (SASS)	10.0	*0020		
Volatile Organic Sampling Train	10.0	*0030		
GROUND WATER MONITORING	11.0			
Background and Objectives	11.1			
Relationship to the Administrative regulations and to Other Documents	11.2			
Revisions and Additions	11.3			
Acceptable Designs and Practices	11.4			
Unacceptable Designs and Practices	11.5			
LAND TREATMENT MONITORING	12.0			
Background	12.1			
Treatment Zone	12.2			
Regulatory Definition	12.3			
Monitoring and Sampling Strategy	12.4			
Analysis	12.5			
References and Bibliography	12.6			
INCINERATION	13.0			
Introduction	13.1			
Regulatory Definition	13.2			
Waste Characterization Strategy	13.3			
Stack-Gas Effluent Characterization Strategy	13.4			
Additional Effluent Characterization Strategy	13.5			
Selection of Specific Sampling and Analysis Methods	13.6			
References	13.7			

FOOTNOTE: *The Third Edition of SW-846 and its Revision 1 are available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202) 738-3238, document number 955-001-00000-1.

FOOTNOTE: *This method may be used in conjunction with or in addition to the methods found in the Second Edition of SW-846 as amended by Updates I and II.

FOOTNOTE: ǂ When Method 9066 is used it shall be preceded by the manual distillation specified in procedure 7.1 of Method 9065. Just prior to distillation in Method 9065, adjust the sulfuric acid-preserved sample to pH 4 with 1+9 NaOH. After the manual distillation is completed, the autoanalyzer manifold is simplified by connecting the re-sample line directly to the sampler.

[Title	Section No.	Method No.
Sampling of Solid Wastes	1.0	
Development of Appropriate Sampling Plans	1.1	
Regulatory and Scientific Objectives	1.1.1	
Fundamental Statistical Concepts	1.1.2	
Basic Statistical Strategies	1.1.3	
Simple Random Sampling	1.1.3.1	
Stratified Random Sampling	1.1.3.2	
Systematic Random Sampling	1.1.3.3	
Special Considerations		
Composite Sampling	1.1.4.1	
Subsampling	1.1.4.2	
Cost and Loss Functions	1.1.4.3	
Implementation of Sampling Plan	1.2	
Selection of Sampling Equipment	1.2.1	
Composite Liquid Waste Sampler	1.2.1.1	
Weighted Bottle	1.2.1.2	
Dipper	1.2.1.3	
Thief	1.2.1.4	
Trier	1.2.1.5	
Auger	1.2.1.6	
Scoop and Shovel	1.2.1.7	
Selection of Sample Containers	1.2.2	
Processing and Storage of Samples	1.2.3	
Documentation of Chain of Custody	1.3	
Sample Labels	1.3.1	
Sample Seals	1.3.2	
Field Log Book	1.3.3	
Chain of Custody Record	1.3.4	
Sample Analysis Request Sheet	1.3.5	
Sample Delivery to Laboratory	1.3.6	
Shipping of Samples	1.3.7	
Receipt and Logging of Sample	1.3.8	
Assignment of Sample for Analysis	1.3.9	
Sampling Methodology	1.4	
Containers	1.4.1	
Tanks	1.4.2	
Waste Piles	1.4.3	
Landfills and Lagoons	1.4.4	
Waste Evaluation Procedures	2.0	
Characteristics of Hazardous Waste	2.1	
Ignitability	2.1.1	
Pensky Martens Closed Gap Method	2.1.1	1010
Setaflash Closed Cup Method	2.1.1	1020
Corrosivity	2.1.2	
Corrosivity Toward Steel	2.1.2	1110
Reactivity	2.1.3	
Extraction Procedure Toxicity	2.1.4	
Extraction Procedure Toxicity Test Method and Structural Integrity Test	2.1.4	1310
Sample Workup Techniques	4.0	
Inorganic Techniques	4.1	
Acid Digestion for Flame AAS	4.1	3010
Acid Digestion for Furnace AAS	4.1	3020
Acid Digestion of Oil, Grease or Wax	4.1	3030
Dissolution Procedure for Oil, Grease or Wax Alkaline Digestion	4.1	3060
Organic Techniques	4.2	
Separatory Funnel Liquid Liquid Extraction	4.2	3510
Continuous Liquid Liquid Extraction	4.2	3520
Acid Base Cleanup Extraction	4.2	3530
Soxhlet Extraction	4.2	3540
Sonication Extraction	4.2	3550
Sample Introduction Techniques	5.0	
Headspace	5.0	5020
Purge and Trap	5.0	5030
Inorganic Analytical Methods	7.0	
Antimony, Flame AAS	7.0	7470
Antimony, Furnace AAS	7.0	7471
Arsenic, Flame AAS	7.0	7060
Arsenic, Furnace AAS	7.0	7061
Barium, Flame AAS	7.0	7080
Barium, Furnace AAS	7.0	7081
Cadmium, Flame AAS	7.0	7130
Cadmium, Furnace AAS	7.0	7131
Chromium, Flame AAS	7.0	7190
Chromium, Furnace AAS	7.0	7191
Chromium, Hexavalent, Coprecipitation	7.0	7195
Chromium, Hexavalent, Colorimetric	7.0	7196
Chromium, Hexavalent, Chelation	7.0	7197
Lead, Flame AAS	7.0	7420
Lead, Furnace AAS	7.0	7421
Mercury, Cold Vapor, Liquid	7.0	7470
Mercury, Cold Vapor, Solid	7.0	7471
Nickel, Flame AAS	7.0	7520
Nickel, Furnace AAS	7.0	7521
Selenium, Flame AAS	7.0	7740
Selenium, Gaseous Hydride AAS	7.0	7741
Silver, Flame AAS	7.0	7760
Silver, Furnace AAS	7.0	7761
Organic Analytical Methods	8.0	
Gas Chromatographic Methods	8.1	
Halogenated Volatile Organics	8.1	8010
Nonhalogenated Volatile Organics	8.1	8015
Aromatic Volatile Organics	8.1	8020
Acrolein, Acrylonitrile, Acetonitrile	8.1	8030
Phenols	8.1	8040
Phthalate Esters	8.1	8060
Organochlorine Pesticides and PCB's	8.1	8080
Nitroaromatics and Cyclic Ketones	8.1	8090
Polynuclear Aromatic Hydrocarbons	8.1	8100
Chlorinated Hydrocarbons	8.1	8120
Organophosphorus Pesticides	8.1	8140
Chlorinated Herbicides	8.1	8150
Gas Chromatographic/Mass Spectroscopy Methods (GC/MS)	8.2	
GC/MS Volatiles	8.2	8240
GC/MS Semivolatiles, Packed Column	8.2	8250
GC/MS Semivolatiles, Capillary	8.2	8270
Analysis of Chlorinated Dioxins and Dibenzofurans	8.2	8280
High Performance Liquid Chromatographic Methods (HPLC)	8.3	
Polynuclear Aromatic Hydrocarbons	8.3	8310
Miscellaneous Analytical Methods	9.0	
Cyanide;Total and Amenable to Chlorination	9.0	9010
Total Organic Halogen (TOX)	9.0	9020
Sulfides	9.0	9030
pH Measurement	9.0	9040

~~Quality Control/Quality Assurance 10.1~~
~~Introduction 10.1~~
~~Program Design 10.2~~
~~Sampling 10.3~~
~~Analysis 10.4~~
~~Data Handling 10.5]~~

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: The amendment to this administrative regulation affects all generators and facilities that manage hazardous waste. Currently, in Kentucky, there are 4229 entities regulated by the hazardous waste management program.

(a) Direct and indirect costs or savings to those affected:

1. First year: No new costs or savings are anticipated to result from the amendment since this proposal is only adopting existing federal requirements.

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. This administrative regulation only provides a quick reference guide to appropriate analysis methods for conveniences.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet did not consider any alternatives to the proposed amendment. In order to maintain authorization to operate the state program in lieu of the federal hazardous waste program, Kentucky must adopt a list and criteria for identifying hazardous waste that is consistent with and no less stringent than the federal list and criteria. KRS 224.46-510(3) stipulates that the cabinet must adopt a list and criteria for identifying hazardous waste that is identical to the federal list and criteria.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified that may conflict, overlap or duplicate this amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: WAS TIERING APPLIED? Not applicable. This administrative regulation provides only a cross-reference guide to analysis methods.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The amendment to this administrative regulation adopts conforming changes to the document SW-846 (incorporated by reference in 401 KAR 30:010, Section 3) and the federal regulation 40 CFR 261-Appendix III. The Resource Conservation and Recovery Act mandates that authorized state programs must be consistent with and at least as stringent as the federal program.

2. State compliance standards: The amendment to this administrative regulation updates the existing information provided on chemical analysis methods to conform to the Third Edition of SW-846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods). KRS 224.46-510(3) requires the cabinet to adopt a list and criteria for identifying hazardous waste that is identical to the federal list and criteria.

3. Minimum or uniform standards contained in the federal mandate: The amendment adopts changes made to 40 CFR 261-Appendix III, effective December 6, 1990.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 31:160. Appendix on basis for listing hazardous waste.

RELATES TO: KRS 224.01, 224.40, 224.46, 224.99
STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3)
NECESSITY AND FUNCTION: To identify the characteristics of and to provide the basis for listing a hazardous waste pursuant to 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 contains the appendix to this chapter concerning the basis for listing a hazardous waste~~].

Section 1. Basis for Listing Hazardous Waste. The basis for listing hazardous waste is [~~are~~]:

EPA Hazardous Waste No.	Hazardous Constituents for Which Listed
F001	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2,-trifluoroethane, orthodichlorobenzene, trichlorofluoromethane.
F003	Not Applicable (hereafter N.A.).
F004	Cresols and cresylic acid, nitrobenzene.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).
F007	Cyanide (salts).
F008	Cyanide (salts).
F009	Cyanide (salts).
F010	Cyanide (salts).
F011	Cyanide (salts).
F012	Cyanide (complexed).
F019	Hexavalent chromium, cyanide (complexed)
F020	Tetra- and pentachlorodibenzo-p-dioxins; tetra and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines, and other salts.
F021	Penta- and hexachlorodibenzo-p-dioxins; penta- and hexachlorodibenzofurans; pentachlorophenol and its derivatives.
F022	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
F023	Tetra-, and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines and other salts.
F024	Chloromethane, dichloromethane, trichloromethane, carbon tetra-chloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethylene,1,1-dichloroethylene, 1,1,1-trichloroethane,1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene,pentachloroethane, hexachloroethane, allylchloride (3-chloropropene), dichloropropane, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorobenzene, dichlorobenzenes, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.
F025	Chloromethane; dichloromethane; trichloromethane; carbon tetrachloride; chloroethylene; 1,1-dichloroethane; 1,2-dichloroethane; trans-1,2-dichloroethylene; 1,1-dichloroethylene; 1,1,1-trichloroethane; 1,1,2-trichloroethane; trichloroethylene; 1,1,1,2-tetrachloroethane; 1,1,2,2-tetrachloroethane; tetrachloroethylene; pentachloroethane, hexachloroethane; allyl chloride (3-chloropropene); dichloropropane; dichloropropene; 2-chloro-1,3-butadiene; hexachloro-1,3,butadiene; hexachlorocyclopentadiene; benzene, chlorobenzene; dichlorobenzene; 1,2,4-trichlorobenzene; tetrachlorobenzene; pentachlorobenzene; hexachlorobenzene; toluene; naphthalene.
F026	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
F027	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines and other salts.
F028	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines and other salts.
F032	Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)-anthracene, indeno(1,2,3-cd)pyrene, pentachlorophenol, arsenic, chromium, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans.
F034	Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, arsenic, chromium
F035	Arsenic, chromium, lead.
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F039	All constituents for which treatment standards are specified for multisource leachate (wastewaters and nonwastewaters) under Section 6 of 401 KAR 37:040, Table CCW.
K001	Pentachlorophenol, phenol,2-chlorophenol, p-chloro-m-cresol, 2,4- dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, creosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)-pyrene, indenol(1,2,3-cd)pyrene, benz(a) anthracene, dibenz(a)anthracene, acenaphthalene.
K002	Hexavalent chromium, lead.
K003	Hexavalent chromium, lead.
K004	Hexavalent chromium.
K005	Hexavalent chromium, lead.
K006	Hexavalent chromium.
K007	Cyanide (complexed), hexavalent chromium.
K008	Hexavalent chromium.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methylchloride, paraldehyde, formic acid, chloroacetaldehyde.
K011	Acrylonitrile, acetonitrile, hydrocyanic acid.
K013	Hydrocyanic acid, acrylonitrile, acetonitrile.
K014	Acetonitrile, acrylamide.
K015	Benzyl chloride, chlorobenzene, toluene, benzotrichloride.
K016	Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene.
K017	Epichlorohydrin, chloroethers, (bis(chloromethyl) ether and bis(2-chloroethyl) ethers), trichloropropane, dichloropropanols.
K018	1,2-dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene.
K019	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K020	Ethylene dichloride, 1,1,1-trichloro- ethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K021	Antimony, carbon tetrachloride, chloroform.
K022	Phenol, tars (polycyclic aromatic hydrocarbons).
K023	Phthalic anhydride, maleic anhydride.
K024	Phthalic anhydride, 1,4-naphthoquinone.
K025	Meta-dinitrobenzene, 2,4-dinitrotoluene.
K026	Paraldehyde, pyridines, 2-picoline.
K027	Toluene diisocyanate, toluene-2,4-diamine.
K028	1,1,1-trichloroethane, vinyl chloride.

K029	1,2-dichloroethane, 1,1,1-trichlorethane, vinyl chloride, vinylidene chloride, chloroform.
K030	Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, ethylene dichloride.
K031	Arsenic.
K032	Hexachlorocyclopentadiene.
K033	Hexachlorocyclopentadiene.
K034	Hexachlorocyclopentadiene.
K035	Creosote, chrysene, naphthalene, fluoranthene benzo(b)-fluoranthene, benzo(a)pyrene, indeno (1,2,2-cd) pyrene, benzo(a)anthracene, dibenzo(a)anthracene, acenaphthalene.
K036	Toluene, phosphorothioic acid esters.
K037	Toluene, phosphorodithioic and phosphorothioic acid esters.
K038	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K039	Phosphorodithioic and phosphorothioic acid esters.
K040	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K041	Toxaphene.
K042	Hexachlorobenzene, orthodichlorobenzene
K043	2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol.
K044	N.A.
K045	N.A.
K046	Lead
K047	N.A.
K048	Hexavalent chromium, lead.
K049	Hexavalent chromium, lead.
K050	Hexavalent chromium.
K051	Hexavalent chromium, lead.
K052	Lead.
K060	Cyanide, naphthalene, phenolic compounds, arsenic.
K061	Hexavalent chromium, lead, cadmium.
K062	Hexavalent chromium, lead.
K064	Lead, cadmium.
K065	Lead, cadmium.
K066	Lead, cadmium.
K069	Hexavalent chromium, lead, cadmium.
K071	Mercury.
K073	Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-tetrachloroethane.
K083	Aniline, diphenylamine, nitrobenzene, phenylenediamine.
K084	Arsenic.
K085	Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.
K086	Lead, hexavalent chromium.
K087	Phenol, naphthalene.
K088	Cyanide (complexes).
K090	Chromium.
K091	Chromium.
K093	Phthalic anhydride, maleic anhydride.
K094	Phthalic anhydride.
K095	1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane.
K096	1,2-dichloroethane, 1,1,1-trichloroethane, 1,1,2-trichloroethane.
K097	Chlordane, heptachlor.
K098	Toxaphene.
K099	2,4-dichlorophenol, 2,4,6-trichlorophenol.
K100	Hexavalent chromium, lead, cadmium.
K101	Arsenic.
K102	Arsenic.
K103	Aniline, nitrobenzene, phenylenediamine.
K104	Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine.
K105	Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6-trichlorophenol.
K106	Mercury.
K111	2,4-Dinitrotoluene.
K112	2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K113	2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K114	2,4-Toluenediamine, o-toluidine, p-toluidine.
K115	2,4-Toluenediamine.
K116	Carbon tetrachloride, tetrachloroethylene, chloroform, phosgene.
K117	Ethylene dibromide.
K118	Ethylene dibromide.
K123	Ethylene thiourea.
K124	Ethylene thiourea.
K125	Ethylene thiourea.
K126	Ethylene thiourea.
K136	Ethylene dibromide.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. ONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This amendment affects all hazardous waste generators, transporters and management facility owners or operators. Currently there are 4229 entities regulated by the Kentucky hazardous waste management program.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no anticipated costs or savings associated with this amendment because it adopts existing federal requirements that would be applicable in Kentucky if the state did not have

authorization to operate the state program in lieu of the federal program. Continued authorization is dependent upon adopting this amendment.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with this amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet may experience additional costs in enforcing requirements for new hazardous constituents.

2. Continuing costs or savings: The costs will continue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting or paperwork associated with this amendment.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered by the cabinet. The Resource Conservation and Recovery Act mandates that a state may be authorized to operate the state program in lieu of the federal program only if the state's program is consistent with and no less stringent that the federal program. KRS 224.46-510(3) requires the cabinet to adopt a list and criteria for identifying hazardous waste that is identical to the federal list and criteria.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The amendments to this regulation are taken from Appendix VII of 40 CFR 261, effective December 6, 1990. The Resource Conservation and Recovery Act requires any state that desires to obtain authorization to operate the state program in lieu of the federal hazardous waste program must adopt regulatory requirements which are consistent with and no less stringent than the federal standards.

2. State compliance standards: This amendment complies with KRS 224.46-510(3) which requires the cabinet to adopt a list and criteria for identifying hazardous waste which is identical to the federal list and criteria.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language of 40 CFR 261 - Appendix VII, effective December 6, 1990.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 31:170. Appendix on hazardous waste constituents.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 224.99
STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3)
NECESSITY AND FUNCTION: To identify the characteristics of and to list hazardous wastes pursuant to 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 administrative 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)
Allylchloride	1-Propane, 3-chloro	107-18-6
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(k)fluoranthene	Same	207-08-9
Benzo(a)pyrene	Same	50-32-8 (U022)
p-Benzoquinone	2,5-Cyclohexadiene-1,4-dione	106-51-4 (U197)
Benzotrichloride	Benzene, (trichloromethyl)-	98-07-7 (U023)
Benzyl chloride	Benzene, (chloromethyl)-	100-44-7 (P028)
Beryllium	Same	7440-41-7 (P015)
Beryllium compounds, N.O.S.*	----------	---- (----)
Bromoacetone	2-Propanone, 1-bromo-	598-31-2 (P017)
Bromoform	Methane, tribromo-	75-25-2 (U225)
4-Bromophenyl phenyl ether	Benzene, 1-bromo-4-phenoxy-	101-55-3 (U030)
Brucine	Strychnidin-10-one,2,3-dimethoxy-	357-57-3 (P018)
Butyl benzyl phthalate	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	85-68-7 (----)
Cacodylic acid	Arsinic acid, dimethyl-	75-60-5 (U136)
Cadmium	Same	7440-43-9 (----)
Cadmium compounds, N.O.S.*	----------	---- (----)
Calcium chromate	Chromic acid H_2CrO_4, calcium salt	13765-19-0 (U032)
Calcium cyanide	Calcium cyanide $Ca(CN)_2$	592-01-8 (P021)
Carbon disulfide	Same	75-15-0 (P022)
Carbon oxyfluoride	Carbonic difluoride	353-50-4 (U033)
Carbon tetrachloride	Methane,tetrachloro-	56-23-5 (U211)
Chloral	Acetaldehyde, trichloro-	75-87-6 (U034)
Chlorambucil	Benzene butanoic acid, 4-(bis(2-chloroethyl)amino)-	305-03-3 (U035)
Chlordane	4,7-Methano-1H-indene,1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57-74-9 (U036) U036
Chlordane (alpha and gamma isomers)	----------	---- (U036)
Chlorinated benzenes, N.O.S.*	----------	---- (----)
Chlorinated ethane, N.O.S.*	----------	---- (----)
Chlorinated fluorocarbons, N.O.S.*	----------	---- (----)
Chlorinated naphthalene, N.O.S.*	----------	---- (----)
Chlorinated phenol, N.O.S.*	----------	---- (----)
Chlornaphazin	Naphthalenamine,N,N'-bis(2-chloroethyl)-	494-03-1 (U026)
Chloroacetaldehyde	Acetaldehyde, chloro-	107-20-0 (P023)
Chloroalkyl ethers, N.O.S.*	----------	---- (----)
p-Chloroaniline	Benzenamine,4-chloro-	106-47-8 (P024)
Chlorobenzene	Benzene, chloro-	108-90-7 (U037)
Chlorobenzilate	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510-15-6 (U038)
p-Chloro-m-cresol	Phenol, 4-chloro-3-methyl-	59-50-7 (U039)
2-Chloroethyl vinyl ether	Ethene, (2-chloroethoxy)-	110-75-8 (U042)
Chloroform	Methane, trichloro-	67-66-3 (U044)
Chloromethyl methyl ether	Methane, chloromethoxy-	107-30-2 (U046)

beta-Chloronaphthalene	Naphthalene,2-chloro-	91-58-7 (U047)
o-Chlorophenol	Phenol, 2-chloro-	95-57-8 (U048)
1-(o-Chlorophenyl)thiourea	Thiourea, (2-chlorophenyl)-	5344-82-1 (P026)
Chloroprene	1,3-Butadiene,2-chloro-	126-99-8 (----)
3-Chloropropionitrile	Propanenitrile, 3-chloro-	542-76-7 (P027)
Chromium	Same	7440-47-3 (----)
Chromium compounds, N.O.S.*	----------	---- (----)
Chrysene	Same	218-01-9 (U050)
Citrus red No. 2	2-Naphthalenol, 1-((2,5-dimethoxyphenyl)azo)-	6358-53-8 (----)
Coal tar creosote	Same	8007-45-2 (----)
Copper cyanide	Copper cyanide CuCN	544-92-3 (P029)
Creosote	Same	---- (U051)
Cresol (Cresylic acid)	Phenol, methyl-	1319-77-3 (U052)
Crotonaldehyde	2-Butenal	4170-30-3 (U053)
Cyanides (soluble salts and complexes), N.O.S.*	----------	---- (P030)
Cyanogen	Ethanedinitrile	460-19-5 (P031)
Cyanogen bromide	Cyanogen bromide (CN) Br	506-68-3 (U246)
Cyanogen chloride	Cyanogen chloride (CN) Cl	506-77-4 (P033)
Cycasin	beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl	14901-08-7 (----)
2-Cyclohexyl-4,6-dinitrophenol	Phenol, 2-cyclohexyl-4,6-dinitro-	131-89-5 (P034)
Cyclophosphamide	2H-1,3,2,-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide	50-18-0 (U058)
2,4-D	Acetic acid, (2,4-dichlorophenoxy)-	94-75-7 (U240)
2,4-D, salts, esters	----------	---- (U240)
Daunomycin	5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6,trideoxy-alpha-L-lyxo-hexopyranosyl)oxy)-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methosy-(8S-cis)-	20830-81-3 (U059)
DDD	Benzene,1,1'-(2,2-dichloroethylidene)bis(4-chloro-	72-54-8 (U060)
DDE	Benzene,1,1'-(dichloroethenylidene)bis(4-chloro-	72-55-9 (----)
DDT	Benzene,1,1'-(2,2,2-trichloroethylidene)(bis(4-chloro-	50-29-3 (U061)
Diallate	Carbamothioic acid, bis(1-methylethyl)-,S-(2,3-dichloro-2-propenyl) ester	2303-16-4 (U062)
Dibenz(a,h)acridine	Same	226-36-8 (----)
Dibenz(a,j)acridine	Same	224-42-0 (----)
Dibenz(a,h)anthracene	Same	53-70-3 (U063)
7H-Dibenzo(c,g)carbazole	Same	194-59-2 (----)
Dibenzo(a,e)pyrene	Naphtho(1,2,3,4-def)chrysene	192-65-4 (----)
Dibenzo(a,h)pyrene	Dibenzo(b,def)chrysene	189-64-0 (----)
Dibenzo(a,i)pyrene	Benzo(rst)pentaphene	189-55-9 (U064)
1,2-Dibromo-3-chloropropane	Propane,1,2-dibromo-3-chloro-	96-12-8 (U066)
Dibutyl phthalate	1,2-Benzenedicarboxylic acid,dibutyl ester	84-74-2 (U069)
o-Dichlorobenzene	Benzene, 1,2-dichloro-	95-50-1 (U070)
m-Dichlorobenzene	Benzene, 1,3-dichloro-	541-73-1 (U071)
p-Dichlorobenzene	Benzene, 1,4-dichloro-	106-46-7 (U072)
Dichlorobenzene, N.O.S.*	Benzene, dichloro-	25321-22-6 (----)
3,3'-Dichlorobenzidine	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dichloro-	91-94-1 (U073)
1,4-Dichloro-2-butene	2-Butene,1,4-dichloro-	764-41-0 (U074)
Dichlorodifluoromethane	Methane, dichlorodifluoro-	75-71-8 (U075)
Dichloroethylene, N.O.S.*	Dichloroethylene	25323-30-2 (----)
1,1-Dichloroethylene	Ethene, 1,1-dichloro-	75-35-4 (U078)
1,2-Dichloroethylene	Ethene, 1,2-dichloro-,(E)-	156-60-5 (U079)
Dichloroethyl ether	Ethane, 1,1' oxybis (2-chloro-	111-44-4 (U025)
Dichloroisopropyl ether	Propane, 2,2'-oxybis (2-chloro-	108-60-1 (U027)
Dichloromethoxy ethane	Ethane, 1,1'-(methylenebis (oxy)) bis (2-chloro-	111-91-1 (U024)
Dichloromethyl ether	Methane, oxybis (chloro-	542-88-1 (P016)
2,4-Dichlorophenol	Phenol, 2,4-dichloro-	120-83-2 (U081)
2,6-Dichlorophenol	Phenol, 2,6-dichloro-	87-65-0 (U082)
Dichlorophenylarsine	Arsonous dichloride, phenyl-	696-28-6 (P036)
Dichloropropane, N.O.S.*	Propane, dichloro-	26638-19-7 (----)
Dichloropropanol, N.O.S.*	Propanol, dichloro	26545-73-3 (----)
Dichloropropene, N.O.S.*	1-Propene, dichloro-	26952-23-8 (----)
1,3-Dichloropropene	1-Propene, 1,3-dichloro-	542-75-6 (U084)
Dieldrin	2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a, 3,6,6a,7,7a-octahydro-,(laalpha,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-Dimethylphenethylamine	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)	----------	---- (----)
Heptachlorodibenzofurans	----------	---- (----) (----)
Heptachlorodibenzo-p-dioxins	----------	---- (----) (----) (----)
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)
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)-	465-73-6 (P060)
	4abeta,5beta,8beta,8abeta)-	
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-Pyridazinedione1,2-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 $Os0_4$ (T-4)-	20816-12-0 (P087)
Paraldehyde	1,3,5-Trioxane, 2,4,6-trimethyl-	123-63-7 (U182)
Parathion	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	56-38-2 (P089)
Pentachlorobenzene	Benzene, pentachloro-	608-93-5 (U183)
Pentachlorodibenzo-p-dioxins	----------	---- (----)
Pentachlorodibenzofurans	----------	---- (----)
Pentachloroethane	Ethane, pentachloro-	76-01-7 (U184)
Pentachloronitrobenzene (PCNB)	Benzene, pentachloronitro-	82-68-8 (U185)
Pentachlorophenol	Phenol, pentachloro-	87-86-5 (See F027)
Phenacetin	Acetamide, N-(4-ethoxyphenyl)-	62-44-2 (U187)
Phenol	Same	108-95-2 (U188)
Phenylenediamine	Benzenediamine	25265-76-3 (----)
Phenylmercury acetate	Mercury, (acetato-O)phenyl-	62-38-4 (P092)
Phenylthiourea	Thiourea, phenyl-	103-85-5 (P093)
Phorate	Phosphorodithioic acid, O,O-diethyl S-((ethylthio)methyl)ester	298-02-2 (P094)
Phosgene	Carbonic dichloride	75-44-5 (P095)

Phosphine	Same	7803-51-2 (P096)
Phthalic acid esters, N.O.S.*	----------	---- (----)
Phthalic anhydride	1,3-Isobenzofurandione	85-44-9 (U190)
2-Picoline	Pyridine,2-methyl-	109-06-8 (U191)
Polychlorinated biphenyls, N.O.S.*	----------	---- (----)
Potassium cyanide	Potassium cyanide K(CN)	151-50-8 (P098)
Potassium silver cyanide	Argentate(1-),bis(cyano-C)-,potassium	506-61-6 (P099)
Pronamide	Benzamide,3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5 (U192)
1,3-Propane sultone	1,2-Oxathiolane, 2,2-dioxide	1120-71-4 (U193)
Propargyl alcohol	2-Propyn-1-ol	107-19-7 (P102)
n-Propylamine	1-Propanamine	107-10-8 (U194)
Propylene dichloride	Propane,1,2-dichloro-	78-87-5 (U083)
1,2-Propylenimine	Aziridine, 2-methyl-	75-55-8 (P067)
Propylthiouracil	4(1H)-Pyrimidinone,2,3-dihydro-6-propyl-2-thioxo-	51-52-5 (----)
Pyridine	Same	110-86-1 (U196)
Reserpine	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxy-benzoyl)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)
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
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: The proposed administrative regulation will affect hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities. There are approximately 4229 hazardous waste generators, transporters, and facilities regulated in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no anticipated costs or savings associated with this amendment because it adopts existing federal requirements that would be applicable in Kentucky if the state did not have authorization to operate the state program in lieu of the federal program. Continued authorization is depended upon adopting this amendment.

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:

(a) Direct and indirect costs or savings:

1. First year: The cabinet may experience minor additional costs as it begins to regulate additional constituents.

2. Continuing costs or savings: Additional costs will continue.

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: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered by the cabinet. The Resource Conservation and Recovery Act mandates that a state may be authorized to operate the state program in lieu of the federal program only if the stat's program is consistent with and no less stringent than the federal program. KRS 224.46-510(3) requires the cabinet to adopt a list and criteria for identifying hazardous waste that is identical to the federal list and criteria.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy has been identified which conflicts, overlaps or duplicates the proposed amendment.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The amendments to this administrative regulation are taken from Appendix VIII of 40 CFR 261, effective February 25, 1991. The Resource Conservation and Recovery Act requires any state that desires to obtain authorization to operate the state program in lieu of the federal hazardous waste program must adopt regulatory requirements which are consistent with and no less stringent that the federal standards.

2. State compliance standards: This amendment complies with KRS 224.46-510(3) which requires the cabinet to adopt a list and criteria for identifying hazardous waste which is identical to the federal list and criteria.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 32:010. General provisions for generators.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.99

STATUTORY AUTHORITY: KRS 10-100, 224.46-510

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510 and to [~~requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations to establish standards for the generation of hazardous waste. This chapter establishes standards for the generators of hazardous waste. This regulations~~] establish[~~es~~] the applicable general provisions for generators.

Section 1. Purpose, Scope, and Applicability. (1) These administrative regulations establish standards for generators of hazardous waste.

(2) A generator who treats, stores, or disposes of hazardous waste on-site shall [~~must~~] only comply with the following: Section 2 of this administrative regulation for determining whether or not he has a hazardous waste; Section 3 of this administrative regulation for obtaining an EPA identification number; [~~401 KAR 32:030,~~] Section 5 of 401 KAR 32:030 for accumulation of hazardous waste; Section 1(3) and (4) of 401 KAR 32:040, [~~Section 1(3) and (4),~~] for recordkeeping; Section 4 of 401 KAR 32:040[~~, Section 4,~~] for additional reporting; and, if applicable, Section 10 of 401 KAR 32:050[~~, Section 10,~~] for farmers.

(3) Any person who imports hazardous waste from outside the United States into Kentucky shall comply with the standards applicable to generators established in this chapter.

(4) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of Section 10 of 401 KAR 32:050[~~, Section 10~~] is not required to comply with other standards in this chapter or 401 KAR Chapters 34, 35, 37, and 38 with respect to such pesticides.

(5) A person who generates a hazardous waste as defined by 401 KAR Chapter 31 is subject to the compliance requirements and penalties prescribed in KRS Chapter 224 if he does not comply with the requirements of this chapter.

(6) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in this chapter.

(7) A small quantity generator (that is, [~~i.e.,~~] one who generates between 100 and 1,000 kg/mo of hazardous waste) shall comply with the generator standards established in this chapter.

(8) A limited quantity generator (that is, [~~i.e.,~~] one who generates no more than 100 kilograms of hazardous waste a month or less than one (1) kilogram of acute hazardous waste per month) shall comply with the requirements of Section 5 of 401 KAR 31:010[~~, Section 5~~].

Section 2. Hazardous Waste Determination. A person who generates a waste, as defined in Section 2 of 401 KAR 31:010[~~, Section 2,~~] shall determine if that waste is a hazardous waste using the following method:

(1) He shall first determine if the waste is excluded from administrative regulation under Section 4 of 401 KAR 31:010[~~, Section 4~~].

(2) If not, he shall then determine if the waste is listed as a hazardous waste in 401 KAR 31:040.

(3) For purposes of compliance with 401 KAR Chapter 37 or if the waste is not listed as a hazardous waste in 401 KAR 31:040 the generator [~~he~~] shall then determine whether the waste is identified in 401 KAR 31:030, by either:

(a) Testing the waste according to the methods set forth in 401 KAR 31:030, or according to an equivalent method approved by the cabinet; or

(b) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(4) If the waste is determined to be hazardous, the generator shall refer to 401 KAR Chapters 34, 35, and 38 [~~37~~] for possible exclusions or restrictions pertaining to management of his specific waste.

Section 3. Registration and Identification Number. (1) A generator shall not treat, store, dispose, transport, or offer for transportation, hazardous waste without having registered with the cabinet by submitting a complete registration form and without having received an EPA identification number. Generators shall register initially by

submitting a complete Notification of Hazardous Waste Activity form, DEP-7037, which is incorporated by reference in subsection (2) of this section. After October 26, 1988, generators shall submit an initial registration on a schedule determined by the cabinet. Subsequent annual registrations shall be submitted to the cabinet on the Annual Registration of Hazardous Waste Activity form, DEP-7050, at least forty-five (45) [~~thirty (30)~~] days before the expiration date shown on the generator's registration. This form is incorporated by reference in subsection (2) of this section. Registration shall be filed within ninety (90) days after promulgation or revision of administrative regulations under 401 KAR Chapter 31 identifying by its characteristics or listing any substance as a hazardous waste. The registration shall include:

(a) Known or anticipated types, potential sources, general characteristics, and weights or volumes of hazardous wastes generated annually;

(b) The place of generation and the name and address of a contact agent; and

(c) If the waste is a special waste, generators shall, either individually or collectively as a categorical group, within ninety (90) days after promulgation or revision of administrative regulations under 401 KAR Chapter 31, file a report, according to procedures previously approved by the cabinet, which details, by geographic area, the known or anticipated types, potential sources, general characteristics, and weights or volumes of special wastes generated annually. Not more than one (1) registration shall be required to be filed with respect to the same substance.

(2) A generator who has not received an EPA identification number may obtain one [~~(1)~~] by registering with the cabinet as described in subsection (1) of this section, using forms provided by the cabinet and incorporated by reference. The Notification of Hazardous Waste Activity form (November 1990), DEP 7037, and Annual Registration of Hazardous Waste Activity form (November 1990), DEP 7050, are available for copying and inspection from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between 8 a.m. and 4:30 p.m., Monday through Friday. [~~The normal business hours of the division are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.~~] Upon receiving the request and reviewing the information the cabinet shall assign an EPA identification number to the generator.

(3) A generator shall not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(4) Hazardous waste generation and on-site management of hazardous waste shall be consistent with registration. Any changes in waste streams, on-site management methods, or other information submitted on the registration form requires the generator to submit a modified registration form. A modified Notification of Hazardous Waste Activity form, DEP-7037, shall be submitted if a waste stream is added or the name of the contact person or registrant is changed. The registrant shall timely file a modified registration form with the cabinet. A required modification shall be considered timely filed if it is received by the cabinet not later than thirty (30) days following the change requiring the submittal of the modification. The Notification of Hazardous Waste Activity form, DEP-7037, is incorporated by reference in subsection (2) of this section.

(5) Hazardous waste generators that no longer generate hazardous waste on site, close their facility, or go out of business shall notify the cabinet in writing within thirty (30) days after the generation of hazardous waste ceases. This notification shall be submitted on DEP form 7086, entitled Request to be Removed from the Hazardous Waste Handler List (August 1991), which is [~~herein~~] incorporated into this administrative regulation by reference. This form is available for copying and inspection at the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between 8 a.m. and 4:30 p.m., Monday through Friday. [~~The normal business hours of the division are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.~~]

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This amendment affects approximately 484 full quantity generators; 816 small quantity generators and 1511 limited quantity generators of hazardous waste.

(a) Direct and indirect costs or savings to those affected:

1. First year: The amendments made to this administrative regulation will not result in an additional cost or savings to the regulated community.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The amendment requires full quantity and small quantity generators to register with the cabinet fifteen days earlier than the existing registration standard requires.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: With the increasing universe of hazardous waste generators, the cabinet experienced difficulty processing registration renewals using existing staff. By requiring submittal of registration forms fifteen days earlier the cabinet estimates that it will be able to continue processing these forms on a timely basis without hiring additional staff. Thus, there will be a savings to the agency since additional staff will not be required.

2. Continuing costs or savings: First year savings will continue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet must process registration applications as they are submitted and provide timely issuance of Certificates of Registration since these documents are critical to the regulated community's ability to ship waste off-site.

(3) Assessment of anticipated effect on state and local revenues:

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The majority of the amendments made to this administrative regulation are clarifying text changes or conforming language to incorporate references to new requirements in other administrative regulations. However, the cabinet is adding an additional fifteen days to the deadline for submittal of registration forms. Due to the increasing universe of hazardous waste generators (due in part to Underground Storage Tank removals), the cabinet has not been able with existing staff to process these submittals in a timely manner. Although the cabinet considered hiring additional staff to improve the review backlog, current budget constraints eliminated that option. The cabinet also considered an increased submittal deadline (i.e., more than the additional fifteen days proposed), however, the current backlog was not so overwhelming as to require additional time.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate this amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment is taken from 40 CFR 262.10 to .12.

2. State compliance standards: This amendment complies with KRS 224.46-510, which requires the cabinet to adopt administrative regulations for hazardous waste generators.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 262.10 to 262.12, effective January 31, 1991.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment changes an existing requirement for submittal of registration forms for which there is no counterpart in the federal administrative regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The amendment imposes a different standard than that found in the federal administrative regulations since Kentucky requires annual registration for generators. Annual registration has benefited the Commonwealth by ensuring an accurate universe of generators for which inspections are planned and compliance expected. It has saved the Commonwealth extensively by making the regulatory program more efficient and less wasteful of dwindling state resources. It has allowed the cabinet to meet EPA grant commitments more easily and to have more confidence in the quality of information submitted. In addition, it has minimized the need for enforcement actions against the regulated community when they overlooked the need to keep their registration current (accurate registration information is required by the federal administrative regulations). The amendment to this administrative regulation will facilitate timely issuance of Certificates of Registration utilizing existing staff. Due to the increasing universe of hazardous waste generators, the cabinet found it impossible to process these forms in a timely manner. Because the Certificate of Registration is the control document that allows a generator to ship waste off-site and because generator waste accumulation time limits are strictly enforced, the amendment offers a reasonable solution.

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

401 KAR 32:020. Manifest system.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.99
STATUTORY AUTHORITY: KRS 10-100, 224.46-510
NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510 and to [~~requires the cabinet to promulgate regulations to establish standards for the generation of hazardous wastes. This chapter establishes standards applicable to generators of hazardous waste. This regulation~~] establish[~~es the~~] general requirements and procedures involving the use of the manifest system by generators of hazardous waste.

Section 1. General Requirements. (1) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal shall [~~must~~] prepare a manifest, contained in Appendix A of 401 KAR 32:100, and if necessary, Appendix B of 401 KAR 32:100, according to the instructions included in 401 KAR 32:100.

(2) A generator shall [~~must~~] designate on the manifest the facility which is permitted to handle the waste described on the manifest.

(3) A generator may also designate on the manifest one (1) alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(4) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall [~~must~~] either designate another facility or instruct the transporter to return the waste.

Section 2. Acquisition of Manifests. (1) If the state to which the shipment is manifested (consignment state) supplies the manifest and requires its use, then the generator shall [~~must~~] use that manifest and include all information required in 401 KAR 32:100.

(2) If the consignment state does not supply the manifest, but the state in which the generator is located (generator state) supplies the manifest and requires its use, then the generator shall [~~must~~] use that state's manifest and include all information required in 401 KAR 32:100.

(3) If neither the generator state nor the consignment state supplies the manifest, then the manifest shall [~~must~~] be filled out in accordance with the requirements of 401 KAR 32:100 and the generator may obtain the manifest from any source.

Section 3. Number of Copies. The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one (1) copy each for their records and another copy to be returned by the operator of the designated facility to the generator.

Section 4. Use of the Manifest. (1) The generator shall [~~must~~]:

(a) Sign the manifest certification by hand; and

(b) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(c) Retain one (1) copy, in accordance with Section 1(1) of 401 KAR 32:040.

(2) The generator shall [~~must~~] give the transporter the remaining copies of the manifest.

(3) For shipments of hazardous waste within the United States

solely by water (bulk shipments only), the generator shall [~~must~~] send three (3) copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(4) For rail shipments of hazardous waste within the United States which originate at the site of generation in Kentucky, the generator shall [~~must~~] send at least three (3) copies of the manifest dated and signed in accordance with this section to:

(a) The next nonrail transporter, if any; or

(b) The designated facility if transported solely by rail; or

(c) The last rail transporter to handle the waste in the United States if exported by rail.

(5) For shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator shall assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility with the shipment.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This amendment affects approximately 489 full quantity generators and 816 small quantity generators who transport their waste out of state.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no new costs or savings associated with this amendment, since this proposal adopts language directly from the federal regulations which applies to Kentucky generators.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: This amendment requires generators who ship waste out-of-state to a facility in a state that has not yet adopted new hazardous waste listings to obtain concurrence from the facility that they may accept it. This creates an additional paperwork requirement; however it is already required by the federal regulations.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will have no measurable effect on the administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None; no action is required by the administrative body.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered by the cabinet. The Resource Conservation and Recovery Act mandates that a state may be authorized to operate the state program in lieu of the federal program only if the state's program is consistent with and no less stringent than the federal program. Because the amendment is designed primarily to protect a Kentucky generator from unwittingly shipping a newly listed hazardous waste out-of-state facility which is not permitted to accept it, the cabinet chose to adopt the language verbatim from the federal regulation.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation, or government policy was identified which may conflict, overlap or duplicate this amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment is taken from 40 CFR 262.23, effective January 23, 1990. The Resource Conservation and Recovery Act requires any state that desires to obtain authorization to operate the state program in lieu of the federal hazardous waste program must adopt regulatory requirements which are consistent with and no less stringent than the federal standards.

2. State compliance standards: This amendment complies with KRS 224.46-510(3) which requires the cabinet to promulgate administrative regulations for hazardous waste generators.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 262.23.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 32:030. Pretransport requirements.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.99[~~, 49 CFR Parts 172, 173, 178, 179~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510 and 49 CFR Parts 172, 173, 178, and 179 and to [~~requires the cabinet to promulgate regulations to establish standards for the generation of hazardous waste. The chapter establishes standards applicable to generators of hazardous waste. This regulation~~] establish[~~es the~~] requirements for labeling, marking, placarding, and accumulation time.

Section 1. Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the applicable DOT U.S. Department of Transportation regulations on packaging under 49 CFR Parts 173, 178, and 179 (1989).

Section 2. Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator shall label each package in accordance with the applicable DOT U. S. Department of Transportation regulations on hazardous materials, under 49 CFR 172 (1989).

Section 3. Marking. (1) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the applicable DOT U.S. Department of Transportation regulations on hazardous materials under 49 CFR 172 (1989).

(2) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 110 gallons or less used in such transportation in accordance with the requirements of 49 CFR 172.304 (1989). The following words and information shall be displayed: "Hazardous Waste - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.
Generator's Name and Address _____
Manifest Document Number _____

Section 4. Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall offer the initial transporter the appropriate placards according to DOT U.S. Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F (1989).

Section 5. Accumulation Time. (1) Except as provided in subsection (3) of this section and Section 6 of this administrative regulation, a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without having interim status if:

(a) The waste is placed:

1. In containers and the generator complies with 401 KAR 35:180; or

2. In tanks and the generator complies with 401 KAR 35:190 (except Sections 8(3) and 11 and forty-five (45) days prior to closing a tank, the generator notifies the cabinet in writing of the intent to begin closure); or

3. On drip pads and the generator complies with 401 KAR 35:285 and maintains the following records at the facility:

a. A description of procedures that shall be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety (90) days; and

b. Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

[~~(a) The waste is placed in containers which meet the standards of Section 1 of this regulation and the generator complies with 401 KAR 35:180, or the waste is placed in tanks and the generator complies with 401 KAR 35:190, except those provisions in Sections 8(3) and 11 of 401 KAR 35:190. Forty-five (45) days prior to closing a tank, the generator shall notify the cabinet in writing of the intent to begin closure. Excluding the requirements in Section 2(1), (2), 4 and 5 of 401 KAR 35:070, a generator is exempt from the requirements in 401 KAR 35:070 through 35:130.~~]

(b) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container. The date on which accumulation begins and the date and amount of waste removed from each tank shall be recorded in the inspection log required by Section 6 of 401 KAR 35:020;

(c) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste;" and

(d) The generator complies with the requirements for owners or operators [~~specified~~] in 401 KAR 35:030, and 401 KAR 35:040, with Section 7 [~~and Sections 6 and 7~~] of 401 KAR 35:020, and with Section 7(1)(d) of 401 KAR 37:010. In addition, the generator is exempt from all requirements in 401 KAR 35:070 and 35:080, except for Sections 2, 4, and 5 of 401 KAR 35:070.

(2) A generator who accumulates hazardous waste for more than ninety (90) days is an operator of a storage facility and is subject to the requirements of 401 KAR Chapter 34, 401 KAR Chapter 35 and the permit requirements of 401 KAR Chapter 38, unless he has been granted an extension to the ninety (90) day period. Such extensions may be granted by the cabinet if hazardous wastes shall remain on-site for longer than ninety (90) days due to unforeseen, temporary, and uncontrolled circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

(3) Satellite accumulation.

(a) A generator may accumulate as much as fifty-five (55) gallons of hazardous waste or one (1) quart of acutely hazardous waste listed in Section 4 of 401 KAR 31:040 in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (1) of this section provided that upon commencement of accumulation, he:

1. Complies with Sections 2, 3, and 4(1) of 401 KAR 35:180; and

2. Marks his containers with the words "Hazardous Waste."

(b) A generator who accumulates either hazardous waste or acutely hazardous waste listed in Section 4 of 401 KAR 31:040 in excess of the amounts listed in paragraph (a) of this subsection at or near any point of generation shall, with respect to that amount of excess waste, comply with subsection (1) of this section or other applicable provisions of this chapter and continue to comply with paragraph (a)1 and 2 of this subsection. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating. The date shall be placed on the container on the day that excess accumulation began.

Section 6. Accumulation Time for Small Quantity Generators. (1) A generator generating a total quantity of hazardous waste greater than 100 kilograms, but less than 1,000 kilograms during a calendar month for every month in a calendar year (that is, [~~i.e.,~~] a registered small quantity generator), may accumulate without a permit for up to 180 days. The on-site accumulation may occur without a permit for not more than 6,000 kilograms for up to 270 days if the generator is obligated to ship or haul the waste over 200 miles.

(2) A generator who generates greater than 100 kilograms but

less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he ~~[must]~~ transports his waste or offers his waste for transportation over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 401 KAR Chapters 34 and 35 and the permit requirements of 401 KAR Chapter 38 unless he has been granted an extension to the 180 day (or 270 day if applicable) period. Such extension may be granted by the cabinet if hazardous wastes shall remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

(3) A small quantity generator may accumulate hazardous waste on site for 180 days (or for 270 days if he is obligated to transport his waste or offer his waste for transportation over a distance of 200 miles or more) or less without a permit or without having interim status provided that he complies with the requirements of Section 5(1)~~[(a) through (d)]~~ of this administrative regulation.

(4) A small quantity generator may accumulate hazardous waste in satellite areas provided that he complies with the requirements of Section 5(3) of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

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REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This administrative regulation affects all hazardous waste generators who accumulate their waste on-site. However, this amendment specifically affects generators who accumulate hazardous wastes on drip pads. There are approximately 14 companies conducting wood preservation in Kentucky who may also accumulate waste on drip pads.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no anticipated costs or savings associated with this amendment because it adopts existing federal requirements that are applicable in Kentucky if the state has not been authorized to operate this part of the program. Continued authorization is dependent upon adopting this amendment. However, it should be noted that allowing the use of drip pads to accumulate hazardous wastes at wood preserving facilities significantly reduces the regulatory burden for these sites. Prior to this amendment, all units used for managing hazardous waste that did not meet the definition of a tank or container were required to obtain a full Part B operating permit. This amendment allows drip pads to meet only minimal generator accumulation standards.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: In lieu of permitting requirements, this amendment requires generators who use a drip pad (to accumulate hazardous waste) to keep records documenting their compliance with the requirement to remove waste from the unit every 90 days.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet may experience increased costs as it regulates generators accumulating hazardous waste in drip pads.

2. Continuing costs or savings: Costs will continue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements applicable to the administrative body.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Resource Conservation and Recovery Act mandates that a state may be authorized to operate the state program in lieu of the federal program only if the state's program is consistent with and no less stringent than the federal program. Thus, the cabinet did not consider alternatives which would result in a less stringent standard. In addition, the cabinet believes that the existing proposal will adequately protect public health and the environment at wood preserving sites. Thus, the cabinet did not propose to impose permitting standards for these units.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate the proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment is taken from 40 CFR 262.34, effective July 1, 1991. The Resource Conservation and Recovery Act mandates that authorized state programs must be consistent with and at least as stringent as the federal program.

2. State compliance standards: This amendment complies with KRS 224.46-510 which requires the cabinet to promulgate administrative regulations applicable to hazardous waste generators.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 262.34 effective July 1, 1991.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 32:050. Special conditions.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.99, 40 CFR 260.2, 262.54(h), 262.58, 263.20(g)(4)

STATUTORY AUTHORITY: KRS 10-100, 224.46-510

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-510 and to [~~requires the cabinet to promulgate regulations to establish standards for the generation of hazardous waste. This chapter establishes standards applicable to generators of hazardous waste. This regulation~~] establish[~~es~~] special conditions for generators who export or import hazardous waste. This administrative regulation exempts farmers from certain requirements.

Section 1. Definitions. In addition to the definitions set forth at Section 1 of 401 KAR 30:010, the following definitions apply to this administrative regulation:

(1) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is [~~shall be~~] sent.

(2) "EPA acknowledgment of consent" means the cable set to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(3) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste shall be sent and any intermediary arranging for the export.

(4) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(5) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

Section 2. Applicability. This administrative regulation establishes requirements applicable to exports of hazardous waste. [~~Except to the extent 40 CFR 262.58 (1989) provides otherwise,~~] A primary exporter of hazardous waste shall comply with the special requirements of this administrative regulation and a transporter transporting hazardous waste for export shall comply with applicable requirements of 401 KAR Chapter 33. 40 CFR 262.58 (1989) sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

Section 3. General Requirements. Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this administrative regulation and 401 KAR Chapter 33. Exports of hazardous waste are prohibited unless:

(1) Notification in accordance with Section 4 of this administrative regulation has been provided;

(2) The receiving country has consented to accept the hazardous waste;

(3) A copy of the EPA acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)); and

(4) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA acknowledgment of consent.

Section 4. Notification of Intent to Export. (1) A primary exporter of hazardous waste shall notify EPA of an intended export before the waste is scheduled to leave the United States. A complete notification shall be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification shall be in writing, signed by the primary exporter, and include the following information:

(a) Name, mailing address, telephone number and EPA ID number of the primary exporter;

(b) By consignee, for each hazardous waste type:

1. A description of the hazardous waste and the EPA hazardous waste number (from 401 KAR 31:030 and 31:040), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Part 171-177 (1989);

2. The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported;

3. The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

4. All points of entry to and departure from each foreign country through which the hazardous waste shall pass;

5. A description of the means by which each shipment of the hazardous waste shall be transported (for example, [~~e.g.,~~] mode of transportation vehicle (air, highway, rail, or water[~~, etc.~~]) type(s) of container (drums, boxes, or tanks[~~, etc.~~]));

6. A description of the manner in which the hazardous waste shall be treated, stored or disposed of in the receiving country (for example, [~~e.g.,~~] land or ocean incineration, other land disposal, ocean dumping, recycling);

7. The name and site address of the consignee and any alternate consignee; and

8. The name of any transit countries through which the hazardous waste shall be sent and a description of the approximate length of time the hazardous waste shall remain in such country and the nature of its handling while there.

(2) Notification shall be sent to the Office of Waste Programs Enforcement, RCRA Enforcement Division (OS-520), U.S. Environmental Protection Agency [~~Office of International Activities (A-106), EPA~~], 401 M Street[,] SW, Washington, DC 20460 with "Attention: Notification to Export" prominently displayed on the front of the envelope.

(3) Except for changes to the telephone number in subsection (1)(a) of this section, changes to subsection (1)(b)5 of this section and decreases in the quantity indicated pursuant to subsection (1)(b)3, of this section when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to subsection (1)(b)8 of this section and in the ports of entry to and departure from transit countries pursuant to subsection (1)(b)4 of this section) has been

obtained and the primary exporter receives an EPA acknowledgment of consent reflecting the receiving country's consent to the changes.

(4) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(5) In conjunction with the department of state, EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of subsection (1) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by subsection (1) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2 (1989).

(6) Where the receiving country consents to the receipt of the hazardous waste, EPA shall forward an EPA acknowledgment of consent to the primary exporter for purposes of 40 CFR 262.54(h) (1989). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA shall notify the primary exporter in writing. EPA shall also notify the primary exporter of any responses from transit countries.

Section 5. Special Manifest Requirements. A primary exporter shall comply with the manifest requirements of Sections 1 to [~~through~~] 4 of 401 KAR 32:020 except that:

(1) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;

(2) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;

(3) In special handling instructions and additional information, the primary exporter shall identify the point of departure from the United States;

(4) The following statement shall be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA acknowledgment of consent;"

(5) In lieu of the requirements of Section 2 of 401 KAR 32:020, the primary exporter shall obtain the manifest form from the primary exporter's state if that state supplies the manifest form and requires its use. If the primary exporter's state does not supply the manifest form, the primary exporter may obtain a manifest form from any source;

(6) The primary exporter shall require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in Section 3(1) of 401 KAR 34:050) between the manifest and the shipment. A copy of the manifest signed by the facility may be used to confirm delivery of the hazardous waste;

(7) In lieu of the requirements of Section 1(4) of 401 KAR 32:020, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

(a) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with Section 4(3) of this administrative regulation and obtain an EPA acknowledgment of consent prior to delivery; or

(b) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(c) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(8) The primary exporter shall attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which shall accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall [~~must~~] provide the transporter with an EPA acknowledgment of consent which shall accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the copy of the EPA acknowledgment of consent to the shipping paper.

(9) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with 40 CFR 263.20(g)(4) (1989).

Section 6. Exception Reports. In lieu of the requirements of Section 3 of 401 KAR 32:040, a primary exporter shall file an exception report with the cabinet if:

(1) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(3) The waste is returned to the United States.

Section 7. Annual Reports. (1) Primary exporters of hazardous waste shall file with the cabinet [~~secretary~~] no later than March 1 of each year a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. The reports shall include the following:

(a) The EPA identification number, name, and mailing and site address of the exporter;

(b) The calendar year covered by the report;

(c) The name and site address of each consignee;

(d) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 401 KAR 31:030 and 31:040), DOT hazard class, the name and [~~U.S.~~] EPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(e) Except for hazardous waste produced by exporters of greater than 100 kilograms but less than 1000 kilograms in a calendar month, unless provided pursuant to Section 2 of 401 KAR 32:040:

1. A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

2. A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(f) A certification signed by the primary exporter which states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(2) Reports shall be sent to the cabinet and the Office of Waste Programs Enforcement, RCRA Enforcement Division (OS-520), U.S. Environmental Protection Agency [~~International Activities (A-106), Environmental Protection Agency~~], 401 M Street SW, Washington, DC 20460.

Section 8. Recordkeeping. (1) For all exports a primary exporter shall:

(a) Keep a copy of each notification of intent to export for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(b) Keep a copy of each EPA acknowledgment of consent for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(c) Keep a copy of each confirmation of delivery of the hazardous

waste from the consignee for at least three (3) years from the date the hazardous waste was accepted by the initial transporter; and

(d) Keep a copy of each annual report for a period of at least three (3) years from the due date of the report.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the cabinet.

Section 9. Imports of Hazardous Waste. (1) Any person who imports hazardous waste from a foreign country into the United States shall comply with the requirements of this chapter and the special requirements of this section.

(2) When importing hazardous waste, a person shall meet all the requirements of Section 1(1) of 401 KAR 32:020 for the manifest except that:

(a) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

(b) In place of the generator's signature on the certification statement, the U.S. importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.

(3) A person who imports hazardous waste shall obtain the manifest form from the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.

Section 10. Farmers. A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this chapter or other standards in 401 KAR Chapters 34, 35, 37, or 38 for those wastes provided he triple rinses each emptied pesticide container in accordance with Section 7(2)(c) of 401 KAR 31:010[~~, Section 7(2)(c)~~], and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This amendment affects generators who export hazardous waste out of the country. Although Kentucky has approximately 2811 active hazardous waste generators, only three entities have considered exporting hazardous waste recently.

(a) Direct and indirect costs or savings to those affected:

1. First year: The amendments made to this administrative regulation correct the official address to which generators must submit paperwork. Thus, the changes are not substantial and will result in neither a cost or savings to those companies seeking to export hazardous waste.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: This amendment merely changes the mailing address for those owners or operators who export hazardous waste. Previously, exporters sent a notification to the Office of International Activities at EPA, and must now send the notification to the Office of Waste Programs Enforcement Division.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There is no impact on the administrative body.

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: No alternatives were considered since this amendment simply corrects an address to which generators must submit their export paperwork.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate the proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment is taken from 40 CFR 262.53 and 262.56, both effective September 4, 1991. The Resource Conservation and Recovery Act mandates that authorized state programs must be consistent with and at least as stringent as the federal program.

2. State compliance standards: This amendment complies with KRS 224.46-510 which requires the cabinet to promulgate administrative regulations applicable to hazardous waste generators.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 262.53 and 262.56, effective September 4, 1991.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 34:020. General facility standards.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation~~] establish[~~es~~] the general standards for facilities.

Section 1. Applicability. (1) This chapter applies to owners and operators of all hazardous waste facilities, except as provided in Section 1 of 401 KAR 34:010[~~, Section 1,~~] and subsection (2) of this section.

(2) Section 9(2) of this administrative regulation applies only to facilities subject to administrative regulation under 401 KAR 34:180, 34:190, 34:200, 34:210, 34:220, 34:230, 34:240, and 34:250.

Section 2. Identification Number. Every facility owner or operator shall apply to the cabinet for an EPA identification number in accordance with the notification procedures.

Section 3. Required Notices. (1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the cabinet in writing at least four (4) weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(2) The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator is also the generator) shall inform the generator in writing that he has the appropriate permit(s) for, and shall accept, the waste the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

(3) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the postclosure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of this chapter and 401 KAR Chapter 38.

Section 4. General Waste Analysis. (1)(a) Before an owner or operator treats, stores, or disposes of any hazardous waste, or nonhazardous wastes if applicable under Section 4(4) of 401 KAR 34:070, he shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis shall contain all the information which shall be known to treat, store, or dispose of the waste in accordance with the requirements of this chapter and 401 KAR Chapter 37 or with the conditions of a permit issued under 401 KAR Chapter 38.

(b) The analysis may include data developed under 401 KAR Chapter 31 and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(c) The analysis shall be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis shall be repeated:

1. When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste, or nonhazardous wastes if applicable under Section 4(4) of 401 KAR 34:070, has changed; and

2. For off-site facilities, when the results of the inspection required in paragraph (d) of this subsection indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(d) The owner or operator of an off-site facility shall inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(2) The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which he shall carry out to comply with subsection (1) of this section. He shall keep this plan at the facility. At a minimum, the plan shall specify:

(a) The parameters for which each hazardous waste, or nonhazardous waste if applicable under Section 4(4) of 401 KAR 34:070, shall be analyzed and the rationale for the selection of these parameters (that is, [~~i.e.,~~] how analysis for these parameters shall provide sufficient information on the waste's properties to comply with subsection (1) of this section);

(b) The test methods which shall be used to test for these parameters;

(c) The sampling method which shall be used to obtain a representative sample of the waste to be analyzed. A representative sample
may be obtained using one (1) of the sampling methods described in 401 KAR 31:100.

(d) The frequency with which the initial analysis of the waste shall be reviewed or repeated to ensure that the analysis is accurate and up to date;

(e) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply;

(f) Where applicable, the methods that [~~which~~] shall be used to meet the additional waste analysis requirements for specific waste management methods as specified in Section 8 of this administrative regulation, Section 9 of 401 KAR 34:230, in Section 2 of 401 KAR 34:240, [~~and~~] Section 7 of 401 KAR 37:010, Section 5(4) of 401 KAR 34:275, and Section 14(4) of 401 KAR 34:280; and

(g) For surface impoundments exempted from land disposal restrictions under Section 4(1) of 401 KAR 37:010, the procedures and schedules for:

1. The sampling of impoundment contents;

2. The analysis of test data; and

3. The annual removal of residues which are not delisted under Section 2 of 401 KAR 31:060 or which exhibit a characteristic of hazardous waste and either:

a. Do not meet applicable treatment standards of 401 KAR 37:040; or

b. Where no treatment standards have been established;

(i) The residues are prohibited from land disposal under Section 4 of 401 KAR 37:030[~~, Section 4,~~] or KRS 224.46-520; or

(ii) The residues are prohibited from land disposal under Section 5(6) of 401 KAR 37:030[~~, Section 5(6)~~].

(3) For off-site facilities, the waste analysis plan required in subsection (2) of this section shall also specify the procedures which shall be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches

the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan shall describe:

(a) The procedures which shall be used to determine the identity of each movement of waste managed at the facility; and

(b) The sampling method which shall be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

Section 5. Security. (1) The owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, unless he can demonstrate to the cabinet that:

(a) Physical contact with the waste, structures, or equipment within the active portion of the facility shall not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(b) Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, shall not cause a violation of the requirements of this chapter.

(2) Unless the owner or operator has made a successful demonstration under subsection (1) of this section, a facility shall have:

(a) A twenty-four (24) hour surveillance system (for example, [e.g.,] television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(b)1. An artificial or natural barrier ([e.g.,] a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

2. A means to control entry, at all times, through the gates or other entrances to the active portion of the facility ([e.g.,] an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(3) Unless the owner or operator has made a successful demonstration under subsection (1) of this section, a sign with the legend, "Danger - Unauthorized Personnel Keep Out," shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient number to be seen from any approach to this active portion. The legend shall be written in English and in any other language predominant in the area surrounding the facility and shall be legible from a distance of at least twenty-five (25) feet. Existing signs with a legend other than "Danger - Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

Section 6. General Inspection Requirements. (1) The owner or operator shall inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to: release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(2)(a) The owner or operator shall develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(b) He shall keep this schedule at the facility.

(c) The schedule shall identify the types of problems (for example, [e.g.,] malfunctions or deterioration) which are to be looked for during the inspection (for example, [e.g.,] inoperative sump pump, leaking fitting, or eroding dike[, etc.]).

(d) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of [possible] deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, [or] malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the terms and frequencies called for in Section 5 of 401 KAR 34:180, Sections 4 and 6 [5] of 401 KAR 34:190, Section 4 of 401 KAR 34:200, Section[s 4 and] 5 of 401 KAR 34:210, Section 6 of 401 KAR 34:220, Section 4 of 401 KAR 34:230, Section 7 of 401 KAR 34:240, and Section 3 of 401 KAR 34:250, Section 4 of 401 KAR 34:275, and Sections 3, 4, and 9 of 401 KAR 34:280 where applicable.

(3) The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(4) The owner or operator shall record inspections in an inspection log or summary. He shall keep these records for at least three (3) years from the date of inspection. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

Section 7. Personnel Training. (1)(a) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this chapter. The owner or operator shall ensure that this program includes all the elements described in the document required under subsection (4)(c) of this section.

(b) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(c) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

1. Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;
2. Key parameters for automatic waste feed cutoff systems;
3. Communications or alarm systems;
4. Response to fires or explosions;
5. Response to groundwater contamination incidents; and
6. Shutdown of operations.

(2) Facility personnel shall successfully complete the program required in subsection (1) of this section within six (6) months after the effective date of these administrative regulations or six (6) months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these administrative regulations shall not work in unsupervised positions until they have completed the training requirements of subsection (1) of this section.

(3) Facility personnel shall take part in an annual review of the initial training required in subsection (1) of this section.

(4) The owner or operator shall maintain the following documents and records at the facility:

(a) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(b) A written job description for each position listed under paragraph (a) of this subsection. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of

employees assigned to each position;

(c) A written description of the type and amount of both introductory and continuing training that shall be given to each person filling a position listed under paragraph (a) of this subsection; and

(d) Records that document that the training or job experience required under subsections (1), (2) and (3) of this section has been given to, and completed by, facility personnel.

(5) Training records on current personnel shall be kept until closure of the facility; training records on former employees shall be kept for at least three (3) years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

Section 8. General Requirements for Ignitable, Reactive, or Incompatible Wastes. (1) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, ~~[e.g.,]~~ from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(2) Where specifically required by other sections of this administrative regulation, the owner or operator of a facility that treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, shall take precautions to prevent reactions which:

(a) Generate extreme heat or pressure, fire or explosions, or violent reactions;

(b) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

(c) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion;

(d) Damage the structural integrity of the device or facility; or

(e) Through other like means threaten human health or the environment.

(3) When required to comply with subsection (1) or (2) of this section, the owner or operator shall document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests (for example, ~~[e.g.,]~~ bench scale or pilot scale tests), waste analyses (as specified in Section 4 of this administrative regulation), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

Section 9. Location Standards. (1) Seismic considerations. Portions of new facilities where treatment, storage, or disposal of hazardous waste shall be conducted shall not be located within sixty-one (61) meters (approximately 200 feet) of a fault which had displacement in Holocene time.

(2) Flood plains.

(a) Except as paragraph (c) of this subsection applies, a facility located in a 100-year flood plain shall be designed, constructed, operated, maintained, and refitted if necessary, to prevent washout of any hazardous waste and to protect the facility from inundation by waters of the 100-year flood plain throughout the active life of the facility, throughout the closure phase of the facility, and for disposal facilities only, throughout the postclosure phase. Facilities that have closed and removed all hazardous waste, waste constituents, contaminated soil, debris or other material contaminated with hazardous constituents, are not required to protect the closed portion of the facility from washout of waste or inundation by waters of the 100-year flood. Prevention of washout and protection from inundation shall be accomplished by one (1) of the following:

1. Using a structure or device such as a dike or floodwall which has been designed:

a. To provide adequate freeboard to prevent overtopping of the structure during a 100-year flood due to wind and wave action;

b. To provide sufficient structural integrity to prevent massive failure due to the force and erosive tendencies of the 100-year floodwaters;

c. To accommodate such other characteristics of the facility's location, such as special geologic or hydrological features, as necessary to accomplish the requirements of this subsection.

2. Providing procedures which shall cause the waste to be removed safely, before floodwaters can reach the facility, to a location where the wastes shall not be vulnerable to floodwaters.

3. Demonstrating to the satisfaction of the cabinet that alternate devices or measures, with the exception of covering the waste, shall provide protection which meets the requirements of this paragraph.

(b) No person shall be issued a permit to construct a new hazardous waste site or facility in the floodway.

(c) No person shall be issued a permit to construct a new hazardous waste disposal site or facility in the 100-year flood plain or a seasonal high-water table.

(d) No hazardous waste site or facility shall restrict the flow of the 100-year flood or reduce the temporary water storage capacity of the 100-year flood plain so as to pose a hazard to human life, wildlife or land or water resources.

(3) Salt dome formations, salt bed formations, underground mines and caves. The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited.

Section 10. Construction Quality Assurance Program. (1)(a) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile, and landfill units that are required to comply with Section 2(4) of 401 KAR 34:200, Section 2(3) of 401 KAR 34:210, and Section 2(3) and (4) of 401 KAR 34:230. The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(b) The CQA program shall address the following physical components, where applicable:

1. Foundations;

2. Dikes;

3. Low-permeability soil liners;

4. Geomembranes (flexible membrane liners);

5. Leachate collection and removal systems and leak detection systems; and

6. Final cover systems.

(2) Written CQA plan. The owner or operator of units subject to the CQA program under subsection (1) of this section shall develop and implement a written CQA plan. The plan shall identify steps that shall be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(a) Identification of applicable units, and a description of how they shall be constructed.

(b) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(c) A description of inspection and sampling activities for all unit components identified in subsection (1)(b) of this section, including observations and tests that shall be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating

record under Section 4 of 401 KAR 34:050.

(3) Contents of program.

(a) The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

1. Structural stability and integrity of all components of the unit identified in subsection (1)(b) of this section;

2. Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (for example, pipes) according to design specifications;

3. Conformity of all materials used with design and other material specifications under Section 2 of 401 KAR 34:200, Section 2 of 401 KAR 34:210, and Section 2 of 401 KAR 34:230.

(b) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of Sections 2(3)(a)1b of 401 KAR 34:200, Section 2(3)(a)1b of 401 KAR 34:210, and Section 2(3)(a)1b of 401 KAR 34:230 in the field. Compliance with the hydraulic conductivity requirements shall be verified by using in-situ testing on the constructed test fill. The cabinet may accept an alternative demonstration, in lieu of a test fill, where data are sufficient to show that a constructed soil liner shall meet the hydraulic conductivity requirements of Section 2(3)1b of 401 KAR 34:200, Section 2(3)(a)1b of 401 KAR 34:210, and Section 2(3)(a)1b of 401 KAR 34:230 in the field.

(4) Certification. Waste shall not be received in a unit subject to this section until the owner or operator has submitted to the cabinet by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of Section 2(3) or (4) of 401 KAR 34:200, Section 2(3) or (4) of 401 KAR 34:210, and Section 2(3) or (4) of 401 KAR 34:230; and the procedure in Section 1(12)(b)2 of 401 KAR 38:030 of this has been completed. Documentation supporting the CQA officer's certification shall be furnished to the cabinet upon request.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: The proposed amendment affects the owners and operators of hazardous waste treatment, storage, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: Additional costs may be incurred as the provisions have been added to this administrative regulation to require sites or facilities that include surface impoundments, waste piles or landfills to prepare and implement a Construction Quality Assurance Program. However, there are no new anticipated costs or savings associated with this amendment because it adopts existing federal requirements that would be applicable in Kentucky if the state did not have authorization to operate the state program in lieu of the federal program. Continued authorization is dependent upon adopting this amendment.

2. Continuing costs or savings: These cost will continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The amendment requires the preparation of a written Construction Quality Assurance Program and submittal of a certification to the cabinet that construction of a new land disposal unit occurred successfully.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment may result in additional costs to the agency in administering and reviewing the Construction Quality Assurance Program submittals.

2. Continuing costs or savings: First year costs may continue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet will review the certification documents upon receipt.

(3) assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered by the cabinet. The Resource Conservation and Recovery Act mandates that a state may be authorized to operate the state program in lieu of the federal program only if the state's program is consistent with and no less stringent than the federal program. The cabinet evaluated alternatives which would have required submittal and review of additional information. However, the proposed amendment will adequately protect public health and the environment.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate the proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The amendments to this administrative regulation are taken from 40 CFR 264.13 effective March 6, 1992; 264.15, effective July 29, 1992; and 264.19, effective July 29, 1992. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: These amendments comply with KRS 224.46-520 which requires the cabinet to promulgate administrative regulations applicable to hazardous waste storage, treatment and disposal facilities.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR Parts 264.13; 264.15; and 264.19.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 34:050. Manifest system, recordkeeping and reporting.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This administrative regulation~~] establish[~~es~~] a manifest system, recordkeeping and reporting requirements for facilities.

Section 1. Applicability. This administrative regulation applies to owners and operators of both on-site and off-site hazardous waste sites or facilities, except as Section 1 of 401 KAR 34:010 provides otherwise. Sections 2, 3 and 7 of this administrative regulation do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

Section 2. Use of Manifest System. (1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, shall:

(a) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(b) Note any significant discrepancies in the manifest (as defined in Section 3(1) of this administrative regulation) on each copy of the manifest;

(c) Immediately give the transporter at least one (1) copy of the signed manifest;

(d) Within thirty (30) days after the delivery, send a copy of the manifest to the generator; and

(e) Retain at the facility a copy of each manifest for at least three (3) years after the date of delivery.

(2) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, shall:

(a) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(b) Note any significant discrepancies (as defined in Section 3(1) of this administrative regulation) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

(c) Immediately give the rail or water (bulk shipment) transporter at least one (1) copy of the manifest (or shipping paper if the manifest has not been received);

(d) Within thirty (30) days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within thirty (30) days after delivery, the owner or operator, or his agent, shall send a copy of the shipping paper signed and dated to the generator; and

(e) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three (3) years from the date of delivery.

(3) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of 401 KAR Chapter 32.

Section 3. Manifest Discrepancies. (1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(a) For bulk waste, variations greater than ten (10) percent in weight; and

(b) For batch waste, any variation in piece count, such as a discrepancy of one (1) drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(2) Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (for example, [~~e.g.,~~] with telephone conversations). If the discrepancy is not resolved within fifteen (15) days after receiving the waste, the owner or operator shall immediately submit to the cabinet a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

Section 4. Operating Record. (1) The owner or operator shall keep a written operating record at his facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(a) A description and the quantity of each hazardous waste received, and the method and date of its treatment, storage, or disposal at the facility as described in 401 KAR 34:290;

(b) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste shall be recorded on a map or diagram of each cell or disposal area. For all facilities, this information shall include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest;

(c) Records and results of waste analyses performed as specified in Sections 4 and 8 of 401 KAR 34:020, Section 9 of 401 KAR 34:230, Section 2 of 401 KAR 34:240, [~~and~~] Sections 4(1) and 7 of 401 KAR 37:010, Section 5 of 401 KAR 34:275, and Section 14 of 401 KAR 34:280;

(d) Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 7(10) of

401 KAR 34:040;

(e) Records and results of inspections as required by Section 6(4) of 401 KAR 34:020 (except these data need be kept only three (3) years);

(f) Monitoring, testing or analytical data, and corrective action where required by 401 KAR 34:060, and Section 10 of 401 KAR 34:020, Sections 2, 4 and 6 of 401 KAR 34:190, Sections 3, 4 and 10 of 401 KAR 34:200, Sections 3, 4, and 5 of 401 KAR 34:210, Sections 5, 6 and 8 of 401 KAR 34:220, Sections 3, 4, [and] 5 and 13 of 401 KAR 34:230, Section 7 of 401 KAR 34:240 and Section 3 of 401 KAR 34:250, Sections 5(3) to (6) and 6 of 401 KAR 34:275, and Sections 14(4) to (9) and 15 of 401 KAR 34:280;

(g) For off-site facilities, notices to generators as specified in Section 3(2) of 401 KAR 34:020;

(h) All closure cost estimates under Section 1 of 401 KAR 34:090 and, for disposal facilities, postclosure cost estimates under Section 1 of 401 KAR 34:100;

(i) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and environment;

(j) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Section 5 of 401 KAR 37:010, a petition pursuant to Section 6 of 401 KAR 37:010, or a certification under 401 KAR 37:010, Section 8, and the applicable notice required of a generator under Section 7(1) of 401 KAR 37:010;

(k) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required of a generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010;

(l) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the [a] generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010;

(m) For an off-site land disposal facility, a copy of the notice and certification and demonstration if applicable required of the generator or the owner or operator of a treatment facility under Section 7 or 8 of 401 KAR 37:010, whichever is applicable;

(n) For an on-site land disposal facility, the information contained in the notice required of the generator or owner or operator of a treatment facility under 401 KAR 37:010, Section 7, except for the manifest number, and the certification and demonstration if required under 401 KAR 37:010, Section 8, whichever is applicable;

(o) For surface impoundments, water balance calculations as required in 401 KAR 34:200, Section 4;

(p) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010[; Section 7 or 8]; and

(q) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010[, Section 7 or 8].

Section 5. Availability, Retention, and Disposition of Records. (1) All records, including plans, required under this chapter shall be furnished upon request, and made available at all reasonable times for inspection by any officer, employee, or representative of the cabinet who is duly designated by the secretary of the cabinet.

(2) The retention period for all records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the cabinet.

(3) A copy of records of waste disposal locations and quantities under Section 4(2)(b) of this administrative regulation shall be submitted to the cabinet and local land authority upon closure of the facility.

Section 6. Annual Report. The owner or operator shall prepare and submit a single copy of an annual report to the cabinet by March 1 of each year. The report form designated by the secretary shall be used for this report. The annual report shall cover facility activities during the previous calendar year and shall include at a minimum the following information:

(1) The EPA identification number, name, and address of the facility;

(2) The calendar year covered by the report;

(3) For off-site facilities, the name and EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator;

(4) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) Information on transportation, the use of the manifest, and other information from the manifest, as applicable;

(7) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(8) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for the years prior to 1984; and

(9) The certification signed by the owner or operator of the facility or his authorized representative.

Section 7. Unmanifested Waste Report. If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in Section 1(5)(b) of 401 KAR 33:020[, Section 1(5)(b),] and if the waste is not excluded from the manifest requirement by Section 5 of 401 KAR 31:010, then the owner or operator shall prepare and submit a single copy of a report to the secretary within fifteen (15) days after receiving the waste. The unmanifested waste report shall be submitted on a form approved by the cabinet. The report shall be designated "Unmanifested Waste Report" and include the following information:

(1) The EPA identification number, name, and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name, and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

Section 8. Additional Reports. In addition to submitting the annual report and unmanifested waste reports described in Sections 6 and 7 of this administrative regulation the owner or operator shall also report to the cabinet [secretary]:

(1) Releases, fires, and explosions as specified in Section 7(10) of 401 KAR 34:040;

(2) Facility closure as specified in Section 6 of 401 KAR 34:070; and

(3) As otherwise required by 401 KAR 34:060, 34:200, 34:210, 34:220, ~~[and]~~ 34:230, 34:275, and 34:280.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: The proposed amendment affects all owners and operators of permitted hazardous waste storage, treatment, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no anticipated costs or savings associated with this amendment because it adopts existing federal requirements that would be applicable in Kentucky if the state did not have authorization to operate the state program in lieu of the federal program. Continued authorization is dependent upon adopting this amendment. In addition, it is noted that the amendments made to this administrative regulation provided clarifying cross-references to other (new) regulatory requirements.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The proposed amendment to this administrative regulation does not impose any new reporting or paperwork requirements. However, clarifying references to proposed recordkeeping and reporting requirements in other administrative regulations are cited.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will result in one new costs or savings to the administrative body.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The proposed amendment to this administrative regulation imposes no new reporting or paperwork requirements on the administrative body.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered by the cabinet. The Resource Conservation and Recovery Act mandates that a state may be authorized to operate the state program in lieu of the federal program only if the state's program is consistent with and no less stringent than the federal program. In addition, because the amendments to this administrative regulation simply cross-reference other (new) regulatory standards, the cabinet believes the amendment adequately protects human health and the environment.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, duplicate or overlap the proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate: The proposed amendment adopts language from 40 CFR 264.73 effective January 29, 1992 and 40 CFR 264.77, effective June 21, 1990. The Resource Conservation and Recovery Act, mandates that authorized state programs must be consistent with and at least as stringent as the federal program.

2. State compliance standards: This amendment complies with KRS 224.46-520 which requires the cabinet to adopt administrative regulations for hazardous waste management facilities.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 264.73 and 264.77.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 34:070. Closure and postclosure.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish ~~[KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46.520 requires the Cabinet to establish standards for these permits, to require adequate financial responsibili-~~

~~ty, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes~~] standards for closure and postclosure of facilities.

Section 1. Applicability. Except as Section 1 of 401 KAR 34:010 provides otherwise:

(1) Sections 2 to [~~through~~] 6 of this administrative regulation (which concern closure) apply to the owners and operators of all hazardous waste management sites or facilities; and

(2) Sections 7 to [~~through~~] 11 of this administrative regulation (which concern postclosure care) apply to the owners and operators of:

(a) All hazardous waste disposal facilities;

(b) Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in Section 6 of 401 KAR 34:200 or Section 8 of 401 KAR 34:210; and

(c) Tank systems that are required under Section 8 of 401 KAR 34:190 to meet the requirements for landfills.

Section 2. Closure Performance Standards. The owner or operator shall close the facility in a manner that:

(1) Minimizes the need for further maintenance; [~~and~~]

(2) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; [~~and~~]

(3) Complies with the closure requirements of this administrative regulation including but not limited to, the requirements of Section 9 of 401 KAR 34:180, Section 8 of 401 KAR 34:190, Section 6 of 401 KAR 34:200, Section 8 of 401 KAR 34:210, Section 8 of 401 KAR 34:220, Section 6 of 401 KAR 34:230, Section 8 of 401 KAR 34:240, and Section 2 to [~~through~~] 4 of 401 KAR 34:250.

Section 3. Closure Plan; Amendment of Plan. (1) Written plan.

(a) The owner or operator of a hazardous waste site or facility shall have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by Section 6(3)(a)1 of 401 KAR 34:200 and Section 8(3)(a)1 of 401 KAR 34:210 to have contingent closure plans. The plan shall be submitted with the permit application, in accordance with Section 2(13) of 401 KAR 38:090, and approved by the cabinet as part of the permit issuance procedures under 401 KAR 38:050. In accordance with Section 3 of 401 KAR 38:030, the approved closure plan shall become a condition of any hazardous waste site or facility permit.

(b) The cabinet's approval of the plan shall ensure that the approved closure plan is consistent with Sections 2 to [~~, 3, 4, 5 and~~] 6 of this administrative regulation and the applicable requirements of 401 KAR 34:060, Section 9 of 401 KAR 34:180, Section 8 of 401 KAR 34:190, Section 6 of 401 KAR 34:200, Section 8 of 401 KAR 34:210, Section 8 of 401 KAR 34:220, Section 6 of 401 KAR 34:230, Section 8 of 401 KAR 34:240, and Section 2 of 401 KAR 34:250. Until final closure is completed and certified in accordance with Section 6 of this administrative regulation, a copy of the approved plan and all approved revisions shall be furnished to the cabinet upon request, including request by mail.

(2) Content of plan. The plan shall identify steps necessary to perform partial and final closure of the facility at any point during its active life. The closure plan shall include at least:

(a) A description of how each hazardous waste management unit at the facility shall be closed in accordance with Section 2 of this administrative regulation;

(b) A description of how final closure of the facility shall be conducted in accordance with Section 2 of this administrative regulation. The description shall identify the maximum extent of the operations which shall be unclosed during the active life of the facility; [~~and~~]

(c) An estimate of the maximum inventory of hazardous wastes that was ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of the off-site hazardous waste management units to be used, if applicable; [~~and~~]

(d) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard; [~~and~~]

(e) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; [~~and~~]

(f) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule shall include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which shall allow tracking of the progress of partial and final closure (for example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover shall be included); and

(g) For facilities that use trust funds to establish financial assurance under 401 KAR 34:090 or 401 KAR 34:100 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(3) Amendment of plan. The owner or operator shall submit a written request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the procedures in 401 KAR Chapter 38. The written request shall include a copy of the amended closure plan for approval by the cabinet.

(a) The owner or operator may submit a written request to the cabinet for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(b) The owner or operator shall submit a written request for a permit modification to authorize a change in the approved closure plan whenever:

1. Changes in operating plans or facility design affect the closure plan; or

2. There is a change in the expected year of closure, if applicable; or

3. In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

(c) The owner or operator shall submit a written request for a permit modification including a copy of the amended closure plan for approval at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall request a permit modification no later than thirty (30) days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under Section 6(3)(a)1 of 401 KAR 34:200 or Section 8(3)(a)1 of 401 KAR 34:210, shall submit an

amended closure plan to the cabinet no later than sixty (60) days from the date that the owner or operator or cabinet determines that the hazardous waste management unit shall be closed as a landfill, subject to the requirements of Section 6 of 401 KAR 34:230, or no later than thirty (30) days from that date if the determination is made during partial or final closure. The cabinet shall approve, disapprove, or modify this amended plan in accordance with the procedures in 401 KAR Chapter 38. In accordance with Section 3 of 401 KAR 38:030, the approved closure plan shall become a condition of any hazardous waste site or facility permit issued.

(d) The cabinet may request modifications to the plan under the conditions described in paragraph (b) of this subsection. The owner or operator shall submit the modified plan within sixty (60) days of the cabinet's request or within thirty (30) days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the cabinet shall be approved in accordance with the procedures in 401 KAR Chapter 38.

(4) Notification of partial closure and final closure.

(a) The owner or operator shall notify the cabinet in writing at least sixty (60) days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator shall notify the cabinet in writing at least forty-five (45) days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed. The owner or operator shall notify the cabinet in writing at least forty-five (45) days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace, whichever is earlier.

(b) The date when he "expects to begin closure" shall be either:

1. No later than thirty (30) days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit shall receive additional hazardous wastes no later than one (1) year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the cabinet that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and shall continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the cabinet may approve an extension to this one (1) year limit; or

2. For units meeting the requirements of Section 4 of this administrative regulation, no later than thirty (30) days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional nonhazardous wastes, no later than one (1) year after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the cabinet that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the cabinet may approve an extension to this one (1) year limit.

(c) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under KRS 224.10-100, 224.10-440 [420], and 224.46-530 or 224.99-010 to cease receiving hazardous wastes or to close, then the requirements of this subsection do not apply. However, the owner or operator shall close the facility in accordance with the deadlines established in Section 4 of this administrative regulation.

(5) Removal of wastes and decontamination or dismantling of equipment. Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

(6) For existing disposal facilities within the 100-year flood plain, the closure plan and cost estimates shall reflect compliance with the requirements in Section 9(2) of 401 KAR 34:020 to prevent washout of waste and protect the facility from inundation by waters of the 100-year flood.

(7) For new hazardous waste sites or facilities located or to be located in the 100-year flood plain, the closure plan and cost estimates shall reflect that all hazardous waste and hazardous waste residues shall be removed from the site at closure, in accordance with Section 9(2) of 401 KAR 34:020.

Section 4. Closure; Time Allowed for Closure. (1) Within ninety (90) days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in subsections (4) and (5) of this section, at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The cabinet may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(a)1. The activities required to comply with this subsection will [~~shall~~], of necessity, take longer than ninety (90) days to complete; or

2.a. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive nonhazrdous wastes if the owner or operator complies with subsections (4) and (5) of this section; and

b. There is a reasonable likelihood that the owner or operator [~~he~~] or another person will [~~shall~~] recommence operation of the hazardous waste management unit or the facility within one (1) year; and

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) The owner or operator [~~He~~] has taken and shall continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

(2) The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in subsections (4) and (5) of this section, at the hazardous waste management unit or facility. The cabinet may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(a)1. The partial or final closure activities shall, of necessity, take longer than 180 days to complete; or

2.a. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive nonhazardous wastes if the owner or operator complies with subsections (4) and (5) of this section; and

b. There is reasonable likelihood that the owner or operator [~~he~~] or another person shall recommence operation of the hazardous waste management unit or the facility within one (1) year; and

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) The owner or operator [~~He~~] has taken and shall continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(3) The demonstrations referred to in subsections (1) and (2) of this section shall be made as follows:

(a) The demonstrations in subsection (1)(a) of this section shall be made at least thirty (30) days prior to the expiration of the ninety

(90) day period in subsection (1) of this section; and

(b) The demonstration in subsection (2)(a) of this section shall be made at least thirty (30) days prior to the expiration of the 180 day period in subsection (2) of this section, unless the owner or operator is otherwise subject to the deadlines in subsection (4) of this section.

(4)The cabinet may allow an owner or operator to receive only nonhazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(a) The owner or operator requests a permit modification in compliance with all applicable requirements in 401 KAR Chapter 38 and in the permit modification request demonstrates that:

1. The unit has the existing design capacity as indicated on the Part A application to receive nonhazardous wastes; and

2. There is a reasonable likelihood that the owner or operator or another person will receive nonhazardous wastes in the unit within one (1) year after the final receipt of hazardous wastes; and

3. The nonhazardous wastes will not be incompatible with any remaining wastes in the unit, or with facility design and operating requirements of the unit or facility; and

4. Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

5. The owner or operator is operating and will continue to operate in compliance with all applicable permit requirements; and

(b) The request to modify the permit includes:

1. An amended waste analysis plan;

2. Groundwater monitoring and response program;

3. Human exposure assessment required under Section 9 of 401 KAR 38:070; and

4. Closure and postclosure plans, and updated cost estimates and demonstrations of financial assurance for closure and postclosure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the nonhazardous wastes, and changes in closure activities, including the expected year of closure if applicable under Section 3(2)(g) of this administrative regulation, as a result of the receipt of nonhazardous wastes following the final receipt of hazardous wastes; and

(c) The request to modify the permit includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of nonhazardous wastes following receipt of the final volume of hazardous wastes; and

(d) The request to modify the permit and the demonstrations referred to in paragraphs (a) and (b) of this subsection are submitted to the cabinet no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit, or no later than ninety (90) days after the effective date of this administrative regulation whichever is later.

(5) In addition to the requirements in subsection (4) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in Section 2 of 401 KAR 34:200; Section 2 of 401 KAR 34:230; Section 4 of 401 KAR 34:240; and Section 10 of 401 KAR 35:200 or Section 2(4) of 401 KAR 34:200 or Section 10(4) of 35:200 shall:

(a) Submit with the request to modify the permit:

1. A contingent corrective measures plan, unless a corrective action plan has already been submitted under Section 10 of 401 KAR 34:060; and

2. A plan for removing hazardous wastes in compliance with paragraph (b) of this subsection; and

(b) Remove all hazardous wastes from the unit by removing all hazardous liquids, and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(c) Remove hazardous wastes no later than ninety (90) days after the final receipt of hazardous wastes. The cabinet may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes shall, of necessity, take longer than the allotted period to complete and that extension will not pose a threat to human health and the environment.

(d) If a release that is a statistically significant increase (or decrease in the case of pH) over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's groundwater protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in 401 KAR 34:060, the owner or operator of the unit:

1. Shall comply with the reporting requirements of KRS 224.01-400, if applicable;

2. Shall implement corrective measures in accordance with the approved contingent corrective measures plan required by paragraph (a) of this subsection no later than one (1) year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

3. May continue to receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

4. May be required by the cabinet to implement corrective measures in less than one (1) year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(e) During the period of corrective action, the owner or operator shall provide semiannual reports to the cabinet that describe the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of nonhazardous wastes on the effectiveness of corrective action.

(f) The cabinet may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one (1) year as required in paragraph (d) of this subsection, or fails to make substantial progress in implementing corrective action and achieving the facility's groundwater protection standard or background levels if the facility has not yet established a groundwater protection standard.

(g) If the owner or operator fails to implement corrective measures as required in paragraph (d) of this subsection, or if the cabinet determines that substantial progress has not been made pursuant to paragraph (f) of this subsection the cabinet shall:

1. Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadlines in subsections (1) and (2) of this section and provide a detailed statement of reasons for this determination; and

2. Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than twenty (20) days after the date of the notice.

3. If the cabinet receives no written comments,the decision shall become final five (5) days after the close of the comment period. The cabinet shall notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, shall be submitted within fifteen (15) days of the final notice and that closure shall begin in accordance with the deadlines in subsection (1) and (2) of this section.

4. If the cabinet receives written comments on the decision, a final decision shall be made within thirty (30) days after the end of the comment period. The cabinet shall provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the cabinet determines that substantial progress has not been made, the owner or operator shall initiate closure in accordance with the deadlines in subsections (1) and (2) of this section.

Section 5. Disposal or Decontamination of Equipment, Structures and Soils. During the partial and final closure periods, all contaminated equipment, structures and soils shall be properly disposed of or decontaminated unless otherwise specified in Section 8 of 401 KAR

34:190, Section 6 of 401 KAR 34:200, Section 8 of 401 KAR 34:210, Section 8 of 401 KAR 34:220, or Section 6 of 401 KAR 34:230 or under the authority of Section 2 and 4 of 401 KAR 34:250. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall handle that waste in accordance with all applicable requirements of 401 KAR Chapter 32.

Section 6. Certificate of Closure. Within sixty (60) days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within sixty (60) days of the completion of final closure, the owner or operator shall submit to the cabinet, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification shall be signed by the owner or operator and by an [~~independent professional~~] engineer [~~registered in Kentucky~~]. Documentation supporting the [~~independent registered professional~~] engineer's certification shall be furnished to the cabinet upon request until it [~~he~~] releases the owner or operator from the financial assurance requirements for closure under Section 12 of 401 KAR 34:090.

Section 7. Survey Plat. No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the cabinet, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently displayed benchmarks. This plat shall be prepared and certified by a professional land surveyor registered in [~~the Commonwealth of~~] Kentucky. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, shall contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with this administrative regulation.

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

1. Monitoring and reporting in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250; and

2. Maintenance and monitoring of waste containment systems in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250.

(b) Any time preceding partial closure of a hazardous waste management unit subject to postclosure care requirements or final closure, or any time during the postclosure period for a particular unit, the cabinet may, in accordance with the permit modification procedures in 401 KAR Chapter 38:

1. Shorten the postclosure care period applicable to the hazardous waste management unit, or facility, to not less than thirty (30) years as specified in KRS 224.46-520 if all disposal units have been closed, if the cabinet [~~he~~] finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the hazardous waste management unit or facility is secure); or

2. Extend the postclosure care period applicable to the hazardous waste management unit or facility if the cabinet [~~he~~] finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(2) The cabinet may require, at partial and final closure, continuation of any of the security requirements of Section 5 of 401 KAR 34:020 during part or all of the postclosure period when:

(a) Hazardous wastes may remain exposed after completion of partial or final closure; or

(b) Access by the public or domestic livestock may pose a hazard to human health.

(3) Postclosure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed to disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the cabinet finds that the disturbance:

(a) Is necessary to the proposed use of the property, and shall not increase the potential hazard to human health or the environment; or

(b) Is necessary to reduce a threat to human health or the environment.

(4) All postclosure care activities shall be in accordance with the provisions of the approved postclosure plan as specified in Section 9 of this administrative regulation.

Section 9. Postclosure Plan; Amendment of Plan. (1) Written plan. The owner or operator of a hazardous waste disposal unit shall have a written postclosure plan. In addition, certain waste piles and certain surface impoundments from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by Section 6(3)(a)2 of 401 KAR 34:200, and Section 8(3)(a)2 of 401 KAR 34:210 to have contingent postclosure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent postclosure plans under Section 6(3)(a)2 of 401 KAR 34:200 and Section 8(3)(a)2 of 401 KAR 34:210 shall submit a postclosure plan to the cabinet within ninety (90) days from the date that the owner or operator or cabinet determines that the hazardous waste management unit shall be closed as a landfill, subject to the requirements of Sections 8 to [~~through~~] 11 of this administrative regulation. The plan shall be submitted with the permit application, in accordance with Section 2(13) of 401 KAR 38:090, and approved by the cabinet as part of the permit issuance procedures under 401 KAR Chapter 38. In accordance with Section 3 of 401 KAR 38:030, the approved postclosure plan shall become a condition of any hazardous waste site or facility permit issued.

(2) For each hazardous waste management unit subject to the requirements of this section, the postclosure plan shall identify the activities that shall be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(a) A description of the planned monitoring activities and frequencies at which they shall be performed to comply with 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250 during the postclosure care period; and

(b) A description of the planned maintenance activities, and frequencies at which they shall be performed, to ensure:

1. The integrity of the cap and final cover or other containment systems in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250; and

2. The function of the monitoring equipment in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, and 401 KAR 34:250; and

(c) The name, address and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the postclosure care period.

(3) Until final closure of the facility, a copy of the approved postclosure plan shall be furnished to the cabinet upon request,

including request by mail. After final closure has been certified, the person or office specified in subsection (2)(c) of this section shall keep the approved postclosure plan during the remainder of the postclosure period.

(4) Amendment of plan. The owner or operator shall request a permit modification to authorize a change in the approved postclosure plan in accordance with the applicable requirements of 401 KAR Chapter 38. The written request shall include a copy of the amended postclosure plan for approval by the cabinet.

(a) The owner or operator may submit a written request to the cabinet for a permit modification to amend the postclosure plan at any time during the active life of the facility or during the postclosure care period.

(b) The owner or operator shall submit a written request for a permit modification to authorize a change in the approved postclosure plan whenever:

1. Changes in operating plans or facility design affect the approved postclosure plan; or

2. There is a change in the expected year of final closure, if applicable; or

3. Events which occur during the active life of the facility, including partial and final closures, affect the approved postclosure plan.

(c) The owner or operator shall submit a written request for a permit modification at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the postclosure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent postclosure plan under Section 6(3)(a)2 of 401 KAR 34:200 and Section 8(3)(a)2 of 401 KAR 34:210, shall submit a postclosure plan to the cabinet no later than ninety (90) days after the date that the owner or operator or cabinet determines that the hazardous waste management unit shall be closed as a landfill, subject to the requirements of Section 6 of 401 KAR 34:230. The cabinet shall approve, disapprove, or modify this plan in accordance with the procedures in 401 KAR Chapter 38. In accordance with Section 3 of 401 KAR 38:030, the approved postclosure plan shall become a permit condition.

(d) The cabinet may request modifications to the plan under the conditions described in paragraph (b) of this subsection. The owner or operator shall submit the modified plan no later than sixty (60) days after the cabinet's request, or no later than ninety (90) days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent postclosure plan. Any modifications requested by the cabinet shall be approved, disapproved, or modified in accordance with the procedures in 401 KAR Chapter 38.

(5) For existing disposal facilities within the 100-year flood plain, the postclosure plan and cost estimates shall reflect compliance with the requirements in Section 9(2) of 401 KAR 34:020 to prevent washout of waste and protect the facility from inundation by waters of the 100-year flood.

Section 10. Postclosure Notices. (1) No later than sixty (60) days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the cabinet a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(2) Within sixty (60) days of certification of closure of the first hazardous waste disposal unit and within sixty (60) days of certification of closure of the last hazardous waste disposal unit, the owner or operator shall:

(a) Record, in accordance with state law, a notation on the deed to the facility property - or on some other instrument which is normally examined during title search - that shall in perpetuity notify any potential purchaser of the property that:

1. The land has been used to manage hazardous wastes; and

2. Its use is restricted under this administrative regulation; and

3. The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Section 7 of this administrative regulation and subsection (1) of this section have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the cabinet; and

(b) Submit a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph (a) of this subsection, including a copy of the document in which the notation has been placed, to the cabinet.

(3) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes, hazardous waste residues, the liner, if any, or contaminated soils, he shall request a modification to the postclosure permit in accordance with the applicable requirements in 401 KAR Chapter 38. The owner or operator shall demonstrate that the removal of hazardous wastes shall satisfy the criteria of Section 8(3) of this administrative regulation. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the cabinet approve either:

(a) The removal of the notation on the deed to the facility property or other instrument normally examined during title during title search; or

(b) The addition of a notation to the deed or other instrument indicating the removal of the hazardous waste.

Section 11. Certification of Completion of Postclosure Care. No later than sixty (60) days after completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator shall submit to the cabinet by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification shall be signed by the owner or operator and an [~~independent professional~~] engineer [~~registered in the Commonwealth of Kentucky~~]. Documentation supporting the [~~independent registered professional~~] engineer's certification shall be furnished to the cabinet upon request until he releases the owner or operator from the financial assurance requirements for postclosure care under Section 12 of 401 KAR 34:100.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not

wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This proposed administrative regulation affects owners and operators of hazardous waste sites or facilities that decide to accept nonhazardous waste after the final receipt of hazardous waste at a unit.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be increased costs associated with complying with this administrative regulation only if a hazardous waste site or facility decides to accept nonhazardous waste after the final receipt of hazardous waste at a unit. In that case the facility will be required to obtain a permit modification and remains subject to all existing closure and postclosure provisions of a hazardous waste permit. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS 224.

2. Continuing costs or savings: Costs will continue if a facility decides to continue to accept waste.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: A reporting or paperwork requirements associated with maintaining a hazardous waste permit will be required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There be costs associated with reviewing closure and postclosure documents for facilities that decide to accept nonhazardous waste after final receipt of hazardous waste.

2. Continuing costs or savings: Costs will continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: When the state receives authorization for this activity, Kentucky facilities will submit closure and postclosure documents to the cabinet. The cabinet will maintain records and will make a determination.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to the standards in the federal regulations were considered by the cabinet. The federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal programs for the state to be authorized to operate the program in lieu of the federal government. The cabinet evaluated the proposed administrative regulation and determined that it complies with the intent of the state and federal statutes.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government police was identified which may conflict, overlap or duplicate this proposed administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This proposed administrative regulation is taken from 40 CFR 264.110 through .120. However, there is no federal mandate to promulgate this administrative regulation. The federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal programs for the state to be authorized to operate the program in lieu of the federal government. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This proposed administrative regulation complies with KRS Chapter 13A and 224.46-520.

3. Minimum or uniform standards contained in the federal mandate: This proposed administrative regulation conforms to the language in 40 CFR 264.110 through .120.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 34:080. General financial requirements.

RELATES TO: KRS 224.10, 224.40, 224.46

STATUTORY AUTHORITY: KRS 224.46-505, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-505 and 224.46-520 and to [~~KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation~~] establish[~~es the~~] general financial requirements. Additionally, this administrative regulation supersedes and replaces the following: 401 KAR 34:140, Wording of the instruments for trust funds; 401 KAR 34:144, Wording of the instrument for a surety bond guaranteeing payment into a trust fund; 401 KAR 34:148, Wording of the instrument for a surety bond guaranteeing performance; 401 KAR 34:152, Wording of the instrument for a letter of credit; 401 KAR 34:156, Wording of the instrument for a certificate of insurance; 401 KAR 34:159, Wording of the instrument for financial test on closure or postclosure care; 401 KAR 34:162, Wording of the instrument for financial test on liability coverage and closure or postclosure care; 401 KAR 34:165, Wording of the instrument for a corporate guarantee; 401 KAR 34:168, Wording of the instrument for a cash account or certificate of deposit; 401 KAR 34:172, Wording of the instrument

for a liability endorsement; and 401 KAR 34:176, Wording of the instrument for a certificate of liability insurance.

Section 1. Financial Requirement Definitions. (1) When used in this administrative regulation and 401 KAR 34:090 to 401 KAR 34:130, the following terms shall have the meanings indicated:

(a) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070.

(b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090.

(c) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100.

(d) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070.

(2) The following terms are used in the specifications for the financial tests for closure, postclosure care and liability coverage. The definitions are intended to assist in the understanding of these administrative regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

(a) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(b) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(c) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(d) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(e) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(f) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(g) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(h) "Net working capital" means current assets minus current liabilities.

(i) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(j) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(3) The terms "bodily injury" and "property damage" do not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The meanings of the other terms used in the liability insurance requirements are to be consistent with their common meanings within the insurance industry. The definitions of the terms given below are intended to assist in the understanding of these administrative regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage:

(a) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(b) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(c) "Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.

(d) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(4) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet. [~~General. (1) This regulation and 401 KAR 34:090 through 34:176 inclusively contain the financial requirements to establish adequate financial responsibility as required by KRS 224.46-520(3) for hazardous waste sites or facilities. A reference to this section is a citation of this regulation and 401 KAR 34:090 through 34:176.~~

~~(2) Except as specifically provided in this regulation and 401 KAR 34:090 through 34:176, no variance (Section 2 of 401 KAR 30:020) or other waivers of these financial requirements shall be granted by the secretary or the director.~~]

Section 2. Applicability. (1) The requirements of 401 KAR 34:090 to 401 KAR 34:130 [~~and 34:120 through 34:176~~] apply to owners and operators of all hazardous waste sites or facilities, except as provided otherwise in this section or in Section 1 of 401 KAR 34:010.

(2) The requirements of 401 KAR 34:100 and 34:110 apply only to owners and operators of:

(a) Disposal facilities; [~~and~~]

(b) Waste piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in Section 6(1)(b), (2) and (3) of 401 KAR 34:200 and Section 8(2) and (3) of 34:210; and [~~.~~]

(c) Tank systems that are required under Section 8 of 401 KAR 34:190 to meet the requirements of landfills.

(3) States and the federal government are exempt from the requirements of Section 1 of this administrative regulation.

Section 3. General Financial Requirements [~~Definitions~~]. (1) This administrative regulation and 401 KAR 34:090 to 401 KAR 34:130 inclusively contain the financial requirements to establish adequate financial responsibility as required by KRS 224.46-520(3) for hazardous waste sites or facilities. A reference to this section is a citation of this administrative regulation and 401 KAR 34:090 to 34:130.

(2) Except as specifically provided in this administrative regulation and 401 KAR 34:090 to 34:130, no variance (Section 2 of 401 KAR 30:020) or other waivers of these financial requirements shall be granted by the cabinet. [~~When used in Section 1 of this regulation the following terms shall have the meanings given below:~~

~~(a) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070.~~

~~(b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090.~~

~~(c) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b) and (c).~~

~~(d) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100.~~

~~(e) "Parent corporation" means a corporation which directly owns~~

~~at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.~~

~~(f) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 through 11 of 401 KAR 34:070.~~

~~(2) The following terms are used in the specifications for the financial tests for closure, postclosure care and liability self insurance. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.~~

~~(a) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.~~

~~(b) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.~~

~~(c) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.~~

~~(d) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.~~

~~(e) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.~~

~~(f) "Net working capital" means current assets minus current liabilities.~~

~~(g) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.~~

~~(h) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.~~

~~(3) In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable Kentucky statutes. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The cabinet intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.~~

~~(a) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.~~

~~(b) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.~~

~~(c) "Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.~~

~~(d) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.~~]

Section 4. Financial Instruments. (1) Incorporated herein by reference are:

(a) Trust agreement;

(b) Financial guarantee bond;

(c) Corporate guarantee for closure or postclosure care;

(d) Letter from chief financial officer to demonstrate assurance of closure or postclosure care;

(e) Irrevocable standby letter of credit with cover letter for letter of credit;

(f) Escrow account;

(g) Hazardous waste site or facility bond;

(h) Performance bond;

(i) Letter from chief financial officer to demonstrate liability coverage or to demonstrate liability coverage or both liability coverage and assurance of closure or postclosure care;

(j) Corporate guarantee for liability coverage;

(k) Hazardous waste facility liability endorsement;

(l) Hazardous waste facility certificate of liability insurance.

(2) These forms may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Call (502) 564-6716 for assistance.

Section 5. Repeal of Administrative Regulations. The following administrative regulations are hereby repealed:

(1) 401 KAR 34:140, Wording of the instruments for trust funds;

(2) 401 KAR 34:144, Wording of the instrument for a surety bond guaranteeing payment into a trust fund;

(3) 401 KAR 34:148, Wording of the instrument for a surety bond guaranteeing performance;

(4) 401 KAR 34:152, Wording of the instrument for a letter of credit;

(5) 401 KAR 34:156, Wording of the instrument for a certificate of insurance;

(6) 401 KAR 34:159, Wording of the instrument for financial test on closure or postclosure care;

(7) 401 KAR 34:162, Wording of the instrument for financial test on liability coverage and closure or postclosure care;

(8) 401 KAR 34:165, Wording of the instrument for a corporate guarantee;

(9) 401 KAR 34:168, Wording of the instrument for a cash account or certificate of deposit;

(10) 401 KAR 34:172, Wording of the instrument for a liability endorsement; and

(11) 401 KAR 34:176, Wording of the instrument for a certificate of liability insurance.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed

materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This amendment affects all hazardous waste site or facilities in Kentucky. Currently there are 90 treatment storage or disposal facilities for hazardous waste in the state.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs associated with this amendment. The amendment to this administrative regulation restructures existing language to conform with KRS Chapter 13A and adds definitions for "fiscal year" and "substantial business relationship".

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no costs associated with this amendment.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with this administrative regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Resource Conservation and Recovery Act mandates that authorized state programs must be consistent with and at least as stringent as the federal program. The agency is proposing to adopt definitions for the terms "fiscal year" and "substantial business relationship" to clarify the requirements for companies that rely upon a financial test instrument to demonstrate closure, postclosure and liability coverage.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate this amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers, and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment restructures this administrative regulation to comply with the requirement in KRS Chapter 13A to place definitions in the first section of an administrative regulation. The federal system places the applicability section first. Thus, these changes do not conform to the federal regulation. However, because the federal language has been adopted (out of order), the proposed amendment is equivalent to the federal regulation at 40 CFR 264.141 and 264.140, in effect on September 16, 1992.

2. State compliance standards: This amendment complies with KRS 224.46-520 which requires all hazardous waste facilities to demonstrate adequate financial assurance for closure, postclosure and liability.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 264.140 and 264.141, in effect on September 16, 1992.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendment adds a clarifying definition for the term "fiscal year". This is not a definition in the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: According to the US EPA, the financial test mechanism relies upon 12 months of fiscal data for accuracy. However, the Internal Revenue Service recognized abbreviated fiscal years. Because the legitimacy of a financial test submittal has been challenged by the state agency due to the use of an abbreviated fiscal year, it became essential to clarify the intent of the regulations which rely on fiscal year data to perform the critical ratio tests used on the financial test.

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

401 KAR 34:090. Closure financial requirements.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-505 and KRS 224.46-520 and to [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation~~] establish[~~es the~~] closure financial requirements.

Section 1. Cost Estimate for Closure. (1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 2 to [~~through~~] 6 of 401 KAR 34:070 and applicable closure requirements in Section 9 of 401 KAR 34:180, Section 8 of 401 KAR 34:190, Section 6 of 401 KAR 34:200, Section 8 of 401 KAR 34:210, Section 8 of 401 KAR 34:220, Section 6 of 401 KAR 34:230, Section 8 of 401 KAR 34:240, and Sections 2 to [~~through~~] 4 of 401 KAR 34:250.

(a) The estimate shall equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation shall make closure the most expensive, as indicated by its closure plan (see Section 3(2) of 401 KAR 34:070); and

(b) The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in Section 1 [~~3~~](1)(e) of 401 KAR 34:080.) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity shall exist at all times over the life of the facility.

(c) The closure cost estimate shall [~~may~~] not incorporate any salvage value that may be realized with the sale of hazardous

wastes, or nonhazardous wastes if applicable under Section 4(4) of 401 KAR 34:070, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(d) The owner or operator shall [~~may~~] not incorporate a zero cost for hazardous wastes, or nonhazardous wastes if applicable under Section 4(4) of 401 KAR 34:070, that might have economic value.

(2) During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within sixty (60) days prior to the anniversary date of the establishment of the financial instrument used to comply with Section 2 of this administrative regulation. For owners and operators using the financial test or corporate guarantee, the closure cost estimate shall be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before submission of updated information to the cabinet as specified in Section 8(3) of this administrative regulation. The adjustment shall be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in paragraphs (a) and (b) of this subsection. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(a) The first adjustment shall be [~~is~~] made by multiplying the closure cost estimate by the inflation factor. The result shall be [~~is~~] the adjusted closure cost estimate.

(b) Subsequent adjustments shall be [~~are~~] made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(3) During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than thirty (30) days after the cabinet has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in subsection (2) of this section.

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

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

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

Section 2. Financial Assurance for Facility Closure. An owner or operator of each facility shall establish financial assurance for closure of the facility. He shall choose from the options as specified in Sections 3 to [~~through~~] 9 of this administrative regulation.

Section 3. Closure Trust Fund. (1) An owner or operator may satisfy the requirements of this administrative regulation by establishing a closure trust fund which conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the cabinet. An owner or operator of a new facility shall send the originally signed duplicate of the trust agreement to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The trust agreement, including the formal certification of acknowledgment, shall be executed on the form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet containing wording identical to the wording specified in Section 1 of 401 KAR 34:140 and the trust agreement shall be accompanied by a formal certification of acknowledgment (for an example, see Section 2 of 401 KAR 34:140)~~]. Schedule A of the trust agreement shall be updated within sixty (60) days after a change in the amount of the current closure cost estimate covered by the agreement.

(3) Payments to the trust fund shall be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund shall be made as follows:

(a) For a new facility, as defined in 401 KAR 30:010, the first payment shall be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the cabinet before this initial receipt of hazardous waste. The first payment shall be at least equal to the current closure cost estimate (see Section 1 of this administrative regulation), except as provided in Section 10 of this administrative regulation, divided by the number of years in the pay-in period. Subsequent payments shall be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

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

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

(b) If an owner or operator established a trust fund as specified in Section 3 of 401 KAR 35:090, and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund shall be paid in over the pay-in period as defined in this subsection. Payments shall continue to be made no later than thirty (30) days after each anniversary date of the first payment made pursuant to 401 KAR Chapter 35. The amount of each payment shall be determined by this formula:

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

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

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

(5) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this administrative regulation or in 401 KAR 35:090, his first payment shall be at least the amount that the fund shall have contained if the trust fund were established initially and annual payments made according to specifications of this section and Section 3 of 401 KAR 35:090, as applicable.

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

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

(8) If an owner or operator substitutes other financial assurance

as specified in this administrative regulation for all or part of the trust fund, he may submit a written request to the cabinet for release of the amount in excess of the current closure cost estimate covered by the trust fund.

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

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the cabinet. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for partial or final closure activities, the cabinet shall instruct the trustee to make reimbursements in those amounts as the cabinet specifies in writing, if the cabinet determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the cabinet has reason to believe that the maximum cost of closure over the remaining life of the facility shall be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with Section 12 of this administrative regulation, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the cabinet does not instruct the trustee to make such reimbursements, he shall provide the owner or operator with a detailed written statement of reasons.

(11) The cabinet shall agree to termination of the trust when:

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

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with Section 12 of this administrative regulation.

Section 4. Surety Bond Guaranteeing Payment into a Closure Trust Fund. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining a surety bond which conforms to the requirements of this section and submitting the bond to the cabinet. An owner or operator of a new facility shall submit the bond to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The surety bond shall be executed on the form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:144~~].

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

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

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

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

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

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

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

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

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

(b) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an order to begin final closure issued by the cabinet becomes final, or within fifteen (15) days after an order to begin final closure is issued by a circuit court or other court of competent jurisdiction pursuant to KRS 224.46-520, or within fifteen (15) days after issuance of a notice of termination of the permit pursuant to 401 KAR Chapter 38; or

(c) Provide alternate financial assurance as specified in this administrative regulation and obtain the cabinet's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the cabinet of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the amount of the current closure cost estimate, except as provided in Section 10 of this administrative regulation.

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

(8) Under the terms of the bond, the surety may cancel the bond by sending a notice of cancellation by certified mail to the owner or operator and to the cabinet. Cancellation shall not [~~cannot~~] occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the cabinet, as evidenced by return receipt.

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

Section 5. Surety Bond Guaranteeing Performance of Closure. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining a surety bond which conforms to the requirements of this section and by submitting the bond to the cabinet. An owner or operator of a new facility shall submit the bond to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The surety bond shall be executed on the form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:148~~].

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

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

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

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

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

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

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

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

(a) Perform final closure in accordance with the closure plan and other requirements in the permit for the facility whenever required to do so; or

(b) Provide alternate financial assurance as specified in this administrative regulation and obtain the cabinet's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the cabinet of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to KRS 224.46-520 that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety shall perform final closure as guaranteed by the bond or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond shall be in an amount at least equal to the amount of the current closure cost estimate.

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

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the cabinet. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the cabinet, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the cabinet has given prior written consent. The cabinet shall provide such written consent when:

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

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with Section 12 of this administrative regulation.

(10) The surety shall not be liable for deficiencies in the performance of closure by the owner or operator after the cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with Section 12 of this administrative regulation.

Section 6. Closure Letter of Credit. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section and by submitting the letter to the cabinet. An owner or operator of a new facility shall have submitted the letter of credit to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit shall be effective before the initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(2) The [~~wording of the~~] letter of credit shall be executed on the form incorporated by reference in Section 4 of 401 KAR 34:080. The trust agreement required to be filed with the letter of credit shall be executed on the form incorporated by reference in Section 4 of 401 KAR 34:080. [~~identical to the wording specified in Section 2 of 401 KAR 34:152.~~]

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this administrative regulation shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the cabinet shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the cabinet. The standby trust fund shall meet the requirements of the trust fund specified in Section 3 of this administrative regulation, except that:

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

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

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

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

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

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

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

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

(6) The letter of credit shall be issued for at least the amount of the current closure cost estimate except as provided in Section 10 of this administrative regulation.

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

(8) Following a final administrative determination pursuant to KRS 224.46-520 that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, the cabinet may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in this administrative regulation and obtain written approval of such alternate assurance from the cabinet within ninety (90) days after receipt by both the owner or operator and the

cabinet of a notice from the issuing institution that it has decided not to extend the letter of the credit beyond the current expiration date, the cabinet shall draw on the letter of credit. The cabinet may delay the drawing if the issuing institution grants an extension of the term of credit. During the last thirty (30) days of any such extension, the cabinet shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this administrative regulation and obtain written approval of such assurance from the cabinet.

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

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

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with Section 12 of this administrative regulation.

Section 7. Closure Insurance. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining closure insurance which conforms to the requirements of this section and by submitting a certificate of such insurance to the cabinet. An owner or operator of a new facility shall submit the certificate of insurance to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance shall be effective before this initial receipt of hazardous waste. Except as KRS 304.11-030 provides otherwise. Each insurance policy providing primary coverage shall be issued by an insurer who is authorized [~~licensed~~] to transact [~~the business of~~] insurance in [~~the Commonwealth of~~] Kentucky. Each insurance policy providing excess coverage shall be issued by an insurer who is authorized [~~licensed~~] to transact [~~the business of~~] insurance in a state.

(2) The certificate of insurance shall be executed on the [a] form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:156~~].

(3) The closure insurance policy shall be issued for a face amount at least equal to the current closure cost estimate, except as provided in Section 10 of this administrative regulation. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

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

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the cabinet. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for closure activities, the cabinet shall instruct the insurer to make reimbursements in such amounts as the cabinet specifies in writing, if the cabinet determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the cabinet has reason to believe that the maximum cost of closure over the remaining life of the facility shall be significantly greater than the face amount of the policy, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with Section 12 of this administrative regulation, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the cabinet does not instruct the trustee to make such reimbursements, he shall provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in [~~full force and~~] effect until the cabinet consents to termination of the policy by the owner or operator as specified in subsection (10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this administrative regulation, shall constitute a significant violation of these administrative regulations, warranting such remedy as the cabinet deems necessary. Such violation shall be deemed to begin upon receipt by the cabinet of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the cabinet. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the cabinet and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall remain in [~~full force and~~] effect in the event that on or before the date of expiration:

(a) The cabinet deems the facility abandoned; or

(b) The permit is terminated or revoked or a new permit is denied; or

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

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

(e) The premium due is paid.

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

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

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

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with Section 12 of this administrative regulation.

Section 8. Financial Test and Corporate Guarantee for Closure. (1) An owner or operator may satisfy the requirements of this administrative regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall meet the criteria of either paragraph of this subsection:

(a) The owner or operator shall have:

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

2. Net working capital and tangible net worth each at least six (6) times the sum of the current closure and postclosure cost estimates

and the current plugging and abandonment cost estimates; and

3. Tangible net worth of at least $10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(b) The owner or operator shall have:

1. A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. Tangible net worth of at least $10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to [~~through~~] 4 of the letter from the owner's or operator's chief financial officer [~~(see 401 KAR 34:159)~~]. The phrase "current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to [~~through~~] 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three (3) items to the cabinet:

(a) A letter executed on the form incorporated by reference in Section 4 of 401 KAR 34:080 provided by the cabinet, signed by the owner's or operator's chief financial officer [~~and worded as specified in 401 KAR 34:159~~]; and

(b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data shall be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subsection (3) of this section to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

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

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

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

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

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

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

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation by terminating the financial requirements in accordance with Section 12 of this administrative regulation.

(10) An owner or operator may meet the requirements of this administrative regulation by obtaining a written guarantee, hereafter referred to as the "corporate guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (1) to [~~through~~] (8) of this section and shall comply with the terms of the corporate guarantee. The corporate guarantee shall be executed on the [~~a~~] form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:165~~]. The corporate guarantee shall accompany the items sent to the cabinet as specified in subsection (3) of this section. One (1) of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee shall provide that:

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

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

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

Section 9. Cash Account and Certificates of Deposit. (1) An owner or operator may satisfy the requirements of this administrative regulation by submitting to the cabinet by certified mail, a bond

guaranteeing compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto. The bond is to be supported by a cash account or certificate of deposit. The cash account or the certificate of deposit are to be held in escrow pursuant to an escrow agreement. An owner or operator of a new facility shall submit the bond to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bank or financial institution holding the cash account or certificate of deposit in escrow shall be regulated and examined by a federal or state agency.

(2) The bond shall be executed on the [a] form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet which has wording identical to the wording specified in Section 1 of 401 KAR 34:168~~]. The escrow agreement for the cash account or certificate of deposit shall be executed on the [a] form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet which has wording identical to the wording specified in Section 2 of 401 KAR 34:168~~].

(3) The cabinet shall be the beneficiary of the escrow agreement for the cash account or certificate of deposit. The cabinet shall be empowered to draw upon the funds if the owner or operator fails to perform closure or postclosure care in accordance with the closure plan and other permit requirements.

(4) The sum of the cash account or certificate of deposit shall be in an amount at least equal to the amount of the current closure cost estimate, except as provided in Section 10 of this administrative regulation.

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

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

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

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

(9) An owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the cabinet. Within sixty (60) days after receiving bills for closure activities, the cabinet shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the cabinet may instruct the bank or financial institution to make reimbursements in those amounts as the cabinet specifies in writing if the cabinet determines that the closure expenditures are in accordance with the closure plan or otherwise justified.

Section 10. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this administrative regulation by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, certificates of deposit and cash. The mechanisms shall be as specified in Sections 3, 4, 6, 7, and 9, respectively, of this administrative regulation, except that it is the combination of mechanisms rather than each single mechanism, which shall provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The cabinet may use any or all of the mechanisms to provide for closure of the facility.

Section 11. Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this administrative regulation to meet the requirements of this administrative regulation for more than one (1) facility. Evidence of financial assurance submitted to the cabinet shall include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that shall be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the cabinet may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

Section 12. Release of the Owner or Operator from the Requirements of this Administrative Regulation. Within sixty (60) days after approving [~~receiving~~] certifications from the owner or operator and an [~~independent professional~~] engineer [~~who is registered in Kentucky~~] that final closure has been completed in accordance with the approved closure plan, the cabinet shall notify the owner or operator in writing that he is no longer required by this administrative regulation to maintain financial assurance for final closure of the facility, unless the cabinet has reason to believe that final closure has not been in accordance with the approved closure plan. The cabinet shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services

and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This amendment affects hazardous waste sites or facilities in currently 90 treatment, storage or disposal facilities in the state.

(a) Direct and indirect costs or savings to those affected:

1. First year: The majority of the amendments to this administrative regulation will result in no anticipated costs or savings. They adopt existing federal requirements that would be applicable in Kentucky if the state did not have authorization to operate the state program in lieu of the federal program. Continued authorization is dependent upon adopting this amendment. Section 12 has been amended to clarify existing requirements for the cabinet to approve the closure certification prior to release of financial responsibility. This will result in no new cost to the regulated community since financial responsibility requirements have not been released in the past until the closure was approved.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: This amendment requires owners or operators to modify their permits prior to accepting nonhazardous waste after the final receipt of hazardous waste. Financial assurance mechanisms for closure also must be changed to reflect the receipt of nonhazardous wastes after the final receipt of hazardous wastes.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no new costs or savings to the administrative body associated with these amendments. The clarifying text added to Section 12 which is not identical to the federal clarifies the appropriate protocol for release of financial responsibility. Although the agency has relied upon the statutory definition of "termination" in the past in conjunction with KRS 224.46-520, Section 12 amendments clarify the existing standard to require agency approval of the closure certification and release of financial responsibility.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet must review permit modifications and changes in financial assurance documents.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to adopting the federal text were considered by the cabinet. The Resource Conservation and Recovery Act mandates that a state may be authorized to operate the state program in lieu of the federal program only if the state's program is consistent with and no less stringent than the federal program. The cabinet evaluated the changes made to Section 12 and believe that they are consistent with statutory intent and clarify how release of financial responsibility has been approved by the agency in the past.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statutes, administrative regulations or government policies were identified which may conflict, overlap or duplicate the proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment adopts revisions from 40 CFR 264.142, effective August 14, 1989. The Resource Conservation and Recovery Act mandates that authorized state programs must be consistent with and at least as stringent as the federal program.

2. State compliance standards: This amendment complies with KRS 224.46.520 which requires financial assurance demonstrations for closure of all hazardous waste facilities.

3. minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 264.142, effective August 14, 1989.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments made to Section 12 of this administrative regulation (corresponding federal cite 40 CFR 264.143(i)) impose requirements different form the federal. The amendments stipulate that the agency must approve closure certification prior to release of the financial responsibility requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The amendments to Section 12 conform to the requirement in 224.46-520 which releases the facility from financial responsibility requirements upon "termination". KRS 224.01-010 defines the term "termination" as an action taken by the cabinet when postclosure monitoring and maintenance activities cease. Because of the statutory authority, the agency has always approved closure certifications prior to releasing the facility from financial responsibility requirements. This amendment clarifies the regulatory language to be consistent with the statute and existing operating practices employed by the cabinet.

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

401 KAR 34:100. Postclosure financial requirements.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation~~] establish[~~es the~~] postclosure

financial requirements.

Section 1. Cost Estimate for Postclosure Care. (1) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under Section 6 of 401 KAR 34:200 and Section 8 of 401 KAR 34:210 to prepare a contingent closure and postclosure plan, shall have a detailed written estimate, in current dollars, of the annual cost of postclosure monitoring and maintenance of the facility in accordance with the applicable postclosure administrative regulations in Sections 8 to [~~through~~] 11 of 401 KAR 34:070, Section 6 of 401 KAR 34:200, Section 8 of 401 KAR 34:210, Section 8 of 401 KAR 34:220 and Section 6 of 401 KAR 34:230 and Section 4 of 401 KAR 34:250.

(a) The postclosure cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct postclosure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator (see definition of parent corporation in Section 1 [~~3~~](1)(d) [~~(e)~~] of 401 KAR 34:080.

(b) The postclosure cost estimate is calculated by multiplying the annual postclosure cost estimate by the number of years of postclosure care required under 401 KAR 34:070.

(2) During the active life of the facility, the owner or operator shall adjust the postclosure cost estimate for inflation within sixty (60) days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section 2 of this administrative regulation. For owners or operators using the financial test or corporate guarantee, the postclosure cost estimate shall be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before the submission of updated information to the cabinet as specified in Section 8(5) of this administrative regulation. The adjustment may be made by recalculating the postclosure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business as specified in Section 4(1) and (2) of this administrative regulation. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(a) The first adjustment is made by multiplying the postclosure cost estimate by the inflation factor. The result is the adjusted postclosure cost estimate.

(b) Subsequent adjustments are made by multiplying the latest adjusted postclosure cost estimate by the latest inflation factor.

(3) During the active life of the facility, the owner or operator shall revise the postclosure cost estimate within thirty (30) days after the cabinet has approved the request to modify the postclosure plan, if the change in the postclosure plan increases the cost of postclosure care. The revised postclosure cost estimate shall be adjusted for inflation as specified in subsection (2) of this section.

(4) The owner or operator shall keep the following at the facility during the operating life of the facility: the latest postclosure cost estimate prepared in accordance with subsections (1) and (3) of this section and, when this estimate has been adjusted in accordance with subsection (2) of this section, the latest adjusted postclosure cost estimate.

Section 2. Financial Assurance for Postclosure Care. The owner or operator of a hazardous waste management unit subject to the requirements in Section 1 of this administrative regulation shall establish financial assurance for postclosure care in accordance with the approved postclosure plan for the facility sixty (60) days prior to the initial receipt of hazardous waste or the effective date of this administrative regulation, whichever is later. He shall choose from the options in Sections 3 to [~~through~~] 11 of this administrative regulation.

Section 3. Postclosure Trust Fund. (1) An owner or operator may satisfy the requirements of this administrative regulation by establishing a postclosure trust fund which conforms to the requirements of this section and by submitting an originally signed duplicate of the trust agreement to the cabinet. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for disposal. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The trust agreement shall be executed on the form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet containing wording identical to the wording specified in Section 1 of 401 KAR 34:140, and the trust agreement shall be accompanied by a formal certification of acknowledgment (for an example, see Section 2 of 401 KAR 34:140)~~]. Schedule A of the trust agreement shall be updated within sixty (60) days after a change in the amount of the current postclosure cost estimate covered by the agreement.

(3) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the postclosure trust fund shall be made as follows:

(a) For a new facility, the first payment shall be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the cabinet before this initial receipt of hazardous waste. The first payment shall be at least equal to the current postclosure cost estimate, except as provided in Section 10 of this administrative regulation, divided by the number of years in the pay-in period. Subsequent payments shall be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

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

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

(b) If an owner or operator establishes a trust fund as specified in this section, and the value of that trust fund is less than the current postclosure cost estimate when a permit is awarded for the facility, the amount of the current postclosure cost estimate still to be paid into the fund shall be paid in over the pay-in period as defined in subsection (3) of this section. Payments shall continue to be made no later than thirty (30) days after each anniversary date of the first payment made pursuant to 401 KAR Chapter 35. The amount of each payment shall be determined by this formula:

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

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

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

(5) If the owner or operator establishes a postclosure trust fund after having used one (1) or more alternate mechanisms specified in this administrative regulation or in 401 KAR 35:100, his first payment shall be in at least the amount that the fund shall contain if the trust fund were established initially and annual payments made according to specifications of this paragraph and Section 3 of 401 KAR 35:100,

as applicable.

(6) After the pay-in period is completed, whenever the current postclosure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance as specified in this administrative regulation to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current postclosure cost estimate, the owner or operator may submit a written request to the cabinet for release of the amount in excess of the current postclosure cost estimate.

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

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

(10) During the period of postclosure care, the cabinet may approve a release of funds if the owner or operator demonstrates to the cabinet that the value of the trust fund exceeds the remaining cost of postclosure care.

(11) An owner or operator or any other person authorized to conduct postclosure care may request reimbursement for postclosure care expenditures by submitting itemized bills to the cabinet. Within sixty (60) days after receiving bills for postclosure activities, the cabinet shall instruct the trustee to make reimbursement in those amounts as the cabinet specifies in writing, if the cabinet determines that the postclosure care expenditures are in accordance with the approved postclosure plan or otherwise justified. If the cabinet does not instruct the trustee to make such reimbursements, he shall provide the owner or operator with a detailed written statement of reasons.

(12) The cabinet shall agree to termination of the trust when:

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

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with Section 12 of this administrative regulation.

Section 4. Surety Bond Guaranteeing Payment into a Postclosure Trust Fund. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining a surety bond which conforms to the requirements of this section and submitting the bond to the cabinet. An owner or operator of a new facility shall submit the bond to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The surety bond shall be executed on the form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:144~~].

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

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

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

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

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

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

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

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

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

(b) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an order to begin final closure issued by the cabinet becomes final, or within fifteen (15) days after an order to begin final closure is issued by a circuit court or other court of competent jurisdiction; or

(c) Provide alternate financial assurance as specified in this administrative regulation, and obtain the cabinet's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the cabinet of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the amount of the current postclosure cost estimate, except as provided in Section 10 of this administrative regulation.

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

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to both the owner or operator and to the cabinet. Cancellation cannot occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the cabinet, as evidenced by return receipt.

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

Section 5. Surety Bond Guaranteeing Performance of Postclosure. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining a surety bond which conforms to the requirements of this section and submitting the bond to the cabinet. An owner or operator of a new facility shall submit the bond to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The surety bond shall be executed on the form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet~~

~~containing wording identical to the wording specified in 401 KAR 34:148~~].

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

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

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

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

2. Updating of Schedule A of the trust agreement [~~(see 401 KAR 34:140)~~] to show current postclosure cost estimates;

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

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

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

(a) Perform postclosure care in accordance with the postclosure plan and other requirements of the permit for the facility; or

(b) Provide alternate financial assurance as specified in this administrative regulation and obtain the cabinet's written approval of the assurance provided, within ninety (90) days of receipt by both the owner or operator and the cabinet of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to KRS 224.46-520 that the owner or operator has failed to perform postclosure care in accordance with the postclosure plan and other permit requirements, under the terms of the bond the surety shall perform postclosure care in accordance with the approved postclosure plan and other permit requirements or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond shall be in an amount at least equal to the amount of the current postclosure cost estimate.

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

(8) During the period of postclosure care, the cabinet may approve a decrease in the penal sum if the owner or operator demonstrates to the cabinet that the amount exceeds the remaining cost of postclosure care.

(9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the cabinet. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the cabinet, as evidenced by the return receipts.

(10) The owner or operator may cancel the bond if the cabinet has given prior written consent. The cabinet shall provide such written consent when:

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

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with Section 12 of this administrative regulation.

(11) The surety shall not be liable for deficiencies in the performance of postclosure care by the owner or operator after the cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with Section 12 of this administrative regulation.

Section 6. Postclosure Letter of Credit. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section and by submitting the letter to the cabinet. An owner or operator of a new facility shall submit the letter of credit to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for disposal. The letter of credit shall be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(2) The [~~wording of the~~] letter of credit shall be executed on the form incorporated by reference in Section 13 of 401 KAR 34:090 and in accordance with [~~identical to the wording specified in~~] Section 2 of 401 KAR 34:152. The owner or operator may use his own document, provided the language is identical to that specified in 401 KAR 34:152. However, the trust agreement required to be filed with the letter of credit shall be executed on the form incorporated by reference in Section 13 of 401 KAR 34:090 and in accordance with 401 KAR 34:140.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this administrative regulation shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the cabinet shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the cabinet. The standby trust fund shall meet the requirements of the trust fund specified in Section 3 of this administrative regulation, except that:

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

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

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

2. Updating the Schedule A of the trust agreement [~~(see 401 KAR 34:140)~~] to show current postclosure cost estimates;

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

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

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

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

(6) The letter of credit shall be issued in an amount at least equal to the current postclosure cost estimate, except as provided in Section 10 of this administrative regulation.

(7) Whenever the current postclosure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within sixty (60) days after

the increase, shall either cause the amount of the credit to be increased so that it at least equals the current postclosure cost estimate and submit evidence of such increase to the cabinet, or obtain other financial assurance as specified in this administrative regulation to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current postclosure cost estimate following written approval by the cabinet.

(8) During the period of postclosure care, the cabinet may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the cabinet that the amount exceeds the remaining cost of postclosure care.

(9) Following a final administrative determination pursuant to KRS 224.46-520 that the owner or operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, the cabinet may draw on the letter of credit.

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

(11) The cabinet shall return the letter of credit to the issuing institution for termination when:

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

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with Section 12 of this administrative regulation.

Section 7. Postclosure Insurance. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining postclosure insurance which conforms to the requirements of this section and submitting a certificate of such insurance to the cabinet. An owner or operator of a new facility shall submit a certificate of insurance to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for disposal. The insurance shall be effective before this initial receipt of hazardous waste. Each insurance policy providing primary coverage shall be issued by an insurer who is authorized [~~licensed~~] to transact [~~the business of~~] insurance in [~~the Commonwealth of~~] Kentucky except as KRS 304.11-030 provides otherwise. Each insurance policy providing excess coverage shall be issued by an insurer who is authorized [~~licensed~~] to transact [~~the business of~~] insurance in a state.

(2) The certificate of insurance shall be executed on the [a] form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:156~~].

(3) The postclosure insurance policy shall be issued for a face amount at least equal the current postclosure cost estimate, except as provided in Section 10 of this administrative regulation. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) The postclosure insurance policy shall guarantee that funds shall be available to provide postclosure care of the facility whenever the postclosure care period begins. The policy shall also guarantee that once postclosure care begins, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the cabinet to such party or parties as the cabinet specifies.

(5) An owner or operator or any other person authorized to conduct postclosure care may request reimbursement for postclosure care expenditures by submitting itemized bills to the cabinet. Within sixty (60) days after receiving bills for postclosure care activities, the cabinet shall instruct the insurer to make reimbursements in those amounts as the cabinet specifies in writing, if the cabinet determines that the postclosure care expenditures are in accordance with the approved postclosure plan or otherwise justified. If the cabinet does not instruct the insurer to make such reimbursements, he shall provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in [~~full force and~~] effect until the cabinet consents to termination of the policy by the owner or operator as specified in subsection (11) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this administrative regulation, shall constitute a significant violation of these administrative regulations, warranting such remedy as the cabinet deems necessary. Such violation shall be deemed to begin upon receipt by the cabinet of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the cabinet. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by the cabinet and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall remain in [~~full force and~~] effect in the event that on or before the date of expiration:

(a) The cabinet deems the facility abandoned; or

(b) The permit is terminated or revoked or a new permit is denied; or

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

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

(e) The premium due is paid.

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

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five (85) percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for twenty-six (26) week Treasury securities.

(11) The cabinet shall give written consent to the owner or operator that he may terminate the insurance policy when:

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

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation in accordance with Section 12 of this administrative regulation.

Section 8. Financial Test with Corporate Guarantee for Postclosure Care. (1) An owner or operator may satisfy the requirements of this administrative regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The owner or operator shall have:

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

2. Net working capital and tangible net worth each at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. Tangible net worth of at least $10 million; and

4. Assets in the United States amounting to at least ninety (90) percent of his total assets or at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(b) The owner or operator shall have:

1. A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. Tangible net worth of at least $10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of his total assets or at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to [~~through~~] 4 of the letter from the owner's or operator's chief financial officer [~~(see 401 KAR 34:159)~~]. The phrase "current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to [~~through~~] 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three (3) items to the cabinet:

(a) A letter executed on the form provided by the cabinet and incorporated by reference in Section 4 of 401 KAR 34:080, signed by the owner's or operator's chief financial officer [~~and worded as specified in 401 KAR 34:159~~]; and

(b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data shall be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subsection (3) of this section to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

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

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

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

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

(9) During the period of postclosure care, the cabinet may approve a decrease in the current postclosure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the cabinet that the amount of the cost estimate exceeds the remaining cost of postclosure care.

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

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

(b) The cabinet releases the owner or operator from the requirements of this administrative regulation by terminating the financial requirements in accordance with Section 12 of this administrative regulation.

(11) An owner or operator may meet the requirements of this administrative regulation by obtaining a written guarantee hereafter referred to as "corporate guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator as defined in Section 1 of 401 KAR 34:080. The guarantor shall meet the requirements for owners or operators in subsections (1) to [~~through~~] (9) of this section and shall comply with the terms of the corporate guarantee. The corporate guarantee shall be executed on the [a] form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:165~~]. The corporate guarantee shall accompany the items sent to the cabinet as specified in subsection (3) of this section. One (1) of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business

relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee shall provide that:

(a) If the owner or operator fails to perform postclosure care of a facility covered by the corporate guarantee in accordance with the postclosure plan and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Section 3 of this administrative regulation in the name of the owner or operator.

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

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

Section 9. Cash and Certificates of Deposit. (1) An owner or operator may satisfy the requirements of this administrative regulation by submitting to the cabinet a bond guaranteeing compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto. The bond is to be supported by a cash account or certificate(s) of deposit. The cash account or the certificate(s) of deposit are to be held in escrow pursuant to an escrow agreement. An owner or operator of a new facility shall submit the bond to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for disposal. The bank or other financial institution holding the cash account or certificate of deposit in escrow shall be regulated and examined by a federal or state agency.

(2) The bond shall be executed on the [a] form incorporated by reference in Section 4 of 401 KAR 34:080 [~~provided by the cabinet which has wording identical to the wording specified in Section 1 of 401 KAR 34:168~~]. The escrow agreement for the cash account or certificate(s) of deposit shall be executed on the [a] form incorporated by reference in Section 13 of 401 KAR 34:090 and in accordance with [~~provided by the cabinet which has wording identical to the wording specified in~~] Section 2 of 401 KAR 34:168.

(3) The cabinet shall be the beneficiary of the escrow agreement for the cash account or certificate(s) of deposit. The cabinet shall be empowered to draw upon the funds if the owner or operator fails to perform postclosure care in accordance with the postclosure care plan and other permit requirements.

(4) The sum of the cash account or certificate of deposit shall be in an amount at least equal to the amount of the current postclosure cost estimate, except as provided in Section 10 of this administrative regulation.

(5) Whenever the current postclosure cost estimate increases to an amount greater than the sum of the cash account or certificate(s) of deposit, the owner or operator, within sixty (60) days after the increase, shall either cause the sum of the deposit to be increased to an amount at least equal to the current postclosure cost estimate and submit evidence of such increase to the cabinet or obtain other financial assurance as specified in this administrative regulation to cover the increase. Whenever the current postclosure cost estimate decreases, the sum of the deposit may be reduced to the amount of the current postclosure cost estimate following written approval by the cabinet.

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

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

(8) The owner or operator may terminate the cash account or certificate of deposit in accordance with Section 12 of this administrative regulation if the cabinet has given prior written consent on his receipt of evidence of alternate financial assurance as specified in this administrative regulation.

(9) An owner or operator or any other person authorized to conduct postclosure may request reimbursement for postclosure expenditures by submitting itemized bills to the cabinet. Within sixty (60) days after receiving bills for postclosure activities, the cabinet may instruct the bank or financial institution to make reimbursements in those amounts as the cabinet specifies in writing if the cabinet determines that the postclosure expenditures are in accordance with the postclosure plan or otherwise justified.

Section 10. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this administrative regulation by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance and cash. The mechanisms shall be as specified in Sections 3, 4, 6, 7, and 9 of this administrative regulation, respectively, except that it is the combination of mechanisms rather than the single mechanism which shall provide financial assurance for an amount at least equal to the current postclosure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The cabinet may use any or all of the mechanisms to provide for postclosure care of the facility.

Section 11. Use of a Financial Mechanism or Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this administrative regulation to meet the requirements of this administrative regulation for more than one (1) facility of which he is the owner or operator provided the facilities are all within the Commonwealth. Evidence of financial assurance submitted to the cabinet shall include a list showing for each facility the EPA Identification Number, name, address, and the amount of funds for postclosure care assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that shall be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for postclosure care of any of the facilities covered by the mechanism, the cabinet may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

Section 12. Release of the Owner or Operator from the Requirements of this Administrative regulation. Within sixty (60) days after approving [~~receiving~~] certifications from the owner or operator and an [~~independent professional~~] engineer [~~registered in the Commonwealth of Kentucky~~] that the postclosure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the cabinet shall notify the owner or operator that he is no longer required to maintain financial assurance for postclosure care of that unit, unless the cabinet has reason to believe that postclosure care has not been in accordance with the approved postclosure plan. The cabinet shall provide the owner or operator with a detailed written statement of any such reason to believe that postclosure care has not

been in accordance with the approved postclosure plan.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This amendment affects hazardous waste surface impoundments, landfills, waste piles, land treatment units, and disposal miscellaneous units. There are currently 27 disposal facilities in Kentucky subject to financial assurance requirements.

(a) Direct and indirect costs or savings to those affected:

1. First year: The majority of the amendments to this administrative regulation will result in no anticipated costs or savings they adopt existing federal requirements that would be applicable in Kentucky if the state did not have authorization to operate the state program in lieu of the federal program. Continued authorization is dependent upon adopting this amendment. Section 12 has been amended to clarify existing state policy which requires the cabinet approve the postclosure certification prior to release of financial responsibility. This will result in no new cost to the regulated community since financial responsibility requirements have not been released in the past until confirmation of the postclosure certification was approved by the cabinet.

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 new reporting or paperwork requirements associated with the amendments.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no new costs or savings to the administrative body associated with these amendments. The clarifying text added to Section 12 which is not identical to the federal clarifies the appropriate protocol for release of financial responsibility. Although the agency has relied upon the statutory definition of "termination" in the past in conjunction with KRS 224.46-520, Section 12 amendments clarify the existing standard to require agency approval of the closure certification and release of financial responsibility.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendments to this administrative regulation do not alter existing reporting and paperwork requirements.

(3) assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to adopting the federal text were considered by the cabinet. The Resource Conservation and Recovery Act mandates that a state may be authorized to operate the state program in lieu of the federal program only if the state's program is consistent with and no less stringent than the federal program. The cabinet evaluated the changes made to Section 12 and believes that they are consistent with statutory intent and clarify how release of financial responsibility has been approved by the agency in the past.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate:No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate the amendments made to this administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment is taken from 40 CFR 264.145(e), effective May 2, 1986. The Resource Conservation and Recovery Act mandates that authorized state programs must be consistent with and at least as stringent as the federal program.

2. state compliance standards: This amendment complies with KRS 224.46.520 which requires disposal facilities to demonstrate financial assurance for postclosure monitoring and maintenance of the facility.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 264.145, effective May 2, 1986.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments made to Section 12 of this administrative regulation (corresponding federal cite 40 CFR 264.145(i)) impose requirements that differ from the federal regulations. The amendments stipulate that the agency must approve postclosure certification prior to release of the financial responsibility requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The amendments to Section 12 conform to the requirement in KRS 224.46-520 which releases the facility from financial responsibility requirements upon "termination". KRS 224.01-010 defines the term "termination" be an action taken by the cabinet when postclosure monitoring and

maintenance activities cease. Because of the statutory authority, the agency has always required approval of postclosure certifications prior to releasing the facility from financial responsibility requirements. This amendment clarifies the regulatory language to be consistent with the statute and existing operating practiced employed by the cabinet.

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

401 KAR 34:120. Liability requirements.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.46-505, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-505, 224.46-520, and 224.46-530 and to [~~KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation~~] establish[~~es~~] the liability requirements for hazardous waste sites or facilities.

Section 1. Coverage for Sudden Accidental Occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden or accidental occurrences in the amount of at least $1,000,000 per occurrence with an annual aggregate of at least $2,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated [~~in one (1) of three (3) ways,~~] as specified in subsections (1) to (6) [~~, (2) and (3)~~] of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The liability endorsement shall be executed on the [~~a~~] form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:172.~~] The Certificate of Liability Insurance shall be on the [~~a~~] form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:176.~~] The owner or operator shall submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet. If requested by the cabinet, the owner or operator shall provide an originally signed duplicate of the insurance policy. An owner or operator of a new facility shall submit the originally signed duplicate of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(b) Each primary insurance policy shall be issued by an insurer which, at a minimum, is authorized [~~licensed~~] to transact [~~the business of~~] primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall be issued by an insurer which, at a minimum, is authorized [~~licensed~~] to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator may meet the requirements of this administrative regulation by passing a financial test or using the corporate guarantee for liability coverage as specified in Section 7 of this administrative regulation.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in Section 8 of this administrative regulation.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in Section 9 of this administrative regulation.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in Section 10 of this administrative regulation.

(6) [~~(3)~~] An owner or operator may demonstrate the required liability coverage through use of combinations of the financial test, insurance, the corporate guarantee, of insurance, financial test, guarantee, fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. [~~a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance.~~] The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the cabinet in writing within thirty (30) days whenever:

(a) A claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator;

(b) Whenever a claim results in the reduction of the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by subsection (1) through (6) of this section; or

(c) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or against an instrument that is providing financial assurance for liability coverage under subsection (1) to (6) of this section.

Section 2. Coverage for Nonsudden Accidental Occurrences. An owner or operator of a surface impoundment, landfill, land treatment facility, facility for land disposal as specified in KRS 224.01-010 [~~005~~] or miscellaneous unit for disposal that is used to manage hazardous waste, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain additional liability coverage for nonsudden accidental occurrences in the amount of at least $3,000,000 per occurrence with an annual aggregate of at least $6,000,000, exclusive of legal defense costs. An owner or operator who is required to comply with the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a singe annual aggregate level. Owners and operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual

aggregate. This liability coverage may be demonstrated [~~in one (1) of three (3) ways,~~] as specified in subsections (1) to (6) [~~, (2), and (3)~~] of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The liability endorsement shall be on the form incorporated by reference in Section 14 of 401 KAR 34:080 [~~a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:172~~]. The certificate of liability insurance shall be on the [~~a~~] form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:176.~~] The owner or operator shall submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet. If requested by the cabinet, the owner or operator shall provide an originally signed duplicate of the insurance policy. An owner or operator of a new facility shall submit the originally signed duplicate of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(b) Each primary insurance policy shall be issued by an insurer which, at a minimum, is authorized [~~licensed~~] to transact [~~the business of~~] primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall be issued by an insurer which, at a minimum, is authorized [~~licensed~~] to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator may meet the requirements of this administrative regulation by passing a financial test or using the corporate guarantee for liability coverage as specified in Sections 6 and 7 of this administrative regulation.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in Section 8 of this administrative regulation.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in Section 9 of this administrative regulation.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in Section 10 of this administrative regulation.

(6) [~~(3)~~] An owner or operator may demonstrate the required liability coverage through use of combinations of the financial test, insurance, the corporate guarantee, letter of credit, surety bond, and trust bond, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. [~~a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance.~~] The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the cabinet in writing within thirty (30) days whenever:

(a) A claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator;

(b) Whenever a claim results in the reduction of the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by subsections (1) to (6) of this section; or

(c) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or against an instrument that is providing financial assurance for liability coverage under subsections (1) to (6) of this section.

(8) [~~(4)~~] For existing facilities, the required liability coverage for nonsudden accidental occurrences shall be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceding the effective date of these administrative regulations, shall determine which of the dates apply. If the owner and operator of a facility are two (2) different parties, or if there is more than one (1) owner or operator, the sales or revenues of the owner or operator with the largest sales or revenues shall determine the date by which the coverage shall be demonstrated. The dates are as follows:

(a) For an owner or operator with sales or revenues totaling $10,000,000 or more, February 24, 1983.

(b) For an owner or operator with sales or revenues greater than $5,000,000 but less than $10,000,000, February 24, 1984.

(c) All other owners or operators, February 24, 1985.

Section 3. Adjustments by the Cabinet. If the cabinet determines that the levels of financial responsibility required by Sections 1 and 2 of this administrative regulation are not consistent with the degree and duration of risks associated with treatment, storage, or disposal at any facility or group of facilities, the cabinet may increase the level of financial responsibility required under Sections 1 and 2 of this administrative regulation as may be necessary to protect human health and the environment. This adjusted level shall be based on the cabinet's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of such facilities. If the cabinet determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the cabinet may require that the owner or operator of the facility comply with Section 2 of this administrative regulation. An owner or operator shall furnish to the cabinet, within a reasonable time, any information which the cabinet requests to determine whether cause exists for such adjustments of the level or type of coverage. Any adjustment of the level of required coverage for a facility that has a permit shall be treated as a permit modification under Section 2(1)(e) of 401 KAR 38:040 and Section 2 of 401 KAR 38:050.

Section 4. Request for a Variance. If an owner or operator can demonstrate to the satisfaction of the cabinet that the increased level of financial responsibility required by Section 1 or 2 [~~3~~] of this administrative regulation is not consistent with the degree and duration of risk associated with the treatment, storage, or disposal at each facility or group of facilities, the owner or operator may obtain a variance from the cabinet. The cabinet shall not grant any requests for a variance which seek to decrease the level of financial responsibility below the minimums required by KRS 224.46-520(3)(c). If granted, the variance shall take the form of an adjusted level of required liability coverage, such level to be based on the cabinet's assessment of the degree and duration of risk associated with the ownership or operation of each facility or group of facilities. The cabinet may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the cabinet to determine a level of financial responsibility other than that required by Sections 1 and 2 of this administrative regulation. Any request for a variance for a permitted facility shall be treated as a request for a permit modification under Section 2(1)(e) of 401 KAR 38:040 and Section 2 of 401 KAR 38:050.

Section 5. Period of Coverage. An owner or operator shall

continuously provide liability coverage for a facility as required by this administrative regulation until the cabinet approves the certification of the owner or operator and an engineer that final closure has been completed in accordance with the approved closure plan. The cabinet shall then notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the cabinet has reason to believe that closure has not been in accordance with the approved closure plan. [~~certification of termination pursuant to the requirements of KRS 224.46-520.~~]

Section 6. Liability Self-Insurance. (1) An owner or operator may satisfy the requirements of this administrative regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall demonstrate that the level of self-insurance does not exceed ten (10) percent of equity and shall meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The owner or operator shall have:

1. Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test; and

2. Tangible net worth of at least $10 million; and

3. Assets in the United States amounting to either, at least, ninety (90) percent of his total assets or at least six (6) times the sum of the appropriate liability coverage to be demonstrated by this test.

(b) The owner or operator shall have:

1. A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth of at least $10 million; and

3. Tangible net worth at least six (6) times the amount of the liability coverage to be demonstrated by this test; and

4. Assets located in the United States amounting to either, at least, ninety (90) percent of his total assets or at least six (6) times the amount of the liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in subsection (1) of this section refers to the annual aggregate amounts for which coverage is required under Sections 1 and 2 of this administrative regulation.

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three (3) items to the cabinet:

(a) A letter signed by the owner's or operator's chief financial officer and executed on the [a] form incorporated by reference in Section 14 of 401 KAR 34:080. If the owner or operator is using the financial test to demonstrate both assurance for closure or postclosure as specified in Section 8 of 401 KAR 34:090, Section 8 of 401 KAR 34:100, Section 7 of 401 KAR 35:090 or Section 7 of 401 KAR 35:100 and liability coverage, he shall submit the letter on the form incorporated by reference in Section 14 of 401 KAR 34:080 to cover both forms of financial responsibility; [~~provided by the cabinet which is worded as specified in 401 KAR 34:162;~~]

(b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subsection (3) of this section to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal.

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

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a corporate guarantee for the entire amount of required liability coverage as specified in this administrative regulation. Evidence of insurance shall be submitted to the cabinet within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

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

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

Section 7. Corporate Guarantee for Liability Coverage. (1) Subject to subsection (2) of this section, an owner or operator may meet the requirements of this administrative regulation by obtaining a written guarantee, referred to as "corporate guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" as defined in Section 1 of 401 KAR 34:080 with the owner or operator. The guarantor [~~guarantee~~] shall meet the requirements for owners or operators in Section 6(1) to [~~through~~] (8) of this administrative. The wording of the corporate guarantee shall be on the form incorporated by reference in Section 14 of 401 KAR 34:080 [~~identical to the wording specified in Section 1(2) of 401 KAR 34:165~~]. A certified copy of the corporate guarantee shall accompany the items sent to the cabinet as specified in Section 6(3) of this administrative regulation. One (1) of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee shall provide that:

(a) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(b) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the cabinet. This guarantee may not be terminated unless and until the cabinet approves alternate liability coverage

complying with this administrative regulation or 401 KAR 35:120.

(2)(a) In the case of corporations incorporated in the United States, a corporate guarantee may be used to satisfy the requirements of this administrative regulation only if the Attorney General or insurance commissioner of the state in which the guarantor is incorporated, each state in which a facility covered by the guarantee is located and in the state in which it has its principle place of business, have submitted a written statement to the director that a corporate guarantee executed as described in this administrative regulation and incorporated by reference in Section 4 of 401 KAR 34:080 [~~Section 1(2) of 401 KAR 34:165~~] is a legally valid and enforceable obligation in that state and in [~~the Commonwealth of~~] Kentucky.

(b) In the case of corporations incorporated outside of the United States, a corporate guarantee may be used to satisfy the requirements of this section only if the non-United States corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located and in the state in which it has its principle place of business, and the attorney general or insurance commissioner of each state in which a facility covered by the guarantee is located, and the state in which the guarantor corporation has its principle place of business, and the Department of Law or the Insurance Commissioner of the Commonwealth of Kentucky has [~~have~~] submitted a written statement to the director that a corporate guarantee executed as described in this section and Section 1(2) of 401 KAR 34:165 is a legally valid and enforceable obligation in that state and in [~~the Commonwealth of~~] Kentucky.

(c) A corporate guarantee may be used to satisfy the requirements of this administrative regulation only if the assets to be collected are located in the United States. Failure to provide the written statement referenced in paragraphs (a) and (b) of this subsection shall be grounds for denial of the instrument.

Section 8. Letter of Credit for Liability Coverage. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining an irrevocable stand-by letter of credit that conforms to the requirements of this section and submitting a copy of the letter of credit to the cabinet.

(2) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(3) A letter of credit may be used to satisfy the requirements of this administrative regulation only if the assets to be collected are located in the United States. Failure to provide the written statement referenced in subsections (1) and (2) of this section shall be grounds for denial of the instrument.

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit all amounts paid pursuant to a draft by the trustee of the standby trust shall be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(5) The standby trust shall be submitted on the form incorporated by reference in Section 14 of 401 KAR 34:080.

Section 9. Surety Bond for Liability Coverage. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining a surety bond that conforms to the requirements of this section and submitting a copy of the bond to the cabinet.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) A surety bond may be used to satisfy the requirements of this administrative regulation only if the assets to be collected are located in the United States. Failure to provide the written statement referenced in subsection (4) of this section shall be grounds for denial of the instrument.

(4) A surety bond may be used to satisfy the requirements of this section only if the attorney general or insurance commissioner of the state in which the surety is incorporated, and each state in which a facility covered by the surety bond is located have provided a written statement to the cabinet that a surety bond executed as described in this section and executed on the form incorporated by reference in Section 4 of 401 KAR 34:080 is legally valid and enforceable obligation in that state.

Section 10. Trust Fund for Liability Coverage. (1) An owner or operator may satisfy the requirements of this administrative regulation by establishing a trust fund that conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the cabinet.

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) A trust fund may be used to satisfy the requirements of this administrative regulation only if the assets to be collected are located in the United States. Notwithstanding any other provisions of this part, an owner or operator using liability insurance to satisfy the requirements of this section may use, until October 16, 1982, a hazardous waste facility liability endorsement or certificate of liability insurance that does not certify that the insurer is licensed to transact the business of insurance, or eligible as an excess or surplus lines insurer, in one or more states.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This amendment affects all hazardous waste sites and facilities. There are currently 90 hazardous waste treatment, storage or disposal facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The amendments made to this administrative regulation clarify wording, but do not add substantive new requirements. There will be no costs or savings to hazardous waste sites or facilities in Kentucky.

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 new reporting or paperwork requirements imposed by the amendments to this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because the amendments made to this administrative regulation clarify existing wording, there will be no impact on the administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) reporting and paperwork requirements: There are no new reporting or paperwork requirements associated with the amendments to this administrative regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Resource Conservation and Recovery Act mandates that authorized state programs must be consistent with and at least as stringent as the federal program. The amendment to this administrative regulation adopts minor clarifying wording as promulgated by the US EPA. Because the changes are not substantive, but do clarify the existing requirements, the cabinet did not seek alternatives.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or government policies that were identified which conflict, overlap or duplicate the requirements in this amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: This amendment makes technical corrections to clarify existing language.

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment adopts minor revisions from 40 CFR 264.147(a) (b) and (f), effective July 1, 1991. The Resource Conservation and Recovery Act mandates that authorized state programs must be consistent with and at least as stringent as the federal program.

2. State compliance standards: This amendment complies with KRS 224.46-520(3) which requires hazardous waste facilities to demonstrate liability coverage for sudden and nonsudden accidental occurrences. Liability coverage provides for both bodily injury and property damage to third parties.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 264.147, effective July 1, 1991.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 34:190. Tanks.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish [~~KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes~~] minimum standards for tanks.

Section 1. Applicability. The requirements of this administrative regulation apply to owners and operators of hazardous waste sites or facilities that use tank systems for storing or treating hazardous waste, except as otherwise provided in subsections (1) to (3) [~~and (2)~~] of this section or in Section 1 of 401 KAR 34:010.

(1) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in Section 4 of this administrative regulation. To demonstrate the absence or presence of free liquids in the stored or treated waste, EPA Method 9095 (paint filter liquids test) as described in "Test Methods for Evaluating Solid Wastes: Physical Chemical Methods" (EPA Publication No. SW-846) referenced in Section 3 of 401 KAR 30:010 shall [~~must~~] be used.

(2) Tank systems, including sumps, as defined in Section 1 of 401 KAR 30:010, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Section 4(1) of this administrative regulation.

(3) Tanks, sumps, and other collection devices or systems used in conjunction with drip pads, as defined in 401 KAR 30:010, and regulated under 401 KAR 34:285, shall meet the requirements of this administrative regulation.

Section 2. Assessment of Existing Tank System's Integrity. (1) For each existing tank system that does not have secondary containment meeting the requirements of Section 4 of this administrative regulation, the owner or operator shall determine that the tank system is not leaking or is unfit for use. Except as provided in subsection (3) of this section, the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by an [~~independent, qualified professional~~] engineer [~~registered in the Commonwealth of Kentucky~~], in accordance with Section 7(4) of 401 KAR 38:070, that attests to the tank system's integrity no later than 180 days from the date of promulgation of this administrative regulation.

(2) This assessment shall determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment shall consider the following:

(a) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(b) Hazardous characteristics of the waste(s) that have been and will be handled;

(c) Existing corrosion protection measures;

(d) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(e) Results of a leak test, internal inspection, or other tank integrity examination such that:

1. For nonenterable underground tanks, the assessment shall include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects; and

2. For other than nonenterable underground tanks and for ancillary equipment, this assessment shall include either a leak test, as described above, or other integrity examination, that is certified by an [~~independent, qualified, professional~~] engineer, [~~registered in the Commonwealth of Kentucky~~] in accordance with Section 7(4) of 401 KAR 38:070, that addresses cracks, leaks, corrosion, and erosion.

(3) Tank systems that store or treat materials that become hazardous wastes subsequent to the date of promulgation of this administrative regulation, shall conduct the assessment within twelve (12) months after the date that the waste becomes a hazardous waste.

(4) If, as a result of the assessment conducted in accordance with subsection (1) of this section, a tank system is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of Section 7 of this administrative regulation.

Section 3. Design and Installation of New Tank Systems or Components. (1) Owners or operators of new tank systems or components shall obtain and submit to the cabinet, at the time of submittal of Part B information, a written assessment, reviewed and certified by an [~~independent, qualified professional~~] engineer [~~registered in the Commonwealth of Kentucky~~], in accordance with Section 7(4) of 401 KAR 38:070, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment shall show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which shall be used by the cabinet to review and approve or disapprove the acceptability of the tank system design, shall include, at a minimum, the following information:

(a) Design standards according to which tanks or the ancillary equipment are constructed;

(b) Hazardous characteristics of the wastes to be handled;

(c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

1. Factors affecting the potential for corrosion, including but not limited to:

a. Soil moisture content;

b. Soil pH;

c. Soil sulfides level;

d. Soil resistivity;

e. Structure to soil potential;

f. Influence of nearby underground metal structures (for example, [~~e.g.,~~] piping);

g. Existence of stray electric current;

h. Existing corrosion-protection measures (for example, [~~e.g.,~~] coating, cathodic protection); and

2. The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one (1) or more of the following:

a. Corrosion-resistant materials of construction such as special alloys, and fiberglass reinforced plastic[~~, etc.~~];

b. Corrosion-resistant coating (such as epoxy and fiberglass[~~, etc.~~]) with cathodic protection (for example, [~~e.g.,~~] impressed current or sacrificial anodes); and

c. Electrical isolation devices such as insulating joints and flanges[~~, etc~~].

(d) For underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(e) Design considerations to ensure that:

1. Tank foundations are able to maintain the load of a full tank;

2. Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of Section 9(1) of 401 KAR 34:020; and

3. Tank systems will withstand the effects of frost heave.

(2) The owner or operator of a new tank system shall ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an [~~independent, qualified professional~~] engineer [~~registered in the Commonwealth of Kentucky~~], either of whom is trained and experienced in the proper installation of tank systems or components, shall inspect the system for the presence of any of the following items:

(a) Weld breaks;

(b) Punctures;

(c) Scrapes of protective coatings;

(d) Cracks;

(e) Corrosion; or

(f) Other structural damage or inadequate construction and [~~/~~] installation.

All discrepancies (for example, [~~e.g.,~~] structural damage or inadequate construction and [~~/~~] installation) shall be remedied before the tank system is covered, enclosed, or placed in use.

(3) New tank systems or components, that are placed underground and that are backfilled shall be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(4) All new tanks and ancillary equipment shall be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system shall be performed prior to the tank system being covered, enclosed, or placed into use.

(5) Ancillary equipment shall be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(6) The owner or operator shall provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under subsection (1)(c) of this section, or other corrosion protection if the cabinet believes other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated shall be supervised by an independent corrosion expert to ensure proper installation.

(7) The owner or operator shall obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (2) to [~~through~~] (6) of this section, that attest that the tank system was properly designed and installed and that repairs, pursuant to subsections (2) and (4) of this section, were performed. These written statements shall also include the certification statement as required in Section 7(4) of 401 KAR 38:070.

Section 4. Containment and Detection of Releases. (1) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section shall be provided (except as provided in subsections (6) and (7) of this section):

(a) For all new tank systems or components, prior to their being put into service;

(b) For all existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, by January 12, 1991;

(c) For those existing tank systems of known and documented age, by January 12, 1991 or when the tank system has reached fifteen (15) years of age, whichever comes later;

(d) For those existing tank systems for which the age cannot be documented, within eight (8) years of January 12, 1987, but if the age of the facility is greater than seven (7) years, secondary containment shall be provided by the time the facility reaches fifteen (15) years of age, or within two (2) years of January 12, 1987, whichever comes later; and

(e) For tank systems that store or treat materials that become hazardous wastes subsequent to the date of promulgation of this administrative regulation within the time intervals required in paragraphs (a) to [~~through~~] (d) of this subsection, except that the date that a material becomes a hazardous waste shall be used in place of the date of promulgation of this administrative regulation.

(2) Secondary containment systems shall be:

(a) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(b) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(3) To meet the requirements of subsection (2) of this section, secondary containment systems shall be at a minimum:

(a) Constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and shall have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic);

(b) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(c) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within twenty-four (24) hours, or at the earliest practicable time if the owner or operator can demonstrate to the cabinet that existing detection technologies or site conditions will not allow detection of a release within twenty-four (24) hours; and

(d) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation shall be removed from the secondary containment system within twenty-four (24) hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the cabinet that removal of the released waste or accumulated precipitation cannot be accomplished within twenty-four (24) hours.

(e) If the collected material is a hazardous waste under 401 KAR Chapter 31 it is subject to management as a hazardous waste in accordance with all applicable requirements of 401 KAR Chapters 32 to [~~through~~] 35. If the collected material is discharged through a point source to waters of the Commonwealth, it is subject to the requirements of KRS Chapter 224 and 401 KAR Chapter 5. If discharged to a publicly owned treatment works (POTW), it is subject to the requirements of KRS Chapter 224 and 401 KAR Chapter 5. If the collected material is released to the environment it may be subject to the reporting requirements of 40 CFR Part 302 and KRS 224.01-400.

(4) Secondary containment for tanks shall include one (1) or more of the following devices:

(a) A liner (external to the tank);

(b) A vault;

(c) A double-walled tank; or

(d) An equivalent device as approved by the cabinet.

(5) In addition to the requirements of subsections (2), (3), and (4) of this section, secondary containment systems shall satisfy the following requirements:

(a) External liner systems shall be:

1. Designed and operated to contain 100 percent of the capacity of the largest tank within its boundary;

2. Designed and operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour rainfall event;

3. Free of cracks or gaps; and

4. Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (that is, [~~i.e.,~~] capable of preventing lateral as well as vertical migration of the waste).

(b) Vault systems shall be:

1. Designed and operated to contain 100 percent of the capacity of the largest tank within its boundary;

2. Designed and operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour rainfall event;

3. Constructed with chemical-resistant water stops in place at all joints (if any);

4. Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

5. Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

a. Meets the definition of ignitable waste under Section 2 of 401 KAR 31:030; or

b. Meets the definition of reactive waste under Section 4 of 401

KAR 31:030 and may form an ignitable or explosive vapor.

6. Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(c) Double-walled tanks shall be:

1. Designed as an integral structure (that is, [i.e.,] an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

2. Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

3. Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four (24) hours, or at the earliest practicable time, if the owner or operator can demonstrate to the cabinet, and the cabinet concludes, that the existing detection technology or site conditions would not allow detection of a release within twenty-four (24) hours.

(6) Ancillary equipment shall be provided with secondary containment (for example, [e.g.,] trench, jacketing, double-walled piping) that meets the requirements of subsections (2) and (3) of this section except for:

(a) Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(b) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(c) Sealless or magnetic coupling pumps and all sealless valves, that are visually inspected for leaks on a daily basis; and

(d) Pressurized aboveground piping systems with automatic shutoff devices (for example, [e.g.,] excess flow check valves, flow metering shutdown devices, or loss of pressure actuated shutoff devices) that are visually inspected for leaks on a daily basis.

(7) The owner or operator may obtain a variance from the requirements of this section if the cabinet finds, as a result of a demonstration by the owner or operator that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water at least as effectively as secondary containment during the active life of the tank system; or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with paragraph (b) of this subsection, be exempted from the secondary containment requirements of this section.

(a) In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the cabinet will consider:

1. The nature and quantity of the wastes;

2. The proposed alternate design and operation;

3. The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and

4. All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to groundwater or surface water.

(b) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the cabinet will consider:

1. The potential adverse effects on groundwater, surface water and land quality taking into account:

a. The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

b. The hydrogeological characteristics of the facility and surrounding land;

c. The potential for health risks caused by human exposure to waste constituents;

d. The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

e. The persistence and permanence of the potential adverse effects;

2. The potential adverse effects of a release on groundwater quality, taking into account:

a. The quantity and quality of groundwater and the direction of groundwater flow;

b. The proximity and withdrawal rates of groundwater in the area;

c. The current and future uses of groundwater in the area; and

d. The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

3. The potential adverse effects of a release on surface water quality taking into account:

a. The quantity and quality of groundwater and the direction of groundwater flow;

b. The patterns of rainfall in the region;

c. The proximity of the tank system to surface waters;

d. The current and future uses of surface waters in the area and any water quality standards established for those surface waters; and

e. The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality; and

4. The potential adverse effects of a release on the land surrounding the tank system, taking into account:

a. The patterns of rainfall in the region; and

b. The current and future uses of the surrounding land;

(c) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), shall:

1. Comply with the requirements of Section 7 of this administrative regulation except subsection (4) of that section; and

2. Decontaminate or remove contaminated soil to the extent necessary to:

a. Enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

b. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and

3. If contaminated soil cannot be removed or decontaminated in accordance with subparagraph 2 of this paragraph, comply with the requirement of Section 8(2) of this administrative regulation.

(d) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), shall:

1. Comply with the requirements of Sections 7(1) to [, (2), (3), and] (4) of this administrative regulation; and

2. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if groundwater has been contaminated, the owner or operator shall comply with the requirements of Section 8(2) of this administrative regulation; and

3. If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of subsections (1) to [through] (6) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in Section 3 of this administrative regulation if the tank system is replaced. The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

(8) The following procedures shall be followed in order to request

a variance from secondary containment:

(a) The owner or operator shall notify the cabinet in writing that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in subsection (7) according to the following schedule:

1. For existing tank systems, at least twenty-four (24) months prior to the date that secondary containment shall be provided in accordance with subsection (1) of this section.

2. For new tank systems, at least thirty (30) days prior to entering into a contract for installation.

(b) As part of the notification, the owner or operator shall also submit to the cabinet a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in subsection (7)(a) or [~~subsection (7)~~](b) of this section.

(c) The demonstration for a variance shall be completed within 180 days after notifying the cabinet of an intent to conduct the demonstration; and

(d) If a variance is granted under this subsection, the cabinet will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

(9) All tank systems, until such time as secondary containment that meets the requirements of this section is provided, shall comply with the following:

(a) For nonenterable underground tanks, a leak test that meets the requirements of Section 2(1) of this administrative regulation or other tank integrity method, as approved or required by the cabinet shall be conducted at least annually.

(b) For other than nonenterable underground tanks, the owner or operator shall either conduct a leak test as in paragraph (a) of this subsection or develop a schedule and procedure for an assessment of the overall condition of the tank system by an [~~independent, qualified professional~~] engineer [~~registered in the Commonwealth of Kentucky~~]. The schedule and procedure shall be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator shall remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments shall be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

(c) For ancillary equipment, a leak test or other integrity assessment as approved by the cabinet shall be conducted at least annually.

(d) The owner or operator shall maintain on file at the facility a record of the results of the assessments conducted in accordance with subsection (1)(a) to [~~through~~] (c) of this section.

(e) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in paragraphs (a) to [~~through~~] (c) of this subsection, the owner or operator shall comply with the requirements of Section 7 of this administrative regulation.

Section 5. General Operating Requirements. (1) Hazardous wastes or treatment reagents shall not be placed in a tank system if they may cause the tank, its ancillary equipment, or the secondary containment system to rupture, leak, corrode, or otherwise fail.

(2) The owner or operator shall use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include at a minimum:

(a) Spill prevention controls (for example, [~~e.g.,~~] check valves or dry disconnect couplings);

(b) Overfill prevention controls (for example, [~~e.g.,~~] level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(c) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(3) The owner or operator shall comply with the requirements of Section 7 of this administrative regulation if a leak or spill occurs in the tank system.

Section 6. Inspections. (1) The owner or operator shall develop and follow a schedule and procedure for inspecting overfill controls.

(2) The owner or operator shall inspect at least once each operating day:

(a) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(b) Data gathered from monitoring and leak detection equipment (for example, [~~e.g.,~~] pressure or temperature gauges, and monitoring wells) to ensure that the tank system is being operated according to its design; and

(c) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, [~~e.g.,~~] dikes) to detect erosion or signs of releases of hazardous waste (for example, [~~e.g.,~~] wet spots or dead vegetation).

(3) The owner or operator shall inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(a) The proper operation of the cathodic protection system shall be confirmed within six (6) months after initial installation and annually thereafter; and

(b) All sources of impressed current shall be inspected and tested as appropriate, at least every other month.

(4) The owner or operator shall document in the operating record of the facility an inspection of those items in subsections (1) to [~~through~~] (3) of this section.

Section 7. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-Use Tank Systems. A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use shall be removed from service immediately, and the owner or operator shall satisfy the following requirements:

(1) Cessation of use: prevent flow or addition of wastes. The owner or operator shall immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(2) Removal of waste from tank system or secondary containment system.

(a) If the release was from the tank system, the owner or operator shall, within twenty-four (24) hours after detection of the leak or, if the owner or operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(b) If the material released was to a secondary containment system all released materials shall be removed within twenty-four (24) hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(3) Containment of visible releases to the environment. The owner or operator shall immediately conduct a visual inspection of the release and based upon that inspection shall:

(a) Prevent further migration of the leak or spill to soils or surface water; and

(b) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(4) Notifications and reports.

(a) Any release to the environment except as provided in paragraph (b) of this subsection, shall be reported to the cabinet within twenty-four (24) hours of its detection. If the release has been reported pursuant to 40 CFR Part 302 that report will satisfy this requirement.

(b) A leak or spill of hazardous waste is exempted from the

requirements of this subsection if it is:

1. Less than or equal to a quantity of one (1) pound; and

2. Immediately contained and cleaned up.

(c) Within thirty (30) days of detection of a release to the environment, a report containing the following information shall be submitted to the cabinet:

1. Likely route of migration of the release;

2. Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

3. Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty (30) days, these data shall be submitted to the cabinet as soon as they become available;

4. Proximity to downgradient drinking water, surface water, and populated areas; and

5. Description of response actions taken or planned.

(5) Provision of secondary containment, repair or closure.

(a) Unless the owner or operator satisfies the requirements of paragraphs (b) to [~~through~~] (d) of this subsection, the tank system shall be closed in accordance with Section 8 of this administrative regulation.

(b) If the cause of the release was a spill that has not damaged the integrity of the system, the owner or operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(c) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system shall be repaired prior to returning the tank system to service.

(d) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner or operator shall provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section 4 of this administrative regulation before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component shall be repaired and may be returned to service without secondary containment as long as the requirements of subsection (6) of this section are satisfied. If a component is replaced to comply with the requirements of this paragraph that component shall satisfy the requirements for new tank systems or components in Sections 3 and 4 of this administrative regulation. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (for example, [~~e.g.,~~] the bottom of an in-ground or on-ground tank), the entire component shall be provided with secondary containment in accordance with Section 4 of this administrative regulation prior to being returned to use.

(6) Certification of major repairs. If the owner or operator has repaired a tank system in accordance with subsection (5) of this section, and the repair has been extensive (for example, [~~e.g.,~~] installation of an internal liner, repair of a ruptured primary containment or secondary containment vessel), the tank system shall not be returned to service unless the owner or operator has obtained a certification by an [~~independent, qualified professional~~] engineer, [~~registered in the Commonwealth of Kentucky~~] in accordance with Section 7(4) of 401 KAR 38:070 that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification shall be submitted to the cabinet within seven (7) days after returning the tank system to use.

Section 8. Closure and Postclosure Care. (1) At closure of a tank system, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (for example, liners [~~, etc.~~]), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless Section 3(4) of 401 KAR 31:010 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems shall meet all of the requirements specified in 401 KAR 34:070 to [~~through~~] 34:176.

(2) If the owner or operator demonstrates that not all contaminated soil can be practicably removed or decontaminated as required in subsection (1) of this section, then the owner or operator shall close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to landfills (Section 6 of 401 KAR 34:230). In addition, for the purposes of closure, postclosure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in 401 KAR 34:070 to [~~through~~] 34:176.

(3) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of Section 4(2) to [~~through~~] (6) of this administrative regulation and it is not exempt from the secondary containment requirements in accordance with Section 4(7) of this administrative regulation then:

(a) The closure plan for the tank system shall include both a plan for complying with subsection (1) of this section and a contingent plan for complying with subsection (2) of this section;

(b) A contingent postclosure plan for complying with subsection (2) of this section shall be prepared and submitted as part of the permit application;

(c) The cost estimates calculated for closure and postclosure care shall reflect the costs of complying with the contingent closure plan and the contingent postclosure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (1) of this section;

(d) Financial assurance shall be based on the cost estimates in paragraph (c) of this subsection;

(e) For the purposes of the contingent closure and postclosure plans, such a tank system is considered to be a landfill, and the contingent plans shall meet all of the closure, postclosure, and financial responsibility requirements for landfills under 401 KAR 34:070 to [~~through~~] 34:176; and

(f) For new tank systems that shall close in accordance with subsection (2) of this section, the owner or operator shall demonstrate compliance with 401 KAR 38:500.

Section 9. Special Requirements for Ignitable or Reactive Wastes. (1) Ignitable or reactive waste shall not be placed in a tank unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the tank so that:

1. The resulting waste, mixture or dissolved material no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; and

2. Section 8(2) of 401 KAR 34:020 is complied with; or

(b) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(c) The tank system is used solely for emergencies.

(2) The owner or operator of a facility where ignitable or reactive waste is stored or treated in a tank shall comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 to [~~through~~] 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981), referenced in Section 3 of 401 KAR 30:010.

Section 10. Special Requirements for Incompatible Wastes. (1) Incompatible wastes, or incompatible wastes and materials, shall not be placed in the same tank system unless Section 8(2) of 401 KAR 34:020 is complied with.

(2) Hazardous waste shall not be placed in a tank system that has not been decontaminated and that previously held an incompati-

ble waste or material, unless Section 8(2) of 401 KAR 34:020 is complied with.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This proposed amendment affects facilities wood preserving facilities, of which there are 14 in Kentucky.

(a) Direct and indirect costs or savings to those affected: There will some additional costs incurred by wood preserving facilities in complying with the standards of this proposed amendment. However, the increases are as a result of complying with federal regulations as the standards proposed for adoption are equivalent to those already adopted under the federal hazardous waste program.

1. First year: None beyond those specified above.

2. Continuing costs or savings: None beyond those specified above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None beyond those specified above.

(2) Effects on the promulgating administrative body: The cabinet will incur some additional administrative costs in implementing this proposed amendment. In part these will be off-set by grant moneys obtained from U.S. EPA for administration of Kentucky's hazardous waste program.

(a) Direct and indirect costs or savings:

1. First year: None other than those specified above.

2. Continuing costs or savings: None other than those specified above.

3. additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet is required to report to U.S. EPA on hazardous waste activities in the Commonwealth. These reporting responsibilities will continue under this proposed amendment.

(3) Assessment of anticipated effect on state and local revenues: There is no foreseen impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, and in order to maintain a hazardous waste program as stringent as that of U.S. EPA (as required by the Resource Conservation and Recovery Act), there were no alternatives to the promulgation of this proposed amendment.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations, or government policies that conflict with, overlap, or duplicate the provisions of this proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: There is no conflict.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The language of this proposed amendments is taken from 40 CFR 264.190 to 264.199, with minor changes to comport with KRS Chapter 13A. However, there is no actual federal mandate to make these changes. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This amendment imposes tank requirements on wood preserving facilities equivalent to those imposed by U.S. EPA.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 264.190 to 264.199.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 34:200. Surface impoundments.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 relative to surface impoundments. [~~KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring~~

~~and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes minimum standards for surface impoundments.~~]

Section 1. Applicability. This administrative regulation applies to owners and operators of hazardous waste sites or facilities that use surface impoundments to treat, store or dispose of hazardous waste, except as Section 1 of 401 KAR 34:010 provides otherwise.

Section 2. Design and Operating Requirements. (1) Any surface impoundment that is not covered by subsection (3) of this section or Section 1 of 401 KAR 35:200 shall [~~must~~] have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner shall [~~must~~] be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or ground water or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with Section 6(1)(a) of this administrative regulation. For impoundments that will be closed in accordance with Section 6(1)(b) of this administrative regulation, the liner shall [~~must~~] be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner shall [~~must~~] be:

(a) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, geological conditions including, where applicable, karst features, the stress of installation, and the stress of daily operation; and

~~[(b) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, uplift or geological conditions including, where applicable, karst features. At a minimum, synthetic liners shall be placed upon a one (1) foot thick soil liner of 1 x 10^{-7} centimeters per second permeability; and~~]

(b) [~~(c)~~] Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(2) The owner or operator may [~~will~~] be exempted from the requirements of subsection (1) of this section if the cabinet finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see Section 4 of 401 KAR 34:060) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the cabinet shall [~~will~~] consider:

(a) The nature and quantity of the wastes;

(b) The proposed alternate design and operation;

(c) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and ground water or surface water; and

(d) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.

(3) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992 and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 shall install two (2) or more liners and a leachate collection and removal system between such liners. "Construction commences" is defined in 401 KAR 30:010 under "existing facility".

(a)1. The liner system shall include:

a. A top liner designed and constructed of materials (for example, a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and postclosure care period; and

b. A composite bottom liner, consisting of at least two (2) components. The upper component shall be designed and constructed of materials (for example, a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and postclosure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least three (3) feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than $1X10^{-7}$cm/sec.

2. The liners shall comply with subsection (1)(a) and (b) of this section.

(b) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, shall also be a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and postclosure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

1. Constructed with a bottom slope of one (1) percent or more;

2. Constructed of granular drainage materials with a hydraulic conductivity of $1X10^{-1}$cm/sec or more and a thickness of twelve (12) inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of $3X10^{-4}m^2$sec or more;

3. Constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

4. Designed and operated to minimize clogging during the active life and postclosure care period; and

5. Constructed with sumps and liquid removal methods (for example, pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed from the sump.

(c) The owner or operator shall collect and remove pumpable liquids in the sumps to minimize the head on the bottom liner.

(d) Surface impoundments for the disposal of hazardous waste shall be located entirely above the seasonal high-water table in accordance with Section 9(2) of 401 KAR 34:020.

(4) The cabinet may approve alternative design or operating practices to those specified in subsection (3) of this section if the owner or operator demonstrates to the cabinet that such design and operating practices, together with location characteristics:

(a) Shall prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal system specified in subsection (3) of this section; and

(b) Shall allow detection of leaks of hazardous constituents through the top liner at least as effectively.

~~[(3) The owner or operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of an existing surface impoundment unit must install two (2) or more liners and a leachate collection system between such liners. The liners and leachate collection system must protect human~~

~~health and the environment. The requirements of this subsection shall apply with respect to all waste received after the issuance of the permit. The requirement for the installation of two (2) or more liners in this subsection may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any postclosure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a three (3) foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeters per second.~~

~~(4) Subsection (3) of this section will not apply if the owner or operator demonstrates to the cabinet, and the cabinet finds for such surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.~~]

(5) The double liner requirement set forth in subsection (3) of this section may be waived by the cabinet for any monofill, if:

(a) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the [~~EP~~] toxicity characteristics in Section 5 of 401 KAR 31:030; and

(b)1.a. The monofill has at least one (1) liner for which there is no evidence that such liner is leaking. For the purposes of this subsection the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (3) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator shall [~~must~~] remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment shall [~~will~~] comply with appropriate postclosure requirements, including but not limited to ground water monitoring and corrective action;

b. The monofill is located more than one-fourth (1/4) mile from an underground source of drinking water (as that term is defined in Section 1 of 401 KAR 30:010); and

c. The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with permits under KRS 224.40-310 and 224.46-520; or

2. The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(6) The owner or operator of any replacement surface impoundment unit is exempt from subsection (3) of this section if:

(a) The existing unit was constructed in compliance with design standards of this administrative regulation; and

(b) There is no reason to believe that the liner is not functioning as designed.

(7) A surface impoundment shall [~~must~~] be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; and human error.

(8) [~~(7)~~] A surface impoundment shall [~~must~~] have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In insuring structural integrity, it shall [~~must~~] not be presumed that the liner system will function without leakage during the active life of the unit.

(9) [~~(8)~~]A new surface impoundment shall not be constructed in a floodway in accordance with Section 9(2) of 401 KAR 34:020[~~, Section 9(2)~~].

(10) [~~(9)~~] A surface impoundment (including its underlying liners) for the treatment or storage of hazardous waste shall [~~must~~] be protected from inundation by waters of the 100-year flood in accordance with Section 9(2) of 401 KAR 34:020[~~, Section 9(2)~~].

(11) [~~(10)~~] New surface impoundments for the disposal of hazardous waste shall [~~must~~] be located entirely above the seasonal high-water table, in accordance with Section 9(2) of 401 KAR 34:020[~~, Section 9(2)~~].

(12) [~~(11)~~] The cabinet shall [~~will~~] specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

Section 3. Action Leakage Rate. [~~Double-lined Surface Impoundments.~~] (1) The cabinet shall approve an action leakage rate for surface impoundment units subject to Section 2(3) or (4) of this administrative regulation. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding one (1) foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design (for example, slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (for example, the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from factors including siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures).

(2) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under Section 4(4) of this administrative regulation to an average daily flow rate (gallons per acre per day) for each sump. Unless the cabinet approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and if the unit is closed in accordance with Section 6(2) of this regulation, monthly during the postclosure care period when monthly monitoring is required under Section 4(4) of this administrative regulation.

(3) 401 KAR 34:060 Ground water protection requirements apply to all surface impoundments including those with double-liner systems.

Section 4. Monitoring and Inspection. (1) During construction and installation, liners (except in the case of existing portions of surface impoundments exempt from Section 2 of this administrative regulation) and cover systems (e.g., membranes, sheets, or coatings) shall [~~must~~] be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(a) Synthetic liners and covers shall [~~must~~] be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(b) Soil-based and admixed liners and covers shall [~~must~~] be inspected for imperfections including lenses, cracks, channels, root holes, or other structural nonuniformities that may cause an increase in the permeability of the liner or cover.

(2) While a surface impoundment is in operation, it shall [~~must~~] be inspected weekly and after storms to detect evidence of any of the following:

(a) Deterioration, malfunctions, or improper operation of overtopping control systems;

(b) Sudden drops in the level of the impoundment's contents as computed by the water balance calculations required in 401 KAR 34:050 and as observed by flow measuring devices [~~etc.~~]; and

(c) Severe erosion or any other signs of deterioration in dikes or other containment devices.

(3) Prior to the issuance of a permit, and after any extended period of time (at least six (6) months) during which the impoundment was not in service, the owner or operator shall [~~must~~] obtain a certification from a qualified engineer registered in Kentucky that the impoundment's dike, including that portion of any dike which provides freeboard, has structural integrity. The certification shall [~~must~~] establish, in particular, that the dike:

(a) Will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the impoundment; and

(b) Will not fail due to scouring or piping, without dependence on any liner system included in the surface impoundment construction.

(4)(a) An owner or operator required to have a leak detection system under Section 2(3) or (4) of this administrative regulation shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(b) The amount of liquids removed from each leak detection system sump shall be recorded at least monthly throughout the postclosure care period.

Section 5. Emergency Repairs; Contingency Plans. (1) A surface impoundment shall [~~must~~] be removed from service in accordance with subsection (2) of this section when:

(a) The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or

(b) The dike leaks.

(2) When a surface impoundment is [~~must be~~] removed from service as required by subsection (1) of this section, the owner or operator shall [~~must~~]:

(a) Immediately shut off the flow or stop the addition of wastes into the impoundment;

(b) Immediately contain any surface leakage which has occurred or is occurring;

(c) Immediately stop the leak;

(d) Take any other necessary steps to stop or prevent catastrophic failure;

(e) If a leak cannot be stopped by any other means, empty the impoundment; and

(f) Notify the cabinet of the problem in writing within seven (7) days after detecting the problem.

(3) As part of the contingency plan required in 401 KAR 34:040 the owner or operator shall [~~must~~] specify a procedure for complying with the requirements of this section.

(4) No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken:

(a) If the impoundment was removed from service as the result of actual or imminent dike failure, the dike's structural integrity shall [~~must~~] be recertified in accordance with Section 4(3) of this administrative regulation.

(b) If the impoundment was removed from service as the result of a sudden drop in the liquid level, then:

1. For any existing portion of the impoundment, a liner shall [~~must~~] be installed in compliance with Section 2 of this administrative regulation; and

2. For any other portion of the impoundment, the repaired liner system shall [~~must~~] be certified by a qualified engineer as meeting the design specifications approved in the permit.

3. Determine, using water balance calculations in accordance with 401 KAR 34:050, how much liquid was lost, where the liquid went and take appropriate actions.

(5) A surface impoundment that has been removed from service in accordance with the requirements of this section and that is not being repaired within six (6) months time, as specified by the cabinet, shall [~~must~~] be closed in accordance with the provisions of Section 6 of this administrative regulation.

Section 6. Closure and Postclosure Care. (1) At closure, the owner or operator shall [~~must~~]:

(a) Remove or decontaminate all waste residues, contaminated containment system components [~~(liners, etc.)~~], contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless Section 3 of 401 KAR 31:010 applies; or

(b) Treat in such a manner so as to:

1. Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

2. Stabilize remaining wastes to a bearing capacity sufficient to support final cover; and

3. Cover the surface impoundment with a final cover designed and constructed to:

a. Provide long-term minimization of the migration of liquids through the closed impoundment;

b. Function with minimum maintenance;

c. Promote drainage and minimize erosion or abrasion of the final cover;

d. Accommodate settling and subsidence so that the cover's integrity is maintained; and

e. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(2) If some waste residues or contaminated materials are left in place at final closure, the owner or operator shall [~~must~~] comply with all postclosure requirements contained in Sections 8 to [~~through~~] 11 of 401 KAR 34:070, including maintenance and monitoring throughout the postclosure care period (specified in the permit under Section 9 of 401 KAR 34:070). The owner or operator shall [~~must~~]:

(a) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(b) Maintain and monitor the leak detection system in accordance with Sections 2(3)(b)4 and (c) and 4(4)(a) and (b) of this administrative regulation, and comply with all other applicable leak detection system requirements of this chapter;

(c) [~~(b)~~] Maintain and monitor the ground water monitoring system and comply with all other applicable requirements of 401 KAR 34:060; and

(d) [~~(c)~~] Prevent run-on and run-off from eroding or otherwise damaging the final cover.

(3)(a) If an owner or operator plans to close a surface impoundment in accordance with subsection (1)(a) of this section, and the impoundment does not comply with the liner requirements of Section 2(1) of this administrative regulation and is not exempt from them in accordance with Section 2(2) of this administrative regulation, then:

1. The closure plan for the impoundment under Section 3 of 401 KAR 34:070 shall [~~must~~] include both a plan for complying with subsection (1)(a) of this section and a contingent plan for complying with subsection (1)(b) of this section, which is also in compliance with 401 KAR 38:500 and KRS 224.40-310(3) [~~855(3)~~], in case not all contaminated subsoils can be practicably removed at closure; and

2. The owner or operator shall [~~must~~] prepare a contingent postclosure plan under Section 9 of 401 KAR 34:070 for complying with subsection (2) of this section, which is also in compliance with 401 KAR 38:500 and KRS 224.855(3), in case not all contaminated subsoils can be practicably removed at closure.

(b) The cost estimates calculated under Section 1 of 401 KAR 34:090 and Section 1 of 401 KAR 34:100 for closure and postclosure care of an impoundment subject to this paragraph shall [~~must~~] include

separate analyses of the cost of complying with the contingent closure plan and the contingent postclosure plan in addition to the cost of expected closure under subsection (1)(a) of this section.

Section 7. Special Requirements for Ignitable or Reactive Waste. Ignitable or reactive waste shall [~~must~~] not be placed in a surface impoundment, unless the waste and impoundment satisfy all applicable requirements of 401 KAR Chapter 37 and:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(a) The resulting waste [~~or mixture~~] no longer meets the definition of ignitable or reactive waste under 401 KAR Chapter 31;and

(b) Section 8 of 401 KAR 34:020 is complied with; or

(2) The surface impoundment is used solely for emergencies.

Section 8. Special Requirements for Incompatible Wastes. Incompatible wastes, or incompatible wastes and materials (see 401 KAR 34:330 for examples) shall [~~must~~] not be placed in the same surface impoundment.

Section 9. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027. (1) Hazardous wastes F020, F021, F022, F023, F026, and F027 (chlorinated dioxins, chlorinated dibenzofurans, and chlorinated phenols) shall [~~must~~] not be placed in surface impoundment[~~s~~] unless the owner or operator operates the surface impoundment[~~s~~] in accordance with a management plan for these wastes that is approved by the cabinet [~~secretary~~] pursuant to the standards set out in this section, and in accordance with all other applicable requirements of this chapter. The factors to be considered are:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(b) The attenuative properties of underlying and surrounding soils or other materials;

(c) The mobilizing properties of other materials codisposed with these wastes; and

(d) The effectiveness of additional treatment, design, or monitoring techniques.

(2) The cabinet [~~secretary~~] may determine that additional design, operating, and monitoring requirements are necessary for surface impoundments managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

Section 10. Response Actions. (1) The owner or operator of surface impoundment units subject to Section 2(3) or (4) of this administrative regulation shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in subsection (2) of this section.

(2) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(a) Notify the cabinet in writing of the excess within seven (7) days of the determination;

(b) Submit a preliminary written assessment to the cabinet within fourteen (14) days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(c) Determine to the extent practicable the location, size, and cause of any leak;

(d) Determine whether waste receipt shall cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(e) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(f) Within thirty (30) days after the notification that the action leakage rate has been exceeded, submit to the cabinet the results of the analyses specified in paragraphs (c), (d), and (e) of this subsection, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the cabinet a report summarizing the results of any remedial actions taken and actions planned.

(3) To make the leak and remediation determinations in subsection (2)(c), (d), and (e) of this section, the owner or operator shall:

(a)1. Assess the source of liquids and amounts of liquids by source;

2. Conduct a fingerprint, hazardous constituent, or other analysis of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

3. Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(b) Document why such assessments are not needed.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This proposed amendment affects owners or operators with waste piles.

(a) Direct and indirect costs or savings to those affected:

1. First year: This proposed amendment will increase costs associated with EPA requirements for costs associated with installing composite liners and leachate collection systems for surface impoundments at hazardous waste sites or facilities.

2. Continuing costs or savings: Costs for monitoring the leachate collection system will continue for the life of the unit.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The cabinet may approve alternate designs or operating practices.

(b) Reporting and paperwork requirements: The amount of liquids removed from each leak detection system pump is to be recorded weekly during the active life and closure period and monthly throughout the postclosure period. The cabinet is to be notified if an exceedance occurs.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There may be increased costs associated with monitoring compliance with the new provisions of this administrative regulation.

2. Continuing costs or savings: There may be continuing costs associated with reviewing requests for alternative designs or operating practices.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) assessment of alternative methods; reasons why alternatives were rejected: There were no alternatives to the text of the federal regulations considered by the cabinet. The design and operating standards to be added to this administrative regulation already in effect in Kentucky by federal regulation. The federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal program for states to operate the program in lieu of the federal government.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate this proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment is taken from 40 CFR 264.220 through .231; however, there is no actual federal mandate to make these changes. The Federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal program for states to operate the program in lieu of the federal government. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This amendment complies with KRS Chapter 13A and 224.46-520.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR Parts 264.220 through .231.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 34:210. Waste piles.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish [~~KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes~~] minimum standards for waste piles.

Section 1. Applicability. (1) This administrative regulation applies to owners and operators of hazardous waste sites or facilities that store or treat hazardous waste in piles, except as Section 1 of 401 KAR 34:010 provides otherwise.

(2) This administrative regulation does not apply to owners or operators of waste piles that are closed with wastes left in place. Such waste piles are subject to administrative regulation under 401 KAR 34:230 (Landfills).

(3) The owner or operator of any waste pile that is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated is not subject to administrative regulation under Section 2 of this administrative regulation or under 401 KAR 34:060, provided that:

(a) Liquids or materials containing free liquids are not placed in the pile;

(b) The pile is protected from surface water run-on by the structure or in some other manner;

(c) The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting; and

(d) The pile will not generate leachate through decomposition or other reactions.

Section 2. Design and Operating Requirements. (1) A waste pile (except for an existing portion of a waste pile) shall [~~must~~] have:

(a) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility. The liner shall [~~must~~] be:

1. Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation; and

2. [~~Placed upon a foundation or base capable of providing support to the liner and resistant to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift. At a minimum, synthetic liners shall be placed upon a one (1) foot thick soil liner of 1 x 10-7 cm/sec permeability.~~

~~3.~~] Installed to cover all surrounding earth likely to be in contact with the waste or leachate. [~~; and~~]

(b) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The cabinet shall [~~will~~] specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed thirty (30) cm (approximately one (1) foot). The leachate collection and removal system shall [~~must~~] be:

1. Constructed of materials that are:

a. Chemically resistant to the waste managed in the pile and the leachate expected to be generated; and

b. Of sufficient strength and thickness to prevent collapse under the pressures exerted by waste placement, overlying wastes, waste cover materials, and by any equipment used at the pile; and

2. Designed and operated to function without clogging through the scheduled closure of the waste pile.

(2) The owner or operator may be exempted from the requirements of subsection (1) of this section if the cabinet finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see Section 4 of 401 KAR 34:060) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the cabinet shall [~~will~~] consider:

(a) The nature and quantity of the wastes;

(b) The proposed alternate design and operation;

(c) The hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

(d) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(3) The owner or operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 shall install two (2) or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is defined in 401 KAR 30:010 under "existing facility".

(a)1. The liner system shall include:

a. A top liner designed and constructed of materials (for example, a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and postclosure care period; and

b. A composite bottom liner, consisting of at least two (2) components. The upper component shall be designed and constructed of materials (for example, a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and postclosure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least three (3) feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than $1X10^{-7}$ cm/sec.

2. The liners shall comply with subsections (1)(a)1, 2, and 3 of this section.

(b) The leachate collection and removal system immediately above the top liner shall be designed, constructed, operated, and maintained to collect and remove leachate from the waste pile during the active life and postclosure care period. The cabinet shall specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed thirty (30) cm (one (1) foot). The leachate collection and removal system shall comply with paragraph (c)3 and 4 of this subsection.

(c) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, shall also be a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and postclosure care period. The requirements for a leak detection system in this administrative regulation are satisfied by installation of a system that is, at a minimum:

1. Constructed with a bottom slope of one (1) percent or more;

2. Constructed of granular drainage materials with a hydraulic conductivity of $1X10^{-2}$ cm/sec or more and a thickness of twelve (12) inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of $3X10^{-5}$ m^2/sec or more;

3. Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the waste pile;

4. Designed and operated to minimize clogging during the active life and postclosure care period; and

5. Constructed with sumps and liquid removal methods (for example, pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed from the sump.

(d) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(e) A leak detection system shall be located completely above the seasonal high water table.

(4) The cabinet may approve alternative design or operating practices to those specified in subsection (3) of this section if the owner or operator demonstrates to the cabinet that such design and operating practices, together with location characteristics:

(a) Shall prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (3) of this section; and

(b) Shall allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(5) Subsection (3) of this section does not apply to monofills that are granted a waiver by the cabinet in accordance with Section 2(5) of 401 KAR 34:200.

(6) The owner or operator of any replacement waste pile unit is exempt from subsection (3) of this section if:

(a) The existing unit was constructed in compliance with the design standards of this administrative regulation; and

(b) There is no reason to believe that the liner is not functioning as designed.

(7) [~~(3)~~] The owner or operator shall [~~must~~] design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a twenty-five (25) year storm.

(8) [~~(4)~~] The owner or operator shall [~~must~~] design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a twenty-four (24) hour, twenty-five (25) year storm.

(9) [~~(5)~~] Collection and holding facilities ([~~e.g.,~~] tanks or basins for example) associated with run-on and run-off control systems shall [~~must~~] be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(10) [~~(6)~~] If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator shall [~~must~~] cover or otherwise manage the pile to control wind dispersal.

(11) [~~(7)~~] A new waste pile shall not be constructed in a floodway in accordance with Section 9(2) of 401 KAR 34:020.

(12) [~~(8)~~] Any waste pile (including its underlying liners) for the

treatment or storage of hazardous waste shall [~~must~~] be protected from inundation by waters of the 100-year flood in accordance with Section 9(2) of 401 KAR 34:020.

(13) [~~(9)~~] The cabinet shall [~~will~~] specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

Section 3. Action Leakage Rate. [~~Double-lined Piles: Groundwater Protection Requirements of 401 KAR 34:060.~~] (1) The cabinet shall approve an action leakage rate for waste piles subject to Section 2(3) or (4) of this administrative regulation. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding one (1) foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design (for example, slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (for example, the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from factors including siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures).

(2) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly flow rate from the monitoring data obtained under Section 5(3) of 401 KAR 34:210 to an average daily flow rate (gallons per acre per day) for each sump. Unless the cabinet approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period. The owner or operator of a double-lined waste pile is subject to administrative regulation under 401 KAR 34:060.

Section 4. Response Actions. [~~Inspection of Liners.~~] (1) The owner or operator of waste pile units subject to Section 2(3) or (4) of this administrative regulation shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in subsection (2) of this section.

(2) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(a) Notify the cabinet in writing of the exceedance within seven (7) days of the determination;

(b) Submit a preliminary written assessment to the cabinet within fourteen (14) days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(c) Determine to the extent practicable the location, size, and cause of any leak;

(d) Determine whether waste receipt shall cease or be curtailed, whether any waste shall be removed from the unit for inspection, repairs, or controls, and whether or not the unit shall be closed;

(e) Determine any other short-term and long-term actions to be taken to mitigate or stop any leaks; and

(f) Within thirty (30) days after the notification that the action leakage rate has been exceeded, submit to the cabinet the results of the analyses specified in paragraphs (c), (d), and (e) of this subsection, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the cabinet a report summarizing the results of any remedial actions taken and actions planned.

(3) To make the leak and remediation determinations in subsection (2)(c), (d), and (e) of this section, the owner or operator shall:

(a)1. Assess the source of liquids and amounts of liquids by source;

2. Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

3. Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(b) Document why such assessments are not needed. [~~If, during inspection of the liner, deterioration, a crack, or other condition is identified that is causing or could cause a leak, the owner or operator must:~~

~~(a) Notify the cabinet of the condition in writing within seven (7) days after detecting the condition; and~~

~~(b) Repair or replace the liner (base) and obtain a certification from a qualified engineer registered in Kentucky that, to the best of his knowledge and opinion, the liner (base) has been repaired and leakage will not occur.~~

~~(2) The cabinet will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.~~]

Section 5. Monitoring and Inspection. (1) During construction or installation, liners (except in the case of existing portions of piles exempt from Section 2(1) of this administrative regulation) and cover systems ([~~e.g.,~~] membranes, sheets, or coatings for example) shall [~~must~~] be inspected for uniformity, damage and imperfections (examples are, [~~e.g.,~~] holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(a) Synthetic liners and covers shall [~~must~~] be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters;

and

(b) Soil-based and admixed liners and covers shall [~~must~~] be inspected for imperfections including lenses, cracks, channels, root holes, or other structural nonuniformities that may cause an increase in the permeability of the liner or cover.

(2) While a waste pile is in operation, it shall [~~must~~] be inspected at least weekly and after storms to detect evidence of any of the following:

(a) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(b) Proper functioning of wind dispersal control systems, where present; and

(c) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(3) An owner or operator required to have a leak detection system under Section 2(3) of this administrative regulation shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

Section 6. Special Requirements for Ignitable or Reactive Waste. (1) Ignitable or reactive waste shall [~~must~~] not be placed in a waste pile unless the waste and waste pile satisfy all applicable requirements of 401 KAR Chapter 37; and

(2) The waste is treated, rendered or mixed before placement in the pile so that: [~~is treated, rendered or mixed before placement in the pile so that:~~]

(a) [~~(1)~~] The resulting waste, mixture, or dissolution of material [~~or mixture~~] no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; and

(b) [~~(2)~~] Section 8(2) of 401 KAR 34:020 is complied with.

Section 7. Special Requirements for Incompatible Wastes. (1) Incompatible wastes, or incompatible wastes and materials (see 401 KAR 34:330 for examples), shall [~~must~~] not be placed in the same pile.

(2) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, other piles, open tanks, or surface impoundments shall [~~must~~] be separated from the other materials, or protected from them by means of a dike, berm,

wall, or other device.

(3) Hazardous waste shall [~~must~~] not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with Section 8(2) of 401 KAR 34:020.

Section 8. Closure and Postclosure Care. (1) At closure, the owner or operator shall [~~must~~] remove or decontaminate all waste residues, contaminated containment system components [~~(liner, etc.)~~], contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless Section 3(4) of 401 KAR 31:010 applies.

(2) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection (1) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he shall [~~must~~] close the facility and perform postclosure care in accordance with the closure and postclosure care requirements that apply to landfills (Section 6 of 401 KAR 34:230).

(3)(a) The owner or operator of a waste pile that does not comply with the liner requirements of Section 2(1)(a) of this administrative regulation and is not exempt from them in accordance with Section 1(3) or 2(2) of this administrative regulation shall [~~must~~]:

1. Include in the closure plan for the pile under Section 3 of 401 KAR 34:070 both a plan for complying with subsection (1) of this section and a contingent plan for complying with subsection (2) of this section which is subject to the requirements of 401 KAR 38:500 in case not all contaminated subsoils can be practicably removed at closure; and

2. Prepare a contingent postclosure plan under Section 9 of 401 KAR 34:070 for complying with subsection (2) of this section in case not all contaminated subsoils can be practicably removed at closure, which is subject to the requirements of 401 KAR 38:500.

(b) The cost estimates calculated under Section 1 of 401 KAR 34:090 and Section 1 of 401 KAR 34:100 for closure and postclosure care of a pile subject to this section shall [~~must~~] include both a cost estimate for complying with the contingent closure plan and the cost estimate for complying with the contingent postclosure plan and the cost of expected closure under subsection (1) of this section.

Section 9. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027. (1) Hazardous waste numbers F020, F021, F022, F023, F026, and F027 (chlorinated dioxins, chlorinated dibenzofurans, and chlorinated phenols) shall [~~must~~] not be placed in waste piles that are not enclosed (as defined in Section 1(3) of this administrative regulation) unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the cabinet pursuant to the standards set out in this section, and in accordance with all other applicable requirements of this chapter. The factors to be considered are:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(b) The attenuative properties of underlying and surrounding soils or other materials;

(c) The mobilizing properties of other materials codisposed with these wastes; and

(d) The effectiveness of additional treatment, design, or monitoring techniques.

(2) The cabinet may determine that additional design, operating, and monitoring requirements are necessary for piles managing hazardous waste numbers F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This proposed amendment affects owners or operators with waste piles.

(a) Direct and indirect costs or savings to those affected:

1. First year: This proposed amendment will increase costs associated with EPA requirements for costs associated with installing composite liners and leachate collection systems for surface impoundments at hazardous waste sites or facilities.

2. Continuing costs or savings: Costs for monitoring the leachate collection system will continue for the life of the unit.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The cabinet may approve alternate designs or operating practices.

(b) Reporting and paperwork requirements: The amount of liquids removed from each leak detection system pump is to be recorded weekly during the active life and closure period and monthly throughout the postclosure period. The cabinet is to be notified if an exceedance occurs.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There may be increased costs associated with monitoring compliance with the new provisions of this administrative regulation.

2. Continuing costs or savings: There may be continuing costs associated with reviewing requests for alternative designs or operating practices.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives

were rejected: There were no alternatives to the text of the federal regulations considered by the cabinet. The design and operating standards to be added to this administrative regulation already in effect in Kentucky by federal regulation. The federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal program for states to operate the program in lieu of the federal government.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate this proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers, and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment is taken from 40 CFR 264.250 to .259; however, there is no actual federal mandate to make these changes. The Federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal program for states to operate the program in lieu of the federal government. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This amendment complies with KRS Chapter 13A and 224.46-520.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR Parts 264.220 to .223.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 34:220. Land treatment.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish ~~[requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes the~~] minimum standards for hazardous waste land treatment facilities.

Section 1. Applicability. This administrative regulation applies to owners and operators of facilities that treat and dispose of hazardous waste in land treatment units, except as Section 1 of 401 KAR 34:010 provides otherwise.

Section 2. Treatment Program. (1) An owner or operator subject to this administrative regulation shall ~~[must]~~ establish a land treatment program that is designed to ensure that hazardous constituents placed in or on the treatment zone are degraded, transformed, or immobilized within the treatment zone. The cabinet shall ~~[will]~~ specify in the facility permit the elements of the treatment program, including:

(a) The wastes that are capable of being treated at the unit based on a demonstration under Section 3 of this administrative regulation;

(b) Design measures and operating practices necessary to maximize the success of degradation, transformation, and immobilization processes in the treatment zone in accordance with Section 4(1) of this administrative regulation; and

(c) Unsaturated zone monitoring provisions meeting the requirements of Section 6 of this administrative regulation.

(2) The cabinet shall ~~[will]~~ specify in the facility permit the hazardous constituents that shall ~~[must]~~ be degraded, transformed, or immobilized under this administrative regulation. Hazardous constituents are constituents identified in 401 KAR 31:170 that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone, and all maximum groundwater contaminant levels as identified in Table I of Section 5 of 401 KAR 34:060 ~~[30:060, Section 5]~~.

(3) The cabinet shall ~~[will]~~ specify the vertical and horizontal dimensions of the treatment zone in the facility permit. The treatment zone is the portion of the unsaturated zone below and including the land surface in which the owner or operator intends to maintain the conditions necessary for effective degradation, transformation, or immobilization of hazardous constituents. The maximum depth of the treatment zone shall ~~[must]~~ be:

(a) No more than 1.5 meters (approximately five (5) feet) from the initial soil surface; and

(b) More than one (1) meter (approximately three (3) feet) above the seasonal high water table.

Section 3. Treatment Demonstration. (1) For each waste that shall ~~[will]~~ be applied to the treatment zone, the owner or operator shall ~~[must]~~ demonstrate, prior to application of the waste, that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone.

(2) In making this demonstration, the owner or operator may use field tests, laboratory analyses, available data, or, in the case of existing units, operating data. If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration required under subsection (1) of this section, he shall ~~[must]~~ obtain a treatment or disposal permit under Section 4 of 401 KAR 38:060. The cabinet shall ~~[will]~~ specify in this permit the testing, analytical, design, and operating requirements (including the duration of the tests and analyses, and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure and cleanup activities) necessary to meet the requirements in subsection (3) of this section.

(3) Any field test or laboratory analysis conducted in order to make a demonstration under subsection (1) of this section shall ~~[must]~~:

(a) Accurately simulate the characteristics and operating conditions for the proposed land treatment unit including:

1. The characteristics of the waste (including the presence of constituents from 401 KAR 31:170);

2. The climate in the area;

3. The topography of the surrounding area;

4. The characteristics of the soil in the treatment zone (including depth); and

5. The operating practices to be used at the unit.

(b) Be likely to show that hazardous constituents in the waste to be tested shall [~~will~~] be completely degraded, transformed, or immobilized in the treatment zone of the proposed land treatment unit; and

(c) Be conducted in a manner that protects human health and the environment considering:

1. The characteristics of the waste to be tested;

2. The operating and monitoring measures taken during the course of the test;

3. The duration of the test;

4. The volume of waste used in the test; and

5. In the case of field tests, the potential for migration of hazardous constituents to groundwater or surface water.

Section 4. Design and Operating Requirements. The cabinet shall [~~will~~] specify in the facility permit how the owner or operator shall [~~will~~] design, construct, operate, and maintain the land treatment unit in compliance with this section.

(1) The owner or operator shall [~~must~~] design, construct, operate, and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents in the treatment zone. The owner or operator shall [~~must~~] design, construct, operate, and maintain the unit in accord with all design and operating conditions that were used in the treatment demonstration under Section 3 of this administrative regulation. At a minimum, the cabinet shall [~~will~~] specify the following in the facility permit:

(a) The rate and method of waste application to the treatment zone;

(b) Measures to control soil pH;

(c) Measures to enhance microbial or chemical reactions ([~~e.g.,~~] fertilization, tilling, for example); and

(d) Measures to control the moisture content of the treatment zone.

(2) The owner or operator shall [~~must~~] design, construct, operate, and maintain the treatment zone to minimize run-off of hazardous constituents during the active life of the land treatment unit.

(3) The owner or operator shall [~~must~~] design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a twenty-five (25) year storm.

(4) The owner or operator shall [~~must~~] design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a twenty-four (24) hour, twenty-five (25) year storm.

(5) Collection and holding facilities ([~~e.g.,~~] tanks or basins, for example) associated with run-on and run-off control systems shall [~~must~~] be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

(6) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator shall [~~must~~] manage the unit to control wind dispersal.

(7) The owner or operator shall [~~must~~] inspect the unit weekly and after storms to detect evidence of:

(a) Deterioration, malfunctions, or improper operation of run-on and run-off controls systems; and

(b) Improper functioning of wind dispersal control measures.

(8) New land treatment facilities shall [~~must~~] be located entirely above the seasonal high-water table and out of the 100-year flood plain, in accordance with Section 9(2) of 401 KAR 34:020.

Section 5. Food Chain Crops. The cabinet may allow the growth of food chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this section. The cabinet shall [~~will~~] specify in the facility permit the specific food chain crops which may be grown.

(1)(a) The owner or operator shall [~~must~~] demonstrate that there is no risk to human health caused by the growth of such crops in or on the treatment zone by demonstrating, prior to the planting of such crops, that hazardous constituents other than cadmium:

1. Shall [~~Will~~] not be transferred to the food or feed portions of the crop by plant uptake or direct contact, and shall [~~will~~] not otherwise be ingested by food chain animals ([~~e.g.,~~] by grazing for example); or

2. Shall [~~Will~~] not occur in greater concentrations in or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under similar conditions in the same region.

(b) The owner or operator shall [~~must~~] make the demonstration required under this subsection prior to the planting of crops at the facility of all constituents identified in 401 KAR 31:170 that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone. The owner or operator shall [~~must~~] determine all maximum groundwater contaminant levels as identified in Table I of Section 5 of 401 KAR 34:060[~~, Section 5~~], and soil pH and submit test results as part of the demonstration required by this subsection.

(c) In making a demonstration under this subsection, the owner or operator may use field tests, greenhouse studies, available data, or, in the case of existing units, operating data, and shall [~~must~~]:

1. Base the demonstration on conditions similar to those present in the treatment zone, including soil characteristics (for example, [~~e.g.,~~] pH, cation exchange capacity), specific wastes, application rates, application methods, and crops to be grown; and

2. Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures.

(d) If the owner or operator intends to conduct field tests or greenhouse studies in order to make the demonstration required under this subsection, he shall [~~must~~] obtain a permit for conducting such activities.

(2) The owner or operator shall [~~must~~] comply with the following conditions if cadmium is contained in wastes applied to the treatment zone:

(a)1. The pH of the waste and soil mixture shall [~~must~~] be six and five-tenths (6.5) or greater at the time of each waste application, except for waste containing cadmium at concentrations of two (2) mg/kg (dry weight) or less;

2. The annual application of cadmium from waste shall [~~must~~] not exceed five-tenths (0.5) kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food chain crops, the annual cadmium application rate shall [~~must~~] not exceed the rates in Table I.

Table I

Time Period	Annual Cd application rate (kilograms per hectare)
Present to June 30, 1984	2.0
July 1, 1984-December 31, 1986	1.25
Beginning Jan. 1, 1987	0.5

3. The cumulative application of cadmium from waste shall [~~must~~] not exceed five (5) kg/ha if the waste and soil mixture has a pH of less than six and five-tenths (6.5); and

4. If the waste and soil mixture has a pH of six and five-tenths (6.5) or greater or is maintained at a pH of six and five-tenths (6.5) or greater during crop growth, the cumulative application of cadmium from waste shall [~~must~~] not exceed: five (5) kg/ha if soil cation exchange capacity (CEC) is less than five (5) meq/100g; ten (10) kg/ha if soil CEC is 5-15 meq/100g; and twenty (20) kg/ha if soil CEC is greater than fifteen (15) meq/100g; or

(b) 1. Animal feed shall [~~must~~] be the only food chain crop produced;

2. The pH of the waste and soil mixture shall [~~must~~] be six and five-tenths (6.5) or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level

shall [~~must~~] be maintained whenever food chain crops are grown;

3. There shall [~~must~~] be an operating plan which demonstrates how the animal feed shall [~~will~~] be distributed to preclude ingestion by humans. The operating plan shall [~~must~~] describe the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses; and

4. Future property owners shall [~~must~~] be notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food chain crops shall [~~must~~] not be grown except in compliance with subsection (2)(b) of this section.

Section 6. Unsaturated Zone Monitoring. An owner or operator subject to this administrative regulation shall [~~must~~] establish an unsaturated zone monitoring program to discharge the following responsibilities:

(1) The owner or operator shall [~~must~~] monitor the soil and soil-pore liquid to determine whether hazardous constituents migrate out of the treatment zone.

(a) The cabinet will specify the hazardous constituents to be monitored in the facility permit. The hazardous constituents to be monitored are those specified under Section 2(2) of this administrative regulation.

(b) The cabinet may require monitoring for principal hazardous constituents (PHCs) in lieu of the constituents specified under Section 2(2) of this administrative regulation. PHCs are hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and immobilization. The cabinet shall [~~will~~] establish PHCs, based on waste analyses, treatment demonstrations, or other data, that demonstrate effective degradation, transformation, or immobilization of the PHCs shall [~~will~~] assure treatment at least equivalent levels for the other hazardous constituents in the wastes.

(2) The owner or operator shall [~~must~~] install an unsaturated zone monitoring system that includes soil monitoring using soil cores and soil-pore liquid monitoring using devices such as lysimeters. The unsaturated zone monitoring system shall [~~must~~] consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that:

(a) Represent the quality of background soil-pore liquid quality and the chemical make-up of soil that has not been affected by leakage from the treatment zone; and

(b) Indicate the quality of soil-pore liquid and the chemical make-up of the soil below the treatment zone.

(3) The owner or operator shall [~~must~~] establish a background value for each hazardous constituent to be monitored under subsection (1) of this section. The permit shall [~~will~~] specify the background values for each constituent or specify the procedures to be used to calculate the background values.

(a) Background soil values may be based on a one (1) time sampling at a background plot having characteristics similar to those of the treatment zone.

(b) Background soil-pore liquid values shall [~~must~~] be based on at least quarterly sampling for one (1) year at a background plot having characteristics similar to those of the treatment zone.

(c) The owner or operator shall [~~must~~] express all background values in a form necessary for the determination of statistically significant increases under subsection (6) of this section.

(d) In taking samples used in the determination of all background values, the owner or operator shall [~~must~~] use an unsaturated zone monitoring system that complies with subsection (2)(a) of this section.

(4) The owner or operator shall [~~must~~] conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. The cabinet shall [~~will~~] specify the frequency and timing of soil and soil-pore liquid monitoring in the facility permit after considering the frequency, timing, and rate of waste application, and the soil permeability. The owner or operator shall [~~must~~] express the results of soil and soil-pore liquid monitoring in a form necessary for the determination of statistically significant increases under subsection (6) of this section.

(5) The owner or operator shall [~~must~~] use consistent sampling and analysis procedures that are designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical make-up of the soil below the treatment zone. At a minimum, the owner or operator shall [~~must~~] implement procedures and techniques for:

(a) Sample collection;

(b) Sample preservation and shipment;

(c) Analytical procedures; and

(d) Chain of custody control.

(6) The owner or operator shall [~~must~~] determine whether there is a statistically significant change over background values for any hazardous constituent to be monitored under subsection (1) of this section below the treatment zone each time he conducts soil monitoring and soil-pore liquid monitoring under subsection (4) of this section.

(a) In determining whether a statistically significant increase has occurred, the owner or operator shall [~~must~~] compare the value of each constituent, as determined under subsection (4) of this section, to the background value for that constituent according to the statistical procedures specified in the facility permit under this subsection.

(b) The owner or operator shall [~~must~~] determine whether there has been a statistically significant increase below the treatment zone within a reasonable time period after completion of sampling. The cabinet shall [~~will~~] 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 soil and soil-pore liquid samples.

(c) The owner or operator shall [~~must~~] determine whether there is a statistically significant increase below the treatment zone using a statistical procedure that provides reasonable confidence that migration from the treatment zone will be identified. The cabinet shall [~~will~~] specify a statistical procedure in the facility permit that:

1. Is appropriate for the distribution of the data used to establish background values; and

2. Provides a reasonable balance between the probability of falsely identifying migration from the treatment zone and the probability of failing to identify real migration from the treatment zone.

(7) If the owner or operator determines, pursuant to subsection (6) of this section, that there is a statistically significant increase of hazardous constituents below the treatment zone, he shall [~~must~~]:

(a) Notify the cabinet of this finding in writing within seven (7) days. The notification shall [~~must~~] indicate what constituents have shown statistically significant increases.

(b) Within ninety (90) days, submit to the cabinet an application for a permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

(8) If the owner or operator determines, pursuant to subsection (6) of this section, that there is a statistically significant increase of hazardous constituents below the treatment zone, he may demonstrate that a source other than regulated units caused the increase or that the increase resulted from an 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 (7)(b) of this section, he is only relieved of the requirement to submit a permit modification application within the time specified in subsection (7)(b) of this section if the cabinet approves the demonstration made under this subsection showing that a source other than the 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 [~~must~~]:

(a) Notify the cabinet in writing within seven (7) days of determining a statistically significant increase below the treatment zone that he intends to make a determination under this subsection;

(b) Within ninety (90) days, submit a report to the cabinet demonstrating that a source other than the regulated units 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 unsaturated zone monitoring program at the facility; and

(d) Continue to monitor in accordance with the unsaturated zone monitoring program established under this section.

Section 7. Recordkeeping. The owner or operator shall [~~must~~] include hazardous waste application dates and rates in the operating record required under Section 4 of 401 KAR 34:050.

Section 8. Closure and Postclosure Care. (1) During the closure period the owner or operator shall [~~must~~]:

(a) Continue all operations (including pH control) necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone as required under Section 4(1) of this administrative regulation, except to the extent such measure are inconsistent with subsection (1)(h) of this section;

(b) Continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under Section 4(2) of this administrative regulation;

(c) Maintain the run-on control system required under Section 4(3) of this administrative regulation;

(d) Maintain the run-off management system required under Section 4(4) of this administrative regulation;

(e) Control wind dispersal of hazardous waste if required under Section 4(6) of this administrative regulation;

(f) Continue to comply with any prohibitions or conditions concerning growth of food chain crops under Section 5 of this administrative regulation;

(g) Continue unsaturated zone monitoring in compliance with Section 6 of this administrative regulation; and

(h) Establish a vegetative cover on the portion of the facility being closed at such time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover shall [~~must~~] be capable of maintaining growth without extensive maintenance.

(2) For the purpose of complying with Section 6 of 401 KAR 34:070, when closure is completed the owner or operator may submit to the cabinet certification by an independent qualified soil scientist, in lieu of an [~~independent registered professional~~] engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(3) During the postclosure care period the owner or operator shall [~~must~~]:

(a) Continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that such measures are consistent with other postclosure care activities.

(b) Maintain a vegetative cover over closed portions of the facility;

(c) Maintain the run-on control system required under Section 4(3) of this administrative regulation;

(d) Maintain the run-off management system required under Section 4(4) of this administrative regulation;

(e) Control wind dispersal of hazardous waste if required under Section 4(6) of this administrative regulation;

(f) Continue to comply with any prohibitions or conditions concerning growth of food chain crops under Section 5 of this administrative regulation;
and

(g) Continue unsaturated zone monitoring in compliance with Section 6 of this administrative regulation.

(4) The owner or operator shall [~~is~~] not be subject to administrative regulation under subsections (1)(h) and (3) of this section if the cabinet finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in subsection (4)(c) of this section. The owner or operator may submit such a demonstration to the cabinet for approval at any time during the closure of postclosure care periods. For the purposes of this subsection:

(a) The owner or operator shall [~~must~~] establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under Section 2(2) of this administrative regulation.

1. Background soil values may be based on a one (1) time sampling of a background plot having characteristics similar to those of the treatment zone.

2. The owner or operator shall [~~must~~] express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under subsection (4)(c) of this section.

(b) In taking samples used in the determination of background and treatment zone values, the owner or operator shall [~~must~~] take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by leakage from the treatment zone and the soil within the treatment zone, respectively.

(c) In determining whether a statistically significant increase has occurred, the owner or operator shall [~~must~~] compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator shall [~~must~~] use a statistical procedure that:

1. Is appropriate for the distribution of the data used to establish background values; and

2. Provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(5) The owner or operator shall [~~is~~] not be subject to the requirements of 401 KAR 34:060 if the cabinet finds that the owner or operator satisfies subsection (4) of this section and if unsaturated zone monitoring under Section 6 of this administrative regulation indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

Section 9. Special Requirements for Ignitable or Reactive Waste. The owner or operator shall [~~must~~] not apply ignitable or reactive waste to the treatment zone unless:

(1) The waste and the treatment zone meet all applicable requirements of 401 KAR Chapter 37; and

(2) The waste is immediately incorporated into the soil so that:

(a) [~~(1)~~] The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Sections 4 and 5 [~~2 or 4~~] of 401 KAR 31:030; and

(b) [~~(2)~~] Section 8(2) of 401 KAR 34:020 is complied with.

Section 10. Special Requirements for Incompatible Wastes. The owner or operator shall [~~must~~] not place incompatible wastes, or incompatible wastes and materials (see 401 KAR 34:030 for examples), in or on the same treatment zone.

Section 11. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027. (1) Hazardous wastes numbers F020, F021, F022, F023, F026, and F027 (chlorinated dibenzo-p-dioxins, dibenzofurans, and phenols) shall [~~must~~] not be placed in a land

treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the cabinet pursuant to the standards set out in this subsection, and in accordance with all other applicable requirements of this chapter. The factors to be considered are:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(b) The attenuative properties of underlying and surrounding soils or other materials;

(c) The mobilizing properties of other materials codisposed with these wastes; and

(d) The effectiveness of additional treatment, design or monitoring techniques.

(2) The cabinet may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This proposed amendment affects owners or operators that treat and dispose of hazardous waste in land treatment units except as provided in 401 KAR 34:010.

(a) Direct and indirect costs or savings to those affected:

1. First year: Most of the changes included in this administrative regulation are required by KRS Chapter 13A. However, there may be increased costs associated with complying with the provisions of 401 KAR Chapter 37. Any increase in cost caused by this proposed amendment are required by federal regulation even if this proposed amendment is not adopted.

2. Continuing costs or savings: Any costs associated with complying with the provisions of 401 KAR Chapter 37 will continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: 401 KAR Chapter 37 sets standards for land disposal of hazardous waste. Additional paperwork may be required if a facility seeks to obtain an exemption or petition the cabinet for a waiver.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There may be additional costs to the cabinet associated with enforcing the provisions of this proposed amendment.

2. Continuing costs or savings: Any costs associated with enforcing the provisions of this proposed amendment will continue.

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: There were no alternatives to adopting the federal text considered by the cabinet. The Federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal program for the state to maintain authorization to operate the federal program in lieu of the federal government.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified that may conflict, overlap or duplicate this proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This proposed amendment is taken from 40 CFR 264.270 to .283; however, there is no actual federal mandate to make these changes. The federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal program if the state is to maintain authorization to operate the hazardous waste program in lieu of the federal government. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This proposed amendment complies with KRS Chapter 13A and 224.46-520.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR Parts 264.270 to 264.283.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 34:230. Landfills.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.70, 224.99, 49 CFR 173, 178, 179 (1990)

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities. This regulation establishes~~] the minimum standards for hazardous waste landfills.

Section 1. Applicability. This administrative regulation applies to owners and operators of facilities that dispose of hazardous waste in landfills, except as Section 1 of 401 KAR 34:010 provides otherwise.

Section 2. Design and Operating Requirements. (1) Any landfill that is not covered by subsection (3) of this section or Section 10(1) of 401 KAR 35:230 shall have a liner system for all portions of the landfill (except for portions in existence prior to November 8, 1984). The liner system shall have:

(a) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at anytime during the active life (including the closure period) of the landfill. The liner shall be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner shall be:

1. Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

2. Placed upon a foundation or base capable of providing support to the liner and resistant to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift. At a minimum, synthetic liners shall be placed upon a one (1) foot thick soil liner of 1 x 10^{-7}cm/sec permeability; and

3. Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(b) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The cabinet shall specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed thirty (30) cm (approximately one (1) foot). The leachate collection and removal system shall be:

1. Constructed of materials that are:

a. Chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

b. Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

2. Designed and operated to function without clogging through the scheduled closure of the landfill.

(2) The owner or operator shall be exempted from the requirements of subsection (1) of this section if the cabinet finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, shall prevent the migration of any hazardous constituents (see Section 4 of 401 KAR 34:060) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the cabinet shall consider:

(a) The nature and quantity of the wastes;

(b) The proposed alternate design and operation;

(c) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

(d) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(3) The owner or operator of each new landfill on which construction commences after January 29, 1992, each lateral expansion of a landfill on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 shall install two (2) or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in 401 KAR 30:010 under "existing facility".

(a)1. The liner system shall include:

a. A top liner designed and constructed of materials (such as a geomembrane) to prevent the migration of hazardous constituents into the liner during the active life and postclosure care period; and

b. A composite bottom liner, consisting of at least two (2) components. The upper component shall be designed and constructed of materials (such as a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and postclosure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component occurs. The lower component shall be constructed of at least three (3) feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than $1X10^{-7}$ cm/sec.

2. The liners shall comply with subsections (1)(a)1, 2, and 3. of this section.

(b) The leachate collection and removal system immediately above the top liner shall be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and postclosure care period. The cabinet shall specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed thirty (30) cm (one (1) foot). The leachate collection and removal system shall comply with paragraph (c)3 and 4 of this subsection.

(c) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and postclosure care period. The requirements for a leak detection system in this administrative regulation are satisfied by installation of a system that is, at a minimum:

1. Constructed with a bottom slope of one (1) percent or more;

2. Constructed of granular drainage materials with a hydraulic conductivity of $1X10^{-2}$ cm/sec or more and a thickness of twelve (12) inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of $3X10^{-5}$ m^2/sec or more;

3. Constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the landfill.

4. Designed and operated to minimized clogging during the active

life and postclosure care period; and

5. Constructed with sumps and liquid removal methods (for example, pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(d) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(e) A leak detection system shall be located completely above the seasonal high water table.

(4) The cabinet may approve alternative design or operating practices to those specified in subsection (3) of this section if the owner or operator demonstrates to the cabinet that such design and operating practices, together with location characteristics:

(a) Shall prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (3) of this section; and

(b) Shall allow detection of leaks of hazardous constituents through the top line at least as effectively.

~~[(3) The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of an existing landfill unit, shall install two (2) or more liners and a leachate collection system above and between liners. The liners and leachate collection system shall protect human health and the environment. The requirements of this subsection shall apply with respect to all waste received after issuance of the permit for units for which the Part B of the permit application was received by the cabinet after November 8, 1984. The requirement for the installation of two (2) or more liners in this subsection may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into the liner during the period the facility remains in operation (including any postclosure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through the liner during the period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy the requirement if it is constructed of at least a three (3) foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.~~

~~(4) Subsection (3) of this section shall not apply if the owner or operator demonstrates to the cabinet, and the cabinet finds for such landfill, that alternative design and operating practices, together with location characteristics, shall prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection systems.]~~

(5) The double liner requirement set forth in subsection (3) of this section may be waived by the cabinet for any monofill, if:

(a) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and the wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristic in Section 5 of 401 KAR 31:030, with EPA hazardous waste numbers D004 through D017; and

(b)1.a. The monofill has at least one (1) liner for which there is no evidence that the liner is leaking;

b. The monofill is located more than one-fourth (1/4) mile from an underground source of drinking water (as that term is defined in Section 1 of 401 KAR 30:010); and

c. The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with permits under KRS 224.40-310 [~~855~~] and 224.46-520 [~~866~~]; or

2. The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there shall be no migration of any hazardous constituent into ground water or surface water at any future time.

(6) The owner or operator of any replacement landfill unit is exempt from subsection (3) of this section if:

(a) The existing unit was constructed in compliance with the design standards of 401 KAR 34:200, Section 2(1) and (3), or 401 KAR 34:230, Section 2(1) and (3); and

(b) There is no reason to believe that the liner is not functioning as designed.

(7) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a twenty-five (25) year storm.

(8) [~~(7)~~] The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a twenty-four (24) hour, twenty-five (25) year storm.

(9) [~~(8)~~] Collection and holding facilities ([~~e.g.,~~] tanks or basins for example) associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(10) [~~(9)~~] If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator shall cover or otherwise manage the landfill to control wind dispersal.

(11) [~~(10)~~] A new landfill shall not be constructed in a floodway, the 100-year flood plain or in an area of seasonal high water table in accordance with Section 9(2) of 401 KAR 34:020.

(12) [~~(11)~~] Existing landfills within the 100-year flood plain shall be protected from inundation by waters of the 100-year flood in accordance with Section 9(2) of 401 KAR 34:020.

(13) [~~(12)~~] The cabinet shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

Section 3. Action Leakage Rate. [~~Double-lined Landfills: Ground-water Protection Requirements.~~] (1) The cabinet shall approve an action leakage rate for landfill units subject to Section 2(3) or (4) of this administrative regulation. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding one (1) foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design (such as slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions. (The action leakage rate shall consider decreases in the flow capacity of the system over time resulting from such factors as siltation and clogging, rib layover and creep of synthetic components of the system, and overburden pressures.)

(2) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under Section 4(3) of this administrative regulation, to an average daily flow rate (gallons per acre per day) for each sump. Unless the cabinet approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and monthly during the postclosure care period when monthly monitoring is required under Section 4(3) of this administrative regulation. [~~The owner or operator of a double-lined landfill shall be subject to the requirements of 401 KAR 34:060.~~]

Section 4. Monitoring and Inspection. (1) During construction or installation, liners (except in the case of existing portions of landfills exempt from Section 2(1) of this administrative regulation) and cover systems ([~~e.g.,~~] membranes, sheets, or coatings for example) shall be inspected for uniformity, damage, and imperfections (for example, [~~e.g.,~~] holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(a) Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(b) Soil-based and admixed liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural nonuniformities that may cause an increase in the permeability of the liner or cover.

(2) While a landfill is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(a) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(b) Proper functioning of wind dispersal control systems, where present; and

(c) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(3)(a) The owner or operator of landfill units subject to Section 2(3) or (4) of this administrative regulation shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in Section 13 of this administrative regulation.

Section 5. Surveying and Recordkeeping. The owner or operator of a landfill shall maintain the following items in the operating record required under Section 4 of 401 KAR 34:050:

(1) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed benchmarks;

(2) The contents of each cell and the approximate location of each hazardous waste type within each cell; and

(3) Any other information specified by the cabinet in the permit.

Section 6. Closure and Postclosure Care. (1) At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:

(a) Provide long-term minimization of migration of liquids through the closed landfill;

(b) Function with minimum maintenance;

(c) Promote drainage and minimize erosion or abrasion of the cover;

(d) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(e) Have a permeability less than or equal to 1×10^{-7} centimeters per second.

(2) After final closure, the owner or operator shall comply with all postclosure requirements contained in Sections 8 to [~~through~~] 11 of 401 KAR 34:070, including maintenance and monitoring throughout the postclosure care period (specified in the permit under Section 8 of 401 KAR 34:070). The owner or operator shall:

(a) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(b) Continue to operate the leachate collection and removal system until leachate is no longer detected;

(c) Maintain and monitor the leak detection system in accordance with Sections 2(3)(c)4 and (4) and 4(3) of this administrative regulation, and comply with all other applicable leak detection system requirements;

(d) [~~(c)~~] Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of this administrative regulation;

(e) [~~(d)~~] Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(f) [~~(e)~~] Protect and maintain surveyed benchmarks used in complying with Section 5 of this administrative regulation.

(3) In the closure and postclosure plans, the owner or operator shall address the following objectives and indicate how they shall be achieved:

(a) Control of pollutant migration from the facility via ground water, surface water and air;

(b) Control of surface water infiltration, including prevention of pooling; and

(c) Prevention of erosion.

(4) The owner or operator shall consider at least the following factors in addressing the closure and postclosure care objectives of subsection (3) of this section.

(a) Type and amount of hazardous waste and hazardous waste constituents in the landfill;

(b) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(c) Site location, topography and surrounding land use, with respect to the potential effects of pollutant migration ([~~e.g.,~~] proximity to ground water, surface water, and drinking water sources for example);

(d) Climate, including amount, frequency and pH of precipitation;

(e) Characteristics of the cover including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope and type of vegetation on the cover; and

(f) Geological and soil profiles, and surface and subsurface hydrology of the site.

(5) In addition to the requirements of Section 8 of 401 KAR 34:070, during the postclosure care period, the owner or operator of a hazardous waste landfill shall:

(a) Maintain and monitor the gas collection and control system (if there is one present in the landfill) to control the vertical and horizontal escape of gases; and

(b) Restrict access to the landfill as appropriate for its postclosure use.

Section 7. Special Requirements for Ignitable or Reactive Waste. Except as provided in subsection (2) of this section, and in Section 11 of this administrative regulation, ignitable or reactive waste shall not be placed in a landfill, unless the waste and landfill meet all applicable requirements of 401 KAR Chapter 37 and: [~~is treated, rendered, or mixed before placement in a landfill so that:~~]

(1) The resulting waste, mixture, or dissolution of material [~~or mixture~~] no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; and

(2) Section 8 of 401 KAR 34:020 is complied with.

Section 8. Special Requirements for Incompatible Wastes. Incompatible wastes, or incompatible wastes and materials, (see 401 KAR 34:330 for examples) shall not be placed in the same landfill cell.

Section 9. Special Requirements for Bulk and Containerized Liquids. (1) Bulk or noncontainerized liquid waste or waste containing free liquids shall not be placed in a landfill.

(2) After May 8, 1985, liquid waste or waste containing free liquids whether or not absorbents have been added, shall not be placed in landfills.

(3) Containers holding free liquids shall not be placed in a landfill unless:

(a) All freestanding liquid:

1. Has been removed by decanting, or other methods; or

2. Has been otherwise eliminated; or

(b) The container is very small, such as an ampule; or

(c) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(d) The container is a lab pack as defined in Section 11 of this administrative regulation and is disposed of in accordance with Section 11 of this administrative regulation.

(4) To demonstrate the absence or presence of free liquids in

either a containerized or a bulk waste, 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) which is referenced in Section 3 of 401 KAR 30:010.

Section 10. Special Requirements for Containers. Unless they are very small, such as an ampule, containers shall be either:

(1) At least ninety (90) percent full when placed in the landfill; or

(2) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

Section 11. Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs). Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

(1) Hazardous waste shall be packaged in nonleaking inside containers. The inside containers shall be of a design and constructed of a material that shall not react dangerously with, be decomposed by, or be ignited by the contained waste. Inside containers shall be tightly and securely sealed. The inside containers shall be of the size and type specified in the U.S. Department of Transportation (DOT) hazardous materials regulations (49 CFR Parts 173, 178, and 179, 1990), if those regulations specify a particular inside container for the waste.

(2) The inside containers shall be overpacked in an open head DOT-specification metal shipping container (49 CFR Parts 178 and 179, 1990) of no more than 416-liter (approximately 110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of absorbent material to completely absorb all of the liquid contents of the inside containers. The metal outer container shall be full after packing with inside containers and absorbent material.

(3) The absorbent material used shall not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers in accordance with Section 8(2) of 401 KAR 34:020.

(4) Incompatible wastes, as defined in 401 KAR 30:010, shall not be placed in the same outside container.

(5) Reactive wastes, other than cyanide-bearing or sulfide-bearing waste as defined in Section 4 of 401 KAR 31:030 shall be treated or rendered nonreactive prior to packaging in accordance with subsections (1) to [~~through~~] (4) of this section. Cyanide-bearing and sulfide-bearing reactive waste may be packed in accordance with subsections (1) to [~~through~~] (4) of this section upon approval of the cabinet without first being treated or rendered nonreactive.

(6) Such disposal shall be in compliance with the requirements of 401 KAR Chapter 37. Persons who incinerate lab packs according to the requirements of 401 KAR 37:040 may use fiber drums in place of metal outer containers. The fiber drums shall meet the U.S. Department of Transportation specifications in 49 CFR 173.12 and be overpacked according to the requirements in subsection 2 of this section.

Section 12. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027. (1) Hazardous waste numbers F020, F021, F022, F023, F026, and F027 (chlorinated dioxins, chlorinated dibenzofurans, and chlorinated phenols) shall not be placed in a landfill unless the owner or operator operates the landfill in accordance with a management plan for these wastes that is approved by the cabinet pursuant to the standards [~~set out~~] in this section, and in accordance with all other applicable requirements of this chapter. The factors to be considered are:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(b) The attenuative properties of underlying and surrounding soils or other materials;

(c) The mobilizing properties of other materials codisposed with these wastes; and

(d) The effectiveness of additional treatment, design, or monitoring requirements.

(2) The cabinet may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

Section 13. Response Actions. (1) The owner or operator of landfill units subject to Section 2(3) or (4) of this administrative regulation shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in subsection (2) of this section.

(2) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(a) Notify the cabinet in writing of the exceedance within seven (7) days of the determination;

(b) Submit a preliminary written assessment to the cabinet within fourteen (14) days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(c) Determine to the extent practicable the location, size, and cause of any leak;

(d) Determine whether waste receipt shall cease or be curtailed, whether any waste shall be removed from the unit for inspection, repairs, or controls, and whether or not the unit shall be closed;

(e) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(f) Within thirty (30) days after the notification that the action leakage rate has been exceeded, submit to the cabinet the results of the analyses specified in paragraph (c), (d), and (e) of this subsection, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the cabinet reports summarizing the results of any remedial actions taken and actions planned.

(3) To make the leak and remediation determinations in subsections (2)(c), (d), and (e) of this section, the owner or operator shall:

(a)1. Assess the source of liquids and amounts of liquids by source;

2. Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

3. Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(b) Document why such assessments are not needed.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation.

Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This proposed amendment affects owners or operators with landfills.

(a) Direct and indirect costs or savings to those affected:

1. First year: This proposed amendment will increase costs associated with EPA requirements for costs associated with installing composite liners and leachate collection systems for surface impoundments at hazardous waste sites or facilities.

2. Continuing costs or savings: Costs for monitoring the leachate collection system will continue for the life of the unit.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The cabinet may approve alternate designs or operating practices.

(b) Reporting and paperwork requirements: The amount of liquids removed from each leak detection system pump is to be recorded weekly during the active life and closure period and monthly throughout the postclosure period. The cabinet is to be notified if an exceedance occurs.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There may be increased costs associated with monitoring compliance with the new provisions of this administrative regulation.

2. Continuing costs or savings: There may be continuing costs associated with reviewing requests for alternative designs or operating practices.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternatives to the text of the federal regulations considered by the cabinet. The design and operating standards to be added to this administrative regulation already in effect in Kentucky by federal regulation. The federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal program for states to operate the program in lieu of the federal government.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate this proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment is taken from 40 CFR 264 subpart N; however, there is no actual federal mandate to make these changes. The Federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal program for states to operate the program in lieu of the federal government. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This amendment complies with KRS Chapter 13A and 224.46-520.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR subpart N.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 34:240. Incinerators.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities except as 401 KAR Chapter 35 applies. This regulation establishes~~] minimum standards for incinerators.

Section 1. Applicability. (1) This administrative regulation applies to owners or operators of hazardous waste sites or facilities as defined in 401 KAR 30:010 that incinerate hazardous waste, except as Section 1 of 401 KAR 34:010 provides otherwise. [~~The following facility owners or operators are considered to incinerate hazardous waste:~~

~~(a) Owners or operators of hazardous waste incinerators (as defined in 401 KAR 30:010); and~~

~~(b) Owners or operators who burn hazardous wastes in boilers or in industrial furnaces in order to destroy them, or who burn hazardous waste in boilers or in industrial furnaces for any recycling purpose and elect to be regulated under this regulation.~~]

(2) After consideration of the waste analysis included with Part B of the permit application, the cabinet, in establishing the permit conditions, shall [~~may~~] exempt the applicant from all requirements of

this administrative regulation except Sections 2 and 8:

(a) If the cabinet finds that the waste to be burned is:

1. Listed as a hazardous waste in 401 KAR 31:040 solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

2. Listed as a hazardous waste in 401 KAR 31:040 solely because it is reactive (Hazard Code R) for characteristics other than those listed in Section 4(1)(d) and (e) of 401 KAR 31:030, and shall ~~[will]~~ not be burned when other hazardous wastes are present in the combustion zone; or

3. A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under 401 KAR 31:030; or

4. A hazardous waste solely because it possesses any of the reactivity characteristics described by Section 4(1)(a), (b), (c), (f), (g), and (h) of 401 KAR 31:030, and shall ~~[will]~~ not be burned when other hazardous wastes are present in the combustion zone; and

(b) If the waste analysis shows that the waste contains none of the hazardous constituents listed in 401 KAR 31:170, which would reasonably be expected to be in the waste.

(3) If the waste to be burned is one which is described by subparagraphs (2)(a) 1, 2, 3, or 4 of this section and contains insignificant concentrations of the hazardous constituents listed in 401 KAR 31:170, then the cabinet may, but is not required to in establishing the permit conditions, exempt the applicant from all requirements of this administrative regulation except Section 2 and 8 of this administrative regulation, after consideration of the waste analysis included with Part B of the permit application, unless the cabinet finds that the waste ~~[will]~~ poses a threat to human health and the environment when burned in an incinerator.

(4) The owner or operator of an incinerator may conduct trial burns, subject only to the requirements of Section 3 of 401 KAR 38:060.

Section 2. Waste Analysis. (1) As a portion of a trial burn plan required by Section 3 of 401 KAR 38:060 or with Part B of his permit application, the owner or operator shall ~~[must]~~ have included an analysis of his waste feed sufficient to provide all information required by 401 KAR 38:060 or 401 KAR 38:090. Owners or operators of new hazardous waste incinerators shall ~~[must]~~ provide the information required by Section 3(2) of 401 KAR 38:060 and 401 KAR 38:090. If an owner or operator demonstrates to the satisfaction of the cabinet that any information required in 401 KAR 38:060 or 401 KAR 38:090 cannot reasonably be attained, the cabinet may waive the requirement to submit the information in accordance with Section 2 of 401 KAR 30:020.

(2) Throughout normal operation the owner or operator shall ~~[must]~~ conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in his permit under Section 6(2) of this administrative regulation.

Section 3. Principal Organic Hazardous Constituents (POHCs). (1) Principal organic hazardous constituents (POHCs) in the waste feed shall ~~[must]~~ be treated to the extent required by the performance standards of Section 4 of this administrative regulation.

(2)(a) One (1) or more POHCs shall ~~[will]~~ be specified in the facility's permit from among those constituents listed in 401 KAR 31:170, for each waste feed to be burned. This specification shall ~~[will]~~ be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses and trial burns or alternative data submitted with Part B of the facility's permit application. Organic constituents which represent the greatest degree of difficulty of incineration shall ~~[will]~~ be those most likely to be designated as POHCs. Constituents are more likely to be designated as POHCs if they are present in large quantities or concentrations in the waste.

(b) Trial POHCs shall ~~[will]~~ be designated for performance of trial burns in accordance with the procedures specified in 401 KAR 38:060, for obtaining trial burn permits.

Section 4. Performance Standards. An incinerator burning hazardous waste shall ~~[must]~~ be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under Section 6 of this administrative regulation, it shall ~~[will]~~ meet the following performance standards:

(1)(a) Except as provided in paragraph (b) of this subsection, an incinerator burning hazardous waste shall ~~[must]~~ achieve a destruction and removal efficiency (DRE) of 99.99 percent for each principal organic hazardous constituent (POHC) designated (under Section 3 of this administrative regulation) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \frac{(W_{in} - W_{out}) \times 100\%}{W_{in}}$$

Where: W_{in}= Mass feed rate of one (1) principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator; and

W_{out}= Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(b) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 (chlorinated dioxins, chlorinated dibenzofurans, chlorinated phenols) shall ~~[must]~~ achieve a destruction and removal efficiency (DRE) of 99.9999 percent for each principal organic hazardous constituent (POHC) designated (under Section 3 of this administrative regulation) in its permit. This performance shall ~~[must]~~ be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in paragraph (a) of this subsection. In addition, the owner or operator of the incinerator shall ~~[must]~~ notify the secretary of his intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(2) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour (four (4) pounds per hour) of hydrogen chloride (HCl) shall ~~[must]~~ control HCl emissions such that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or one (1) percent of the HCl in the stack gas prior to entering any pollution control equipment.

(3) An incinerator burning hazardous waste shall ~~[must]~~ not emit particulate matter exceeding 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) when corrected for the amount of oxygen in the stack gas according to the formula:

$$P_c = P_m \times \frac{14}{21 - Y}$$

When P_c is the corrected concentration of particulate matter, P_m is the measured concentration of particulate matter, and Y is the measured concentration of oxygen in the stack gas, using the Orsat method for oxygen analysis of dry flue gas, presented in 401 KAR 59:020, "new incinerators." This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities the cabinet shall ~~[will]~~ select an appropriate correction procedure to be specified in the facility permit.

(4) For purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 6 of this administrative regulation) shall ~~[will]~~ be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a permit under Section 2 of 401 KAR 38:040.

Section 5. Hazardous Waste Incinerator Permits. (1) The owner or operator of a hazardous waste incinerator may burn only wastes specified in his permit and only under operating conditions specified for those wastes under Section 6 of this administrative regulation except:

(a) In approved trial burns under Section 3 of 401 KAR 38:060[~~, Section 3~~]; or

(b) Under exemptions created by Section 1 of this administrative regulation.

(2) Other hazardous wastes may be burned only after operating conditions have been specified in a new permit or a permit modification as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with Part B of a permit application under 401 KAR 38:090.

(3) The permit for a new hazardous waste incinerator shall [~~must~~] establish appropriate conditions for each of the applicable requirements of this administrative regulation, including but not limited to allowable waste feeds and operating conditions necessary to meet the requirements of Section 6 of this administrative regulation, sufficient to comply with the following standards:

(a) For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in paragraph (b) of this subsection, not to exceed a duration of 720 hours operating time for treatment of hazardous waste, the operating requirements shall [~~must~~] be those most likely to ensure compliance with the performance standards of Section 4 of this administrative regulation, based on the cabinet's engineering judgment. The cabinet may extend the duration of this period once for up to 720 additional hours when good cause for the extension is demonstrated by the applicant.

(b) For the duration of the trial burn, the operating requirements shall [~~must~~] be sufficient to demonstrate compliance with the performance standards of Section 4 of this administrative regulation and shall [~~must~~] be in accordance with the approved trial burn plan;

(c) For the period immediately following completion of the trial burn and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant and review of the trial burn results and modification of the facility permit by the cabinet, the operating requirements shall [~~must~~] be those most likely to ensure compliance with the performance standards of Section 4 of this administrative regulation based on the cabinet's engineering judgment.

(d) For the remaining duration of the permit, the operating requirements shall [~~must~~] be those demonstrated, in a trial burn or by alternative data specified in Section 2(3) of 401 KAR 38:190, as sufficient to ensure compliance with the performance standards of Section 4 of this administrative regulation.

Section 6. Operating Requirements. (1) An incinerator shall [~~must~~] be operated in accordance with operating requirements specified in the permit. These shall [~~will~~] be specified on a case-by-case basis as those demonstrated (in a trial burn or in alternative data as specified in Section 5(2) of this administrative regulation and included with Part B of a facility's permit application) to be sufficient to comply with the performance standards for Section 4 of this administrative regulation.

(2) Each set of operating requirements shall [~~will~~] specify the composition of the waste feed (including acceptable variations in the physical or chemical properties of the waste feed) which shall [~~will~~] not affect compliance with the performance standards of Section 4 of this administrative regulation to which the operating requirements apply. For each such waste feed, the permit shall [~~will~~] specify acceptable operating limits including the following conditions:

(a) Carbon monoxide (CO) level in the stack exhaust gas;

(b) Waste feed rate;

(c) Combustion temperature;

(d) An appropriate indicator of combustion gas velocity as specified by the cabinet;

(e) Allowable variations in incinerator system design or operating procedures; and

(f) Such other operating requirements as are necessary to ensure that the performance standards of Section 4 of this administrative regulation are met.

(3) During start-up and shutdown of an incinerator, hazardous waste (except ignitable waste exempted in accordance with Section 1 of this administrative regulation) shall [~~must~~] not be fed into the incinerator unless the incinerator is operating within the conditions of operation (examples are temperature and air feed rate[~~, etc.~~]) specified in the permit.

(4) Fugitive emissions from the combustion zone shall [~~must~~] be controlled by:

(a) Keeping the combustion zone totally sealed against fugitive emissions; or

(b) Maintaining a combustion zone pressure lower than atmospheric pressure; or

(c) An alternate means of control demonstrated (with Part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

(5) An incinerator shall [~~must~~] be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits established under subsection (1) of this section.

(6) An incinerator shall [~~must~~] cease operation when changes in waste feed, incinerator design, or operating conditions exceed limits designated in its permit.

Section 7. Monitoring and Inspections. (1) The owner or operator shall [~~must~~] conduct, as a minimum, the following monitoring while incinerating hazardous waste:

(a) Combustion temperature, waste feed rate, and the indicator of combustion gas velocity specified in the facility permit shall [~~must~~] be monitored on a continuous basis.

(b) CO shall [~~must~~] be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.

(c) Upon request by the cabinet, sampling and analysis of the waste and exhaust emissions shall [~~must~~] be conducted to verify that the operating requirements established in the permit achieve the performance standards of Section 4 of this administrative regulation.

(2) The incinerator and associated equipment (pumps, valves, conveyors, pipes for example [~~, etc.~~]) shall [~~must~~] be subjected to thorough visual inspection at least daily, for leaks, spills, and fugitive emissions, and signs of tampering.

(3) The emergency waste feed cutoff system and associated alarms shall [~~must~~] be tested at least weekly to verify operability, unless the applicant demonstrates to the cabinet that weekly inspections shall [~~will~~] unduly restrict or upset operations and that less frequent inspection will be adequate. At a minimum, operational testing shall [~~must~~] be conducted at least monthly.

(4) This monitoring and inspection data shall [~~must~~] be recorded and the records shall [~~must~~] be placed in the operating log required by Section 4 of 401 KAR 34:050.

Section 8. Closure. At closure the owner or operator shall [~~must~~] remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the incinerator site.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.
PUBLIC HEARING: A public hearing to receive comments on this

proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This proposed amendment removes hazardous waste boilers and industrial furnaces from the applicability section of this administrative regulation. The adoption of 401 KAR 36:020 and 36:025 supersede the requirements of this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to hazardous waste sites or facilities associated with this proposed amendment. All changes are associated with requirements of KRS Chapter 13A except for the amendment to Section 1 to delete boilers and industrial furnaces from this administrative regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Reporting or paperwork requirements will no longer be required for boilers and industrial furnaces as a result of changes to this proposed amendment. Requirements for boilers and industrial furnaces may be found at 401 KAR 36:020 and 36:025.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no costs or savings to the administrative body associated with this proposed amendment.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting or paperwork requirements will no longer be required for boilers and industrial furnaces as a result of changes to this proposed amendment. Requirements for boilers and industrial furnaces may be found at 401 KAR 36:020 and 36:025.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to adopting federal text were considered by the cabinet. The federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal program if the state is to maintain authorization.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate this proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment is taken from 40 CFR 264.340 to .351; however, there is no actual federal mandate to make these changes. The federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal program if the state is to maintain authorization to operate the program in lieu of the federal program. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This amendment complies with KRS Chapter 13A and 224.46-520.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR Parts 264.340 to 264.351.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 35:010. General provisions for facilities (IS).

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 relative to hazardous waste sites or facilities qualifying for interim status. [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the Natural Resources and Environmental Protection Cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes the general provisions for these facilities.~~]

Section 1. Purpose, Scope, and Applicability. (1) The purpose of this chapter is to establish minimum standards which define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is

subject to postclosure requirements, until postclosure responsibilities are fulfilled.

(2) The standards in this chapter apply to owners and operators of sites or facilities which treat, store, or dispose of hazardous waste who have fully complied with the requirements for interim status under Section 1 to [~~through~~] 6 of 401 KAR 38:070, until either final administrative disposition of their permit application is made under 401 KAR Chapter 38 and KRS 224.46-520, or until applicable 401 KAR Chapter 35 closure and postclosure responsibilities are fulfilled, and to those owners and operators of sites or facilities in existence on November 19, 1980, who failed to provide timely notification as required by Sections 1 to [~~through~~] 6 of 401 KAR 38:070, or failed to file Part A of the permit application as required by Sections 2 and 4 of 401 KAR 38:070. These standards apply to all treatment, storage, or disposal of hazardous waste at these sites or facilities, except as specifically provided otherwise in this chapter or 401 KAR Chapter 31.

(3)(a) The requirements of this chapter do not apply to a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act 16 USC Section 1431-1439;

(b) The requirements of this chapter do not apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste;

(c) Unless the state of Kentucky has obtained authorization from the U.S. Environmental Protection Agency under the federal hazardous waste management program, the applicable provisions of 401 KAR Chapters 30 to [~~through~~] 39 and the applicable provisions of the federal program shall both apply to the persons identified in subparagraphs 1 and 2 of this paragraph. Provided the state of Kentucky obtains authorization to operate the federal hazardous waste management program for activities identified in subparagraphs 1 and 2 of this paragraph, only the applicable provisions of 401 KAR Chapters 30 to [~~through~~] 39 shall apply to the persons identified in subparagraphs 1 and 2 of this paragraph.

1. A person who treats, stores or disposes of hazardous waste by means of underground injection (see paragraph (b) of this subsection).

2. A person who treats, stores or disposes of hazardous waste to which requirements and prohibitions from the Hazardous and Solid Waste Amendments of 1984 apply, provided that Kentucky has not adopted substantially equivalent requirements and prohibitions which regulate the hazardous waste management activity;

(d) The requirements of this chapter do not apply to the owner or operator of a site or facility which treats or stores hazardous waste, which treatment or storage meets the criteria in Section 6(1) of 401 KAR 31:010, except to the extent that Section 6(2) of 401 KAR 31:010 provides otherwise;

(e) The requirements of this chapter do not apply to the owner or operator of a facility managing recyclable materials described in Section 6(1)(b) and (c) of 401 KAR 31:010 (except to the extent that requirements of this chapter are referred to in 401 KAR Chapter 36);

(f) The requirements of this chapter do not apply to a farmer disposing of waste pesticides from his own use in compliance with Section 10 of 401 KAR 32:050;

(g) The requirements of this chapter do not apply to the owner or operator of a totally enclosed treatment facility, as defined in Section 1 of 401 KAR 30:010;

(h) The requirements of this chapter do not apply to the owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in Section 1 of 401 KAR 30:010;

(i)1. The requirements of this chapter do not apply (except as provided in subparagraph 2 of this paragraph) to a person engaged in treatment or containment activities during immediate response to any of the following situations:

a. A discharge of a hazardous waste;

b. An imminent and substantial threat of a discharge of a hazardous waste; or

c. A discharge of a material which, when discharged, becomes a hazardous waste;

2. An owner or operator of a facility otherwise regulated by this chapter shall comply with all applicable requirements of 401 KAR 35:030 and 401 KAR 35:040.

3. Any person who is covered by subparagraph 1 of this paragraph and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter and 401 KAR Chapter 38 for those activities.

(j) The requirements of this chapter do not apply to a transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section 1 of 401 KAR 32:030 at a transfer facility for a period of ten (10) days or less; or

(k) The requirements of this chapter do not apply to the addition of absorbent material to waste in a container (as defined in Section 1 of 401 KAR 30:010) or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and Section 8(b) of 401 KAR 35:020 and Sections 2 and 3 of 401 KAR 35:180 are complied with.

(4) The following hazardous wastes shall not be managed at facilities subject to regulation under this chapter: EPA hazardous waste numbers F020, F021, F022, F023, F026, or F027 (chlorinated dioxins, dibenzofurans, and phenols) unless:

(a) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(b) The waste is stored in tanks or containers;

(c) The waste is stored or treated in waste piles that meet the requirements of Section 1(3) of 401 KAR 34:210 as well as all other applicable requirements of 401 KAR 35:210;

(d) The waste is burned in incinerators that are certified pursuant to [~~the standards and procedures in~~] Section 6 of 401 KAR 35:240; or

(e) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to [~~the standards and procedures in~~] Section 7 of 401 KAR 35:250.

(5) The requirements of this chapter [~~regulation~~] apply to owners or operators of all hazardous waste sites or facilities which treat, store or dispose of hazardous waste referred to in 401 KAR Chapter 37, and the 401 KAR Chapter 37 standards are considered material conditions, or requirements of the 401 KAR Chapter 35 interim status standards.

[~~(6) This chapter contains dates based on previous incorporation of the provisions of this chapter. The provisions of this chapter were originally incorporated in Section 6 of 401 KAR 2:070 on January 7, 1981. On August 24, 1982 the provisions of this chapter were moved to 401 KAR 2:073.~~]

Section 2. Imminent Hazard Action. Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to KRS 224.10-410.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their

testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This amendment affects all owners or operators of hazardous waste sites or facilities qualifying for interim status. There are less than ten interim status facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no anticipated costs or savings relative to this proposed amendment. The changes included in this proposed amendment are required by KRS Chapter 13A.

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 additional reporting or paperwork requirements associated with this proposed amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings relative to this proposed amendment. The changes included in this proposed amendment are required by KRS Chapter 13A.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no anticipated costs or savings relative to this proposed amendment. The changes included in this proposed amendment are required by KRS Chapter 13A.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to adopting the federal text were considered by the cabinet. The federal Resource Conservation and Recovery Act requires that states be authorized to operate the hazardous waste program in lieu of the federal government only if the state program is consistent with and no less stringent than the federal program. The cabinet evaluated the proposed amendment and determined that it is consistent with statutory intent.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This proposed amendment was taken from 40 CFR 265.1 and 265.4; however, there is no actual federal mandate to makes these changes. The federal Resource Conservation and Recovery Act requires that states be authorized to operate the hazardous waste program in lieu of the federal government and no less stringent than the federal program. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This proposed amendment complies with KRS Chapter 13A and 224.46-510.

3. Minimum or uniform standards contained in the federal mandate: This proposed amendment conforms to the language in 40 CFR Parts 265.1 and 265.4.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 35:020. General facilities standards (IS).

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 relative to general standards for hazardous waste sites or facilities qualifying for interim status. ~~[requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes the general standards for facilities.]~~

Section 1. Applicability. The requirements in this administrative regulation apply to owners and operators of all hazardous waste sites or facilities, except as Section 1 of 401 KAR 35:010 provides otherwise.

Section 2. Identification Number. Every facility owner or operator shall apply to the cabinet for an EPA identification number in accordance with the cabinet's notification procedures.

Section 3. Required Notices. (1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the cabinet in writing at least four (4) weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(2) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the postclosure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of this chapter and 401 KAR Chapter 38 (see also Section 3 of 401 KAR 38:020).

Section 4. General Waste Analysis. (1)(a) Before an owner or

operator treats, stores, or disposes of any hazardous wastes, or nonhazardous wastes, if applicable, under Section 4(4) of 401 KAR 35:070, he shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis shall contain all the information which shall be known to treat, store, or dispose of the waste in accordance with the requirements of this chapter and 401 KAR Chapter 37.

(b) The analysis may include data developed under 401 KAR Chapter 31 and existing published or documented data on the hazardous waste or on waste generated from similar processes.

(c) The analysis shall be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis shall be repeated:

1. When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste or nonhazardous wastes, if applicable, under Section 4(4) of 401 KAR 35:070 has changed; and

2. For off-site facilities, when the results of the inspection required in paragraph (d) of this subsection indicate that the hazardous waste received at the site or facility does not match the waste designated on the accompanying manifest or shipping paper.

(d) The owner or operator of an off-site facility shall inspect and if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(2) The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which he shall carry out to comply with subsection (1) of this section. He shall keep this plan at the site or facility. At a minimum, the plan shall specify:

(a) The parameters for which each hazardous waste, or nonhazardous wastes, if applicable, under Section 4(4) of 401 KAR 35:070 shall be analyzed and the rationale for the selection of these parameters (that is, [i.e.,] how analysis for these parameters shall provide sufficient information on the waste's properties to comply with subsection (1) of this section);

(b) The test methods which shall be used to test for these parameters;

(c) The sampling method which shall be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

1. One (1) of the sampling methods described in 401 KAR 31:100; or

2. An equivalent sampling method.

(d) The frequency with which the initial analysis of the waste shall be reviewed or repeated to ensure that the analysis is accurate and up to date;

(e) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply; and

(f) Where applicable, the methods which shall be used to meet the additional waste analysis requirements for specific waste management methods as specified in Section 4 of 401 KAR 35:190, Section 4 of 401 KAR 35:200, Section 3 of 401 KAR 35:210 and Section 3 of 401 KAR 35:220, Section 7 of 401 KAR 35:230, Section 2 of 401 KAR 35:240, Section 3 of 401 KAR 35:250, Section 3 of 401 KAR 35:260, [and] Section 7 of 401 KAR 37:010, Section 5(4) of 401 KAR 35:275, and Section 14(4) of 401 KAR 35:280.

(g) For surface impoundments exempted from land disposal restrictions under Section 4(1) of 401 KAR 37:010, the procedures and schedules for:

1. The sampling of impoundment contents;

2. The analysis of test data; and

3. The annual removal of residues which are not delisted under Section 2 of 401 KAR 31:060 or which exhibit a characteristic of hazardous waste and either:

a. Do not meet applicable treatment standards of 401 KAR 37:040; or

b. Where no treatment standards have been established:

(i) The residues are prohibited from land disposal under Section 4 of 401 KAR 37:030[, Section 4] or KRS 224.46-520; or

(ii) The residues are prohibited from land disposal under Section 5(6) of 401 KAR 37:030[, Section 5(6)].

(3) For off-site facilities, the waste analysis plan required in subsection (2) of this section shall also specify the procedures which shall be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan shall describe:

(a) The procedures which shall be used to determine the identity of each movement of waste managed at the facility; and

(b) The sampling method which shall be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

Section 5. Security. (1) The owner or operator shall prevent the unknowing entry and minimize the possibility for the unauthorized entry of persons or livestock onto the active portion of his facility, unless:

(a) Physical contact with the waste, structures, or equipment within the active portion of the facility shall not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(b) Disturbance of the waste or equipment by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility shall not cause a violation of the requirements of this chapter.

(2) Unless exempt under subsection (1)(a) and (b) of this section, a site or facility shall have:

(a) A twenty-four (24) hour surveillance system (that is, [e.g.,] television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(b)1. An artificial or natural barrier (that is, [e.g.,] a fence in good repair or a fence combined with a cliff) which completely surrounds the active portion of the facility; and

2. A means to control entry, at all times, through the gates or other entrances to the active portion of the facility ([e.g.,] an attendant, television monitors, locked entrance, or controlled roadway access to the facility for example).

(3) Unless exempt under subsection (1)(a) and (b) of this section, a sign with the legend, "Danger - Unauthorized Personnel Keep Out," shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend shall be written in English and in any other language predominant in the area surrounding the facility, and shall be legible from a distance of at least twenty-five (25) feet. Existing signs with a legend other than "Danger - Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous (see Section 7(2) of 401 KAR 35:070 for security requirements at disposal facilities during the postclosure care period).

Section 6. General Inspection Requirements. (1)(a) The owner or operator shall inspect his facility for malfunctions and deterioration, operator errors and discharges which may be causing (or may lead to):

1. Release of hazardous waste constituents to the environment; or

2. A threat to human health.

(b) The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(2)(a) The owner or operator shall develop and follow a written schedule for inspecting all monitoring equipment, safety and emer-

gency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(b) The owner or operator shall keep this schedule at the facility.

(c) The schedule shall identify the types of problems (such as [~~e.g.,~~] malfunctions or deterioration) which are to be checked during the inspection (for example, an [~~e.g.,~~] inoperative sump pump, leaking fitting, eroding dike[~~, etc.~~]).

(d) The frequency of inspection may vary for the terms [~~items~~] on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, [~~or~~] malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the items and frequencies called for in Section 5 of 401 KAR 35:180, Sections 4 and 6 of 401 KAR 35:190[~~, Section 6 of 401 KAR 35:190~~], Section 5 of 401 KAR 35:200, Section 11 of 401 KAR 35:210, Section 5 of 401 KAR 35:220, Section 12 of 401 KAR 35:230, Section 4 of 401 KAR 35:240, Section 4 of 401 KAR 35:250, [~~and~~] Section 4 of 401 KAR 35:260, Section 14 of 401 KAR 35:275, and Sections 3, 4, and 9 of 401 KAR 35:280, where applicable.

(3) The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(4) The owner or operator shall record inspections in an inspection log or summary. He shall keep these records for at least three (3) years from the date of inspection. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

Section 7. Personnel Training. (1)(a) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this chapter. The owner or operator shall ensure that this program includes all the elements described in the document required under subsection (4)(c) of this section.

(b) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(c) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

1. Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;
2. Key parameters for automatic waste feed cutoff systems;
3. Communications or alarm systems;
4. Response to fires or explosions;
5. Response to groundwater contamination incidents; and
6. Shutdown of operations.

(2) Facility personnel shall successfully complete the program required in subsection (1) of this section within six (6) months after January 7, 1981, or six (6) months after the date of their employment or assignment to a site or facility, or to a new position at a facility, whichever is later. Employees hired after January 7, 1981, shall not work in unsupervised positions until they have completed the training requirements of subsection (1) of this section.

(3) Facility personnel shall take part in an annual review of the initial training required in subsection (1) of this section.

(4) The owner or operator shall maintain the following documents and records at the facility:

(a) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each position;

(b) A written job description for each position listed under paragraph (a) of this subsection. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(c) A written description of the type and amount of both introductory and continuing training that shall be given to each person filling a position listed under paragraph (a) of this subsection; and

(d) Records that document that the training or job experience required under subsections (1), (2) and (3) of this section has been given to, and completed by, facility personnel.

(5) Training records on current personnel shall be kept until closure of the site or facility. Training records on former employees shall be kept for at least three (3) years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

Section 8. General Requirements for Ignitable, Reactive, or Incompatible Wastes. (1) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition ([~~e.g.,~~] from heat-producing chemical reactions for example), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flames to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(2) Where specifically required by other sections of this administrative regulation, the treatment, storage or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, shall be conducted so that it does not:

(a) Generate extreme heat or pressure, fire or explosion, or violent reaction;

(b) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(c) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion;

(d) Damage the structural integrity of the device or facility containing the waste; or

(e) Through other like means threaten human health or the environment.

Section 9. Location Standards. The placement of any hazardous waste in a salt dome, salt bed formation, underground mine or cave is prohibited.

Section 10. Construction Quality Assurance Program. (1)(a) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile, and landfill units that are required to comply with Section 10(1) of 401 KAR 35:200, Section 8 of 401 KAR 35:210, and Section 10(3) of 401 KAR 35:230. The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is an engineer registered in Kentucky.

(b) The CQA program shall address the following physical components, where applicable:

1. Foundations;
2. Dikes;
3. Low-permeability soil liners;
4. Geomembranes (flexible membrane liners);
5. Leachate collection and removal systems and leak detection systems; and
6. Final cover systems.

(2) Before construction begins on a unit subject to the CQA program under subsection (1) of this section, the owner or operator shall develop a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(a) Identification of applicable units, and a description of how they will be constructed.

(b) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(c) A description of inspection and sampling activities for all unit components identified in subsection (1)(b) of this section, including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover:

1. Sampling size and locations;
2. Frequency of testing;
3. Data evaluation procedures;
4. Acceptance and rejection criteria for construction materials;
5. Plans for implementing corrective measures; and
6. Data or other information to be recorded and retained in the operating record under Section 4 of 401 KAR 35:050.

(3)(a) The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

1. Structural stability and integrity of all components of the unit identified in subsection (1)(b) of this section;

2. Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

3. Conformity of all materials used with design and other material specifications under Section 10 of 401 KAR 34:200, Section 2 of 401 KAR 34:210, and Section 10 of 401 KAR 34:230.

(b) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of Section 2(3)(a) of 401 KAR 34:200, Section 2(3)(a) of 401 KAR 34:210, and Section 2(3) of 401 KAR 34:230 in the field. Compliance with the hydraulic conductivity requirements shall be verified by using in-situ testing on the constructed test fill. The test fill requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of Section 2(3)(a) of 401 KAR 34:200, Section 2(3)(a) of 401 KAR 34:210, and Section 2(3) of 401 KAR 34:230 in the field.

(4) The owner or operator of units subject to this section shall submit to the cabinet by certified mail or hand delivery, at least thirty (30) days prior to receiving waste, a certification signed by the CQA officer that the CQA plan has been successfully carried out and that the unit meets the requirements of Section 2(3)(a) of 401 KAR 34:200, Section 2(3)(a) of 401 KAR 34:210, and Section 2(3) of 401 KAR 34:230. The owner or operator may receive waste in the unit after thirty (30) days from the cabinet receipt of the CQA certification unless the cabinet determines in writing that the construction is not acceptable, or extends the review period for a maximum of thirty (30) more days, or seeks additional information from the owner or operator during this period. Documentation supporting the CQA officer's certification must be furnished to the cabinet upon request.

PHILLIP J. SHEPHERD, Secretary

E. DOUGLAS STEPHAN, Commissioner

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: The proposed amendment will effect owners and operators of hazardous waste treatment, storage, and disposal facilities qualifying for interim status. There are less than ten interim status facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There may be increased costs as owners or operators of interim status facilities will be required to prepare and implement construction quality assurance program at facilities that include surface impoundments, waste piles, or landfills. However, there are no new anticipated costs or savings associated with this proposed amendment because it adopts existing federal language that facilities are subject to even if this administrative regulation is not amended. Continued authorization of the state program is contingent upon the adoption of this proposed amendment.

2. Continuing costs or savings: These costs will continue.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The amendment requires the preparation of a written Construction Quality Assurance Program and submittal of a certification to the cabinet that construction of a new land disposal unit occurred successfully.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will experience increased costs due to the requirement to monitor construction quality assurance programs.

2. Continuing costs or savings: First year costs may continue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet will review the certification documents upon receipt and maintain them as documents subject to the Freedom of Information Act.

(3) Assessment of anticipated effect on state and local revenues:

None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered by the cabinet. The Federal Resource Conservation and Recovery Act mandates that states be authorized to operate the federal program in lieu of the federal government only if the state program is consistent with and no less stringent than the federal program. The cabinet evaluated alternatives which would have required submittal and review of additional information and determined that the proposed amendment as adopted from the federal regulations will adequately protect public health and the environment.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate the proposed amendment.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This proposed amendment is taken from 40 CFR 265.10 to 265.19; however, there is no actual federal mandate to make these changes. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This amendment complies with KRS 224.46-520 which requires the cabinet to promulgate administrative regulations applicable to hazardous waste storage, treatment and disposal facilities.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR Parts 264.10 to 265.19.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5 Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 35:050. Manifest system, recordkeeping and reporting (IS).

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish the [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes~~] manifest system, recordkeeping and reporting requirements for facilities.

Section 1. Applicability. The requirements in this administrative regulation apply to owners and operators of both on-site and off-site facilities, except as Section 1 of 401 KAR 35:010 provides otherwise. Sections 2, 3 and 7 of this administrative regulation do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

Section 2. Use of Manifest System. (1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator (or his agent) shall:

(a) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(b) Note any significant discrepancies in the manifest (as defined in Section 3(1) of this administrative regulation) on each copy of the manifest;

(c) Immediately give the transporter at least one (1) copy of the signed manifest;

(d) Within thirty (30) days after the delivery, send a copy of the manifest to the generator; and

(e) Retain at the facility a copy of each manifest for at least three (3) years from the date of delivery.

(2) If a facility receives from a rail or water (bulk shipment) transporter hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification and signatures), the owner or operator (or his agent) shall:

(a) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(b) Note any significant discrepancies (as defined in Section 3(1) of this administrative regulation) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

(c) Immediately give the rail or water (bulk shipment) transporter at least one (1) copy of the manifest or shipping paper (if the manifest has not been received);

(d) Within thirty (30) days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within thirty (30) days after delivery, the owner or operator (or his agent) shall send a copy of the shipping paper signed and dated to the generator; and

(e) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three (3) years from the date of delivery.

(3) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of the facility shall comply with the requirements of 401 KAR Chapter 32.

Section 3. Manifest Discrepancies. (1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives.

(a) Significant discrepancies in quantity are:

1. For bulk waste, variations greater than ten (10) percent in weight; and

2. For batch waste, any variation in piece count, such as a discrepancy of one (1) drum in a truckload.

(b) Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(2) Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter ([~~e.g.,~~] with telephone conversations). If the

discrepancy is not resolved within fifteen (15) days after receiving the waste, the owner or operator shall immediately submit to the cabinet a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

Section 4. Operating Record. (1) The owner or operator shall keep a written operating record at his facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(a) A description and the quantity of each hazardous waste received, and the method and date of its treatment, storage or disposal at the facility as required by 401 KAR 35:290;

(b) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste shall be recorded on a map or diagram of each cell or disposal area. For all facilities, this information shall include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest (see Section 9 of 401 KAR 35:070, Section 6 of 401 KAR 35:220 and Section 3 of 401 KAR 35:230 for related requirements);

(c) Records and results of waste analyses and trial tests performed as specified in Section 4 of 401 KAR 35:020, Section 4 of 401 KAR 35:190, Section 4 of 401 KAR 35:200, Section 3 of 401 KAR 35:210, Section 3 of 401 KAR 35:220, Section 7 of 401 KAR 35:230, Section 2 of 401 KAR 35:240, Section 3 of 401 KAR 35:250, Section 3 of 401 KAR 35:260, and Sections 4(1) and 7 of 401 KAR 37:010, Section 5 of 401 KAR 35:275, and Section 14 of 401 KAR 35:280;

(d) Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 7(10) of 401 KAR 35:040;

(e) Records and results of inspections as required by Section 6(4) of 401 KAR 35:020 (except these data need be kept only three (3) years);

(f) Monitoring, testing, or analytical data and corrective action where [~~when~~] required by [~~Section 1 of~~] 401 KAR 35:060; Section 10 of 401 KAR 35:020; [~~, Section 5 of 401 KAR 35:060 (requires that monitoring data at disposal facilities shall be kept throughout the postclosure period);~~] Sections 2, 4, and 6 of 401 KAR 35:190; Sections 2, 3, and 5 of 401 KAR 35:200; Sections 9, 10, and 11 of 401 KAR 35:210; Sections 4, 5 and 7(4)(a) of 401 KAR 35:220; Sections 2, 11, and 12 of 401 KAR 35:230; Section 4 of 401 KAR 35:240; and Section 4 of 401 KAR 35:250; Sections 5(3) to (6) and 6 of 401 KAR 35:275; and Sections 14(4) to (9) and 15 of 401 KAR 35:280;

(g) All closure cost estimates under Section 1 of 401 KAR 35:090 and for disposal facilities, all postclosure cost estimates under Section 1 of 401 KAR 35:100;

(h) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Section 5 of 401 KAR 37:010, monitoring data required pursuant to a petition under 401 KAR 37:010, Section 6, or a certification under 401 KAR 37:010, Section 8, and the applicable notice required of a generator under 401 KAR 37:010, Section 7(1);

(i) For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010;

(j) For an on-site treatment facility, the information contained in the notice and the certification and demonstration if applicable, required of the generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010;

(k) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or owner or operator of a treatment facility under Section 7 or 8 of 401 KAR 37:010;

(l) For an on-site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the generator or the owner or operator under Section 7 or 8 [~~(1)(b)~~] of 401 KAR 37:010;

(m) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or the owner or operator under 401 KAR 37:010, Section 7 or 8; and

(n) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the generator or the owner or operator of a treatment facility under Section 7 or 8 of 401 KAR 37:010[~~, Section 7 or 8~~].

Section 5. Availability, Retention, and Disposition of Records. (1) All records, including plans, required under this chapter shall be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee or representative of the cabinet who is duly designated by the secretary.

(2) The retention period for all records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the site or facility or as requested by the cabinet.

(3) A copy of records of waste disposal locations and quantities under Section 4(2)(b) of this administrative regulation shall be submitted to the cabinet and local land authority upon closure of the facility (see Section 9 of 401 KAR 35:070).

Section 6. Annual Report. The owner or operator shall prepare and submit a single copy of an annual report to the cabinet by March 1 of each year. The report form and instructions designated by the cabinet shall be used for this report. The annual report shall cover site or facility activities during the previous calendar year and shall include at a minimum the following information:

(1) The EPA identification number, name and address of the facility;

(2) The calendar year covered by the report;

(3) For off-site facilities, the name and EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the name, number and address of the foreign generator;

(4) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;

(5) The method of treatment, storage or disposal for each hazardous waste;

(6) Monitoring data under Sections 5(1)(b)2 and 3, and 5(2)(b) of 401 KAR 35:060, where required;

(7) Information on transportation, the use of the manifest, and other information from the manifest, as applicable;

(8) For generators who treat, store, or dispose of hazardous waste on site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(9) For generators who treat, store, or dispose of hazardous waste on site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

(10) The certification signed by the owner or operator of the facility or his authorized representative.

Section 7. Unmanifested Waste Report. If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in Section 1(5)(b) of 401 KAR 33:020, and if the waste is not excluded from the manifest requirement by Section 5 of 401 KAR 31:010, then the owner or operator shall prepare and submit a single copy of a report to the cabinet

within fifteen (15) days after receiving the waste. The unmanifested waste report shall be submitted on a form approved by the cabinet. Such report shall be designated "Unmanifested Waste Report" and shall include the following information:

(1) The EPA identification number, name and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

Section 8. Additional Reports. In addition to submitting the annual report and unmanifested waste reports described in Sections 6 and 7 of this administrative regulation, the owner or operator shall] also report to the cabinet:

(1) Releases, fires and explosions as specified in Section 7(10) of 401 KAR 35:040;

(2) Groundwater contamination and monitoring data as specified in Sections 4 and 5 of 401 KAR 35:060; [~~and~~]

(3) Facility closure as specified in Section 6 of 401 KAR 35:070; and

(4) As otherwise required by 401 KAR 35:280 and 401 KAR 35:290.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner

APPROVED BY AGENCY: October 13, 1993

FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This amendment adds references to Chapter 35 to the requirements for manifest systems, recordkeeping and reporting. There are less than ten interim status facilities operating in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: Those affected entities shall experience no direct or indirect costs or savings. This amendment merely makes reference to other administrative regulations dealing with manifests, records, and reports.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Owners or operators subject to 401 KAR 35:275 and 280 will have to maintain records under this administrative regulation, and will have to submit an annual report and other reports in the event of releases, fires, explosions, groundwater contamination.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Owners or operators subject to 401 KAR 35:275 and 280 will have to maintain records under this administrative regulation, and will have to submit an annual report and other reports in the event of releases, fires, explosions, groundwater contamination.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this administrative regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternatives to the text of the federal regulations considered by the cabinet. The design and operating standards to be added to this administrative regulation already in effect in Kentucky by federal regulation. The federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal program for states to operate the program in lieu of the federal government.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate this proposed amendment.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There is no additional information.

Tiering: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment is taken from 40 CFR 265.70 to .77; however, there is no actual federal mandate to make these changes. The Federal Resource Conservation and Recovery Act requires that states be

consistent with and no less stringent than the federal program for states to operate the program in lieu of the federal government. The mandate to regulate the management of hazardous waste in Kentucky is contained in KRS Chapter 224.

2. State compliance standards: This amendment complies with KRS Chapter 13A and 224.46-520.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR Parts 265.70 to 265.77.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 35:060. Groundwater monitoring (IS).

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.99
STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520
NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes the~~] standards for groundwater monitoring.

Section 1. Applicability. (1) [~~By November 19, 1981,~~] The owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste shall [~~must~~] implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as Section 1 of 401 KAR 35:010 and subsection (3) of this section provide otherwise.

(2) Except as subsections (3) and (4) of this section provide otherwise, the owner or operator shall [~~must~~] install, operate and maintain a groundwater monitoring system which meets the requirements of Section 2 of this administrative regulation, and shall [~~must~~] comply with Sections 3 to [~~through~~] 5 of this administrative regulation. This groundwater monitoring program shall [~~must~~] be carried out during the active life of the facility and, for disposal facilities during the postclosure care period as well.

(3) All or part of the groundwater monitoring requirements of this chapter may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells (domestic, industrial or agricultural) or to surface water. This demonstration shall [~~must~~] be in writing and shall [~~must~~] be kept at the facility. This demonstration shall [~~must~~] be certified by a qualified geologist or geotechnical engineer and shall [~~must~~] establish the following:

(a) The potential for migration of hazardous waste or hazardous waste constituents from the facility to the uppermost aquifer by an evaluation of:

1. A water balance of precipitation, evapotranspiration, run-off and infiltration; and

2. Unsaturated zone characteristics (that is, [~~i.e.,~~] geologic materials, physical properties and depth to groundwater); and

(b) The potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water by an evaluation of:

1. Saturated zone characteristics (that is, [~~i.e.,~~] geologic materials, physical properties and rate of groundwater flow), and

2. The proximity of the site or facility to water supply wells or surface water.

(4) If an owner or operator assumes (or knows) that groundwater monitoring of indicator parameters in accordance with Sections 2 and 3 of this administrative regulation would show statistically significant increases (or decreases in the case of pH) when evaluated under Section 4(2) of this administrative regulation, he may install, operate and maintain an alternate groundwater monitoring system (other than the one described in Sections 2 and 3 of this administrative regulation). If the owner or operator decides to use an alternate groundwater monitoring system he shall [~~must~~]:

(a) [~~By November 19, 1981,~~] Submit to the cabinet a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of Section 4(4)(c) of this administrative regulation for an alternate groundwater monitoring system;

(b) [~~Not later than November 19, 1981,~~] Initiate the determinations specified in Section 4(4)(d) of this administrative regulation;

(c) Prepare and submit a written report in accordance with Section 4(4)(e) of this administrative regulation;

(d) Continue to make the determinations specified in Section 4(4)(d) of this administrative regulation on a quarterly basis until final closure of the facility; and

(e) Comply with the recordkeeping and reporting requirements in Section 5(2) of this administrative regulation.

(5)(a) The groundwater monitoring requirements of this administrative regulation may be waived with respect to any surface impoundment that:

1. Is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristic under Section 3 of 401 KAR 31:030 or are listed as hazardous wastes in 401 KAR 31:040 only for this reason; and

2. Contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment.

(b) The demonstration shall [~~must~~] establish, based upon the consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes shall [~~will~~] be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration shall [~~must~~] be in writing and shall [~~must~~] be certified by a qualified professional.

Section 2. Groundwater Monitoring System. (1) A groundwater monitoring system shall [~~must~~] be capable of yielding groundwater samples for analysis and shall [~~must~~] consist of:

(a) Monitoring wells (at least one (1) well) installed hydraulically upgradient (that is, [~~i.e.,~~] in the direction of increasing static head) from the limit of the waste management area. Their number, locations and depths shall [~~must~~] be sufficient to yield groundwater samples that are:

1. Representative of background groundwater quality in the uppermost aquifer near the facility; and

2. Not affected by the facility; and

(b) Monitoring wells (at least three (3) wells) installed hydraulically downgradient (that is, [~~i.e.,~~] in the direction of decreasing static head) at the limit of the waste management area. Their number, locations and depths shall [~~must~~] ensure that they immediately detect any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(c) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location shall

meet the criteria outlined below. The demonstration shall be in writing and kept at the facility. The demonstration shall be certified by a qualified groundwater scientist and establish that:

1. An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and

2. The selected alternate downgradient location is as close to the limit of the waste management area as practical; and

3. The location ensures detection that, given the alternate location, is as early as possible of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

4. Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this paragraph.

(2) Separate monitoring systems for each waste management component of a site or facility are not required provided that provisions for sampling upgradient and downgradient water quality will detect any discharge from the waste management area.

(a) In the case of a facility consisting of only one (1) surface impoundment, landfill or land treatment area, the waste management area is described by the waste boundary (perimeter).

(b) In the case of a facility consisting of more than one (1) surface impoundment, landfill or land treatment area, the waste management area is described by an imaginary boundary line which circumscribes the several waste management components.

(3) All monitoring wells shall [~~must~~] be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall [~~must~~] be screened or perforated, and packed with gravel or sand where necessary, to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space (that is, [~~i.e.,~~] the space between the bore hole and well casing) above the sampling depth shall [~~must~~] be sealed with a suitable material ([~~e.g.,~~] cement grout or bentonite slurry for example) to prevent contamination of samples and the groundwater.

Section 3. Sampling and Analysis. (1) The owner or operator shall [~~must~~] obtain and analyze samples from the installed groundwater monitoring system. The owner or operator shall [~~must~~] develop and follow a groundwater sampling and analysis plan. He shall [~~must~~] keep this plan at the facility. The plan shall [~~must~~] include procedures and techniques for:

(a) Sample collection;

(b) Sample preservation and shipment;

(c) Analytical procedures; and

(d) Chain of custody control.

(2) The owner or operator shall [~~must~~] determine the concentration or value of the following parameters in groundwater samples in accordance with subsections (3) and (4) of this section:

(a) Parameters characterizing the suitability of the groundwater as a drinking water supply, as specified in 401 KAR 35:310.

(b) Parameters establishing groundwater quality:

1. Chloride;
2. Iron;
3. Manganese;
4. Phenols;
5. Sodium; and
6. Sulfate.

(c) Parameters used as indicators of groundwater contamination:

1. pH;
2. Specific conductance;
3. Total organic carbon;
4. Total organic halogen.

(3)(a) For all monitoring wells, the owner or operator shall [~~must~~] establish initial background concentrations or values of all parameters specified in subsection (2) of this section. He shall [~~must~~] do this quarterly for one (1) year.

(b) For each of the indicator parameters specified in subsection (2)(c) of this section, at least four (4) replicate measurements shall [~~must~~] be obtained for each sample and the initial background arithmetic mean and variance shall [~~must~~] be determined by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from upgradient wells during the first year.

(4) After the first year, all monitoring wells shall [~~must~~] be sampled and the samples analyzed with the following frequencies:

(a) Samples collected to establish groundwater quality shall [~~must~~] be obtained and analyzed for the parameters specified in subsection (2)(b) of this section at least annually.

(b) Samples collected to indicate groundwater contamination shall [~~must~~] be obtained and analyzed for the parameters specified in subsection (2)(c) of this section at least semiannually.

(5) Elevation of the groundwater surface at each monitoring well shall [~~must~~] be determined each time a sample is obtained.

Section 4. Preparation, Evaluation and Response. (1) By August 1, 1982 the owner or operator shall [~~must~~] prepare an outline of a groundwater quality assessment program. The outline shall [~~must~~] describe a more comprehensive groundwater monitoring program (than that described in Sections 2 and 3 of this administrative regulation) capable of determining:

(a) Whether hazardous waste or hazardous waste constituents have entered the groundwater;

(b) The rate and extent of migration of hazardous waste or hazardous waste constituents in the groundwater; and

(c) The concentrations of hazardous waste or hazardous waste constituents in the groundwater.

(2) For each indicator parameter specified in Section 3(2)(c) of this administrative regulation, the owner or operator shall [~~must~~] calculate the arithmetic mean and variance, based on at least four (4) replicate measurements on each sample, for each well monitored in accordance with Section 3(4)(b) of this administrative regulation, and compare these results with its initial background arithmetic mean. The comparison shall [~~must~~] consider individually each of the wells in the monitoring system, and shall [~~must~~] use the student's t-test at the 0.01 level of significance (see 401 KAR 35:320) to determine statistically significant increases (and decreases, in the case of pH) over initial background.

(3)(a) If the comparisons for the upgradient wells made under subsection (2) of this section show a significant increase (or pH decrease), the owner or operator shall [~~must~~] submit this information in accordance with Section 5(1)(b)2 of this administrative regulation.

(b) If the comparisons for downgradient wells made under subsection (2) of this section show a significant increase (or pH decrease), the owner or operator shall [~~must~~] then immediately obtain additional groundwater samples from those downgradient wells where a significant difference was detected, split the samples in two (2), and obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

(4)(a) If the analyses performed under subsection (3)(b) of this section confirm the significant increase (or pH decrease), the owner or operator shall [~~must~~] provide written notice to the cabinet within seven (7) days of the date of such confirmation that the site or facility may be affecting groundwater quality.

(b) Within fifteen (15) days after the notification under subsection (4)(a) of this section, the owner or operator shall [~~must~~] develop and submit to the cabinet [~~director~~] a specific plan, based on the outline required under subsection (1) of this section and certified by a qualified geologist or geotechnical engineer, for a groundwater quality assessment program at the facility.

(c) The plan to be submitted under Section 1(4)(a) of this administrative regulation or subsection (4)(b) of this section shall [~~must~~] specify:

1. The number, location and depth of wells;
2. Sampling and analytical methods for those hazardous wastes

or hazardous waste constituents in the facility;

3. Evaluation procedures, including any use of previously gathered groundwater quality information; and

4. A schedule of implementation.

(d) The owner or operator shall [~~must~~] implement the groundwater quality assessment plan which satisfies the requirements of subsection (4)(c) of this section and, at a minimum, determine:

1. The rate and extent of migration of the hazardous wastes or hazardous waste constituents in the groundwater; and

2. The concentrations of the hazardous wastes or hazardous waste constituents in the groundwater.

(e) The owner or operator shall [~~must~~] make his first determination under subsection (4)(d) of this section as soon as technically feasible and, within fifteen (15) days after the determination, submit to the cabinet [~~director~~] a written report containing an assessment of the groundwater quality.

(f) If the owner or operator determines, based on the results of the first determination under subsection (4)(d) of this section, that no hazardous wastes or hazardous waste constituents from the facility have entered the groundwater, then he may reinstate the indicator evaluation program described in Section 3 of this administrative regulation and subsection (2) of this section. If the owner or operator reinstates the indicator evaluation program, he shall [~~must~~] so notify the cabinet [~~director~~] in the report submitted under subsection (4)(e) of this section.

(g) If the owner or operator determines, based on the first determination under subsection (4)(d) of this section, that hazardous wastes or hazardous waste constituents for the facility have entered the groundwater, then he:

1. Shall [~~must~~] continue to make the determinations required under subsection (4)(d) of this section on a quarterly basis until final closure of the facility, if the groundwater quality assessment plan was implemented prior to final closure of the facility; or

2. May cease to make the determinations required under subsection (4)(d) of this section if the groundwater quality assessment plan was implemented during the postclosure care period.

(5) Notwithstanding any other provision of this administrative regulation, any groundwater quality assessment to satisfy the requirements of subsection (4)(d) of this section which is initiated prior to final closure of the facility shall [~~must~~] be completed and reported in accordance with subsection (4)(e) of this section.

(6) Unless the groundwater is monitored to satisfy the requirements of subsection (4)(d) of this section, at least annually the owner or operator shall [~~must~~] evaluate the data on groundwater surface elevations obtained under Section 3(5) of this administrative regulation to determine whether the requirements under Section 2(1) of this administrative regulation for locating the monitoring wells continues to be satisfied. If the evaluation shows that Section 2(1) of this administrative regulation is no longer satisfied, the owner or operator shall [~~must~~] immediately modify the number, location or depth of the monitoring wells to bring the groundwater monitoring system into compliance with this requirement.

Section 5. Recordkeeping and Reporting. (1) Unless the groundwater is monitored to satisfy the requirements of Section 4(4)(d) of this administrative regulation, the owner or operator shall [~~must~~]:

(a) Keep records of the analyses required in Section 3(3) and (4) of this administrative regulation, the associated groundwater surface elevations required in Section 3(5) of this administrative regulation and the evaluations required in Section 4(2) of this administrative regulation throughout the active life of the site or facility and, for disposal facilities, throughout the postclosure care period as well; and

(b) Report the following groundwater monitoring information to the cabinet [~~director~~]:

1. During the first year when initial background concentrations are being established for the facility, concentrations or values of the parameters listed in Section 3(2)(a) of this administrative regulation for each groundwater monitoring well within fifteen (15) days after completing each quarterly analysis. The owner or operator shall [~~must~~] separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in 401 KAR 35:310.

2. Annually, concentrations or values of the parameters listed in Section 3(2)(c) of this administrative regulation for each groundwater monitoring well, along with the required evaluations for these parameters under Section 4(2) of this administrative regulation. The owner or operator shall [~~must~~] separately identify any significant differences from initial background found in the upgradient wells, in accordance with Section 4(3)(a) of this administrative regulation. During the active life of the facility, this information shall [~~must~~] be submitted as part of the annual report required under Section 6 of 401 KAR 35:050.

3. As a part of the annual report required under Section 6 of 401 KAR 35:050, results of the evaluation of groundwater surface elevations under Section 4(6) of this administrative regulation and a description of the response to that evaluation, where applicable.

(2) If the groundwater is monitored to satisfy the requirements of Section 4(4)(d) of this administrative regulation, the owner or operator shall [~~must~~]:

(a) Keep records of the analyses and evaluations specified in the plan which satisfies the requirements of Section 4(4)(c) of this administrative regulation throughout the active life of the facility and, for disposal facilities, throughout the postclosure care period as well; and

(b) Annually, until final closure of the facility, submit to the cabinet [~~director~~] a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous wastes or hazardous waste constituents in the groundwater during the report period. This report shall [~~must~~] be submitted as part of the annual report required under Section 6 of 401 KAR 35:050.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-

6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1)Type and number of entities affected: This amendment affects all owners or operators of hazardous waste sites or facilities qualifying for interim status. There are less than ten interim status facilities operating in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The majority of the changes to this proposed amendment are required by KRS Chapter 13A and will not result in any costs or savings to sites or facilities subject to this administrative regulation. Section 2(1)(c) incorporates the ability to select alternative hydraulically downgradient monitoring well locations which may result in a savings.

2. Continuing costs or savings: Savings may continue if alternative choices are available and appropriate.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: This amendment creates no new reporting or paperwork requirements. Even though documentation is required to demonstrate that an alternate location meets the administrative regulation add requirements, paperwork is to be maintained at the facility.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The majority of the changes to this proposed amendment are required by KRS Chapter 13A. The amendments to Section 2(1)(c) add an alternative previously not available to facilities but does not involve any costs or savings to the cabinet.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment creates no new reporting or paperwork requirement. This amendment creates no new reporting or paperwork requirements. Even though documentation is required to demonstrate that an alternate location meets the administrative regulation add requirements, paperwork is to be maintained at the facility.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to adopting the federal text were considered by the cabinet. The federal Resource Conservation and Recovery Act mandates that states be authorized to operate the program in lieu of the federal government only if the state's program is consistent with and no less stringent than the federal program. The cabinet evaluated the proposed amendment and determined that it is consistent with statutory intent.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This proposed amendment was taken from 40 CFR 265.90 to 265.94; however, there is no actual federal mandate to make these changes. The federal Resource Conservation and Recovery Act authorizes states to operate the program in lieu of the federal government if the state program is consistent with and no less stringent than the federal requirements. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This proposed amendment complies with KRS Chapter 13A and 224.46-520 relative to groundwater monitoring requirements for facilities qualifying for interim status.

3. Minimum or uniform standards contained in the federal mandate: This proposed amendment conforms to the language in 40 CFR 265.90 to 265.94.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 2(1)(c) allows owners and operators an alternative that was not previously available, but this change to the proposed amendment is no more stringent than the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 35:070. Closure and postclosure (IS).

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and 224.46-530 and to establish [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes~~] the standards for closure and postclosure of facilities qualifying for interim status.

Section 1. Applicability. Except as Section 1 of 401 KAR 35:010 provides otherwise:

(1) Sections 2 to [~~through~~] 6 of this administrative regulation (which concern closure) apply to the owners and operators of all hazardous waste sites or facilities; and

(2) Sections 7 to [~~through~~] 11 of this administrative regulation (which concern postclosure care) apply to the owners and operators of:

(a) All hazardous waste disposal facilities; and

(b) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to the facilities in Section 6 of 401 KAR 35:200[~~, Section 6,~~] or Section 7 of 401 KAR 35:210[~~, Section 7~~]; and

(c) Tank systems that are required under Section 8 of 401 KAR 35:190 to meet requirements for landfills.

Section 2. Closure Performance Standards. The owner or operator shall close the facility in a manner that:

(1) Minimizes the need for further maintenance;

(2) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, postclosure escape of

hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere;
(3) Complies with the closure requirements of this chapter including, but not limited to, the requirements of Section 8 of 401 KAR 35:190, Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, Section 4 of 401 KAR 35:230, Section 5 of 401 KAR 35:240, Section 5 of 401 KAR 35:250, and Section 5 of 401 KAR 35:260;
(4) Includes any corrective action necessary to bringing the facility into compliance with the applicable facility standards contained in Section 12 of 401 KAR 34:060; and
(5) Complies with KRS 224.46-520(8), requiring sites and facilities to be maintained in operational condition.

Section 3. Closure Plan; Amendment of Plan. (1) Written plan. By May 19, 1981 or by six (6) months after the effective date of the administrative regulation that first subjects a facility to the provisions of this section, the owner or operator of a hazardous waste site or facility shall have a written closure plan. Until final closure is completed and certified in accordance with Section 6 of this administrative regulation, a copy of the most current plan shall be furnished to the cabinet upon request, including request by mail. In addition, for facilities without approved plans, the most current plan shall also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the cabinet who is duly designated by the secretary.

(2) Content of plan. The plan shall identify steps necessary to perform partial and final closure of the facility at any point during its active life. The closure plan shall include, at least:

(a) A description of how each hazardous waste management unit at the facility will be closed in accordance with Section 2 of this administrative regulation;

(b) A description of how final closure of the facility will be conducted in accordance with Section 2 of this administrative regulation. The description shall identify the maximum extent of the operation which will be unclosed during the active life of the facility;

(c) An estimate of the maximum inventory of hazardous wastes ever on site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, recycling, treating, storing, or disposing of all hazardous wastes, identification of and the type(s) of the off-site hazardous waste management unit(s) to be used, if applicable;

(d) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard in Section 2 of this administrative regulation;

(e) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards in Section 2 of this administrative regulation, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control;

(f) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule shall include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover shall be included); and

(g) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under Sections 2 to [~~through~~] 11 of 401 KAR 35:090 or Sections 2 to [~~through~~] 11 of 401 KAR 35:100 and whose remaining operating life is less than twenty (20) years, and for facilities without approved closure plans.

(3) Amendment of plan. The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan shall submit a written request to the cabinet to authorize a change to the approved closure plan. The written request shall include a copy of the amended closure plan for approval by the cabinet.

(a) The owner or operator shall amend the closure plan whenever:

1. Changes in operating plans or facility design affect the closure plan; or

2. There is a change in the expected year of closure, if applicable; or

3. In conducting partial or final closure activities, unexpected events require a modification of the closure plan.

(b) The owner or operator shall amend the closure plan at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall amend the closure plan no later than thirty (30) days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with Section 4 of 401 KAR 35:230.

(c) An owner or operator with an approved closure plan shall submit the modified plan to the cabinet at least sixty (60) days prior to the proposed change in facility design or operation, or no more than sixty (60) days after an unexpected event has occurred which has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator shall submit the modified plan no more than thirty (30) days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with Section 4 of 401 KAR 35:230. If the amendment to the plan is a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modification to the plan shall be approved according to the procedures in subsection (4)(d) of this section.

(d) The cabinet may request modifications to the plan under the conditions described in paragraph (a) of this subsection. An owner or operator with an approved closure plan shall submit the modified plan within sixty (60) days of the request from the cabinet or within thirty (30) days if the unexpected event occurs during partial or final closure. If the amendment is considered a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modification to the plan shall be approved in accordance with the procedures in subsection (4)(d) of this section.

(4) Notification of partial closure and final closure.

(a) The owner or operator shall submit the closure plan to the cabinet at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit, whichever is earlier. The owner or operator shall submit the closure plan to the cabinet at least forty-five (45) days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace. The owner or operator shall submit the closure plan to the cabinet at least forty-five (45) days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units. An owner or operator with approved closure plans shall notify the cabinet in writing at least sixty (60) days

prior to the date on which he expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit. An owner or operator with an approved closure plan shall notify the cabinet in writing at least forty-five (45) days prior to the date he expects to begin partial or final closure of a boiler or industrial furnace. An owner or operator with an approved closure plan[s] shall notify the cabinet in writing at least forty-five (45) days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

(b) The date when the owner or operator "expects to begin closure" shall be either:

1. Within thirty (30) days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one (1) year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the cabinet that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and that he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the cabinet may approve an extension to this one (1) year limit; or [:]

2. For units meeting the requirements of Section 4(4) of this administrative regulation, no later than thirty (30) days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional nonhazardous wastes, no later than one (1) year after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the cabinet that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the cabinet may approve an extension to this one (1) year limit.

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

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

2. Issuance of a judicial decree or final order under KRS 224.10-100, 224.10-420, and 224.46-530 or 224.99-010 to cease receiving hazardous wastes or close.

(d) The cabinet shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than thirty (30) days from the date of the notice. The cabinet shall also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one (1) or more issues concerning a closure plan. The cabinet shall give public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two (2) notices may be combined.) The cabinet shall approve, modify, or disapprove the plan within ninety (90) days of its receipt. If the cabinet does not approve the plan it shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall modify the plan or submit a new plan for approval within thirty (30) days after receiving such written statement. The cabinet shall approve or modify this plan in writing within sixty (60) days. If the cabinet modifies the plan, this modified plan becomes the approved closure plan. The cabinet shall assure that the approved plan is consistent with Sections 2 to [through] 6 of this administrative regulation and the applicable requirements of [Section 1 of] 401 KAR 35:060 [et seq.], Section 5 of 401 KAR 35:190, Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, Section 4 of 401 KAR 35:230, Section 5 of 401 KAR 35:240, Section 5 of 401 KAR 35:250, and Section 5 of 401 KAR 35:260. A copy of the modified plan with a detailed statement of reasons for the modifications shall be mailed to the owner or operator.

(5) Removal of wastes and decontamination or dismantling of equipment. Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure. [If the owner or operator planned to begin closure before November 19, 1981, he was required to submit the closure plan by May 19, 1981.]

Section 4. Closure; Time Allowed for Closure. (1) Within ninety (90) days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in subsections (4) and (5) of this section, at a hazardous waste management unit or facility, or within ninety (90) days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the unit or facility, or dispose of on site, all hazardous wastes in accordance with the approved closure plan. The cabinet may approve a longer period if the owner or operator demonstrates that:

(a)1. The activities required to comply with this subsection will, of necessity, take longer than ninety (90) days to complete; or

2.a. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or has the capacity to receive nonhazardous wastes if the facility owner or operator complies with subsections (4) and (5) of this section; and

b. There is a reasonable likelihood that the owner or operator [he] or another person will recommence operation of the hazardous waste management unit or the facility within one (1) year; and

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) The owner or operator [He] has taken and shall continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(2) The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements of subsections (4) and (5) of this section, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The cabinet may approve an extension to the closure period if the owner or operator demonstrates that:

(a)1. The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

2.a. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes or has the capacity to receive nonhazardous wastes if the facility owner or operator complies with subsections (4) and (5) of this section; and

b. There is reasonable likelihood that the owner or operator [he] or another person will recommence operation of the hazardous waste management unit or the facility within one (1) year; and

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) The owner or operator [He] has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

(3) The demonstrations referred to in subsections (1)(a) and (2)(a) of this section shall be made as follows:

(a) The demonstrations in subsection (1)(a) of this section shall be made at least thirty (30) days prior to the expiration of the ninety (90) day period in subsection (1) of this section; and

(b) The demonstrations in subsection (2)(a) of this section shall be made at least thirty (30) days prior to the expiration of the 180 day period in subsection (2) of this section unless the owner or operator is otherwise subject to subsection (4) of this section.

(4) The cabinet may allow an owner or operator to receive nonhazardous wastes if a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(a) The owner or operator submits an amended part B application, or a part B application, if not previously required, and demonstrates that:

1. The unit has the existing design capacity as indicated on the part A application to receive nonhazardous wastes; and

2. There is a reasonable likelihood that the owner or operator or another person will receive nonhazardous wastes in the unit within one (1) year after the final receipt of hazardous wastes; and

3. The nonhazardous wastes will not be incompatible with any remaining wastes in the unit or with the facility design and operating requirements of the unit or facility under this administrative regulation; and

4. Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

5. The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements; and

(b) The part B application includes an amended waste analysis plan, groundwater monitoring and response program, human exposure assessment required under Section 9 of 401 KAR 38:070, and closure and postclosure plans, and updated cost estimates and demonstrations of financial assurance for closure and postclosure care as necessary and appropriate to reflect any changes due to the presence of hazardous constituents in the nonhazardous wastes, and changes in closure activities, including the expected year of closure if applicable under Section 3(2)(g) of this administrative regulation, as a result of the receipt of nonhazardous wastes following the final receipt of hazardous wastes; and

(c) The part B application is amended, as necessary and appropriate, to account for the receipt of nonhazardous wastes following receipt of the final volume of hazardous wastes; and

(d) The part B application and the demonstrations referred to in subparagraphs 1 and 2 of this paragraph are submitted to the cabinet no later than 180 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes, or no later than ninety (90) days after the effective date of the administrative regulation, whichever is later.

(5) In addition to the requirements in subsection (4) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 401 KAR 35:200 shall:

(a) Submit with the part B application:

1. A contingent corrective measures plan; and

2. A plan for removing hazardous wastes in compliance with paragraph (b) of this subsection; and

(b) Remove all hazardous wastes from the unit by removing all hazardous liquids and removing all hazardous waste sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(c) Removal of hazardous wastes shall be completed no later than ninety (90) days after the final receipt of hazardous wastes. The cabinet may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(d) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous constituents over background levels is detected in accordance with the requirements of 401 KAR 35:060, the owner or operator of the unit:

1. Shall comply with the reporting requirements of KRS 224.01-400, if applicable;

2. Shall implement corrective measures in accordance with the approved contingent corrective measures plan required by paragraph (a) of this subsection no later than one (1) year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

3. May receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

4. May be required by the cabinet to implement corrective measures in less than one (1) year or to cease receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(e) During the period of corrective action, the owner or operator shall provide semiannual reports to the cabinet that describe the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of nonhazardous wastes on the effectiveness of the corrective action.

(f) The cabinet may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one (1) year as required in paragraph (d) of this subsection, or fails to make substantial progress in implementing corrective action and achieving the facility's background levels.

(g) If the owner or operator fails to implement corrective measures as required in paragraph (d) of this subsection, or if the cabinet determines that substantial progress has not been made pursuant to paragraph (f) of this subsection he shall:

1. Notify the owner or operator in writing that the owner or operator shall begin closure in accordance with the deadline in subsections (1) and (2) of this section and provide a detailed statement of reasons for this determination; and

2. Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than twenty (20) days after the date of the notice.

3. If the cabinet receives no written comments, the decision shall become final five (5) days after the close of the comment period. The cabinet shall notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, shall be submitted within fifteen (15) days of the final notice and that closure shall begin in accordance with the deadlines in subsections (1) and (2) of this section.

4. If the cabinet receives written comments on the decision, a final decision shall be made within thirty (30) days after the end of the comment period. The cabinet shall provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the cabinet determines that substantial progress has not been made, closure shall be initiated in accordance with the deadlines in subsections (1) and (2) of this section.

5. The final determinations made by the cabinet under paragraph (g)3 and 4 of this subsection are not subject to administrative appeal.

Section 5. Disposal or Decontamination of Equipment, Structures and Soils. During the partial and final closure periods, all contaminated equipment, structures and soil shall be properly disposed of or decontaminated unless specified otherwise in Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, or Section 4 of 401 KAR 35:230. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall handle that hazardous waste in accordance with all applicable requirements of 401 KAR Chapter 32.

Section 6. Certification of Closure. Within sixty (60) days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within sixty (60) days of completion of final closure, the owner or operator shall submit to the cabinet, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification shall be signed by the owner or operator and by an independent professional engineer who is registered in the Commonwealth of Kentucky. Documentation supporting the [~~independent registered professional~~] engineer's certification shall be furnished to the cabinet upon request until it releases the owner or operator from the financial assurance requirements for closure under Section 11 of 401 KAR 35:090.

Section 7. Survey Plat. No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the cabinet a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat shall be prepared and certified by a professional land surveyor registered in the Commonwealth of Kentucky. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use shall contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with this administrative regulation.

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

1. Monitoring and reporting in accordance with the requirements of 401 KAR 35:060, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220 and 401 KAR 35:230; and

2. Maintenance and monitoring of waste containment systems in accordance with the requirements of 401 KAR 35:060, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230.

(b) Any time preceding closure of a hazardous waste management unit subject to postclosure care requirements or final closure, or any time during the postclosure period for a particular hazardous waste disposal unit, the cabinet may in accordance with the permit modification procedures in 401 KAR Chapter 38: [~~extend the postclosure care period applicable to the hazardous waste management unit or facility, if it finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).~~]

1. Shorten the postclosure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the cabinet finds that the reduced period is sufficient to protect human health and the environment (leachate or groundwater monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the hazardous waste management unit or facility is secure) determined in accordance with risk assessment procedures pursuant to KRS 224.01-400; or

2. Extend the postclosure care period applicable to the hazardous waste management unit or facility, if the cabinet finds that the extended period is necessary to protect human health and the environment (leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment) determined in accordance with risk assessment procedures pursuant to KRS 224.01-400.

(2) The cabinet may require, at partial and final closure, continuation of any of the security requirements of Section 5 of 401 KAR 35:020 during part or all of the postclosure period when:

(a) Hazardous wastes may remain exposed after completion of partial or final closure; or

(b) Access by the public or domestic livestock may pose a hazard to human health.

(3) Postclosure use of property on or in which hazardous wastes remain after partial or final closure shall not be allowed to disturb the integrity of the final cover, liner(s), or any other component of the containment system, or the function of the facility's monitoring systems, unless the cabinet finds that the disturbance:

(a) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(b) Is necessary to reduce a threat to human health or the environment.

(4) All postclosure care activities shall be in accordance with the provisions of the approved postclosure plan as specified in Section 9 [~~8~~] of this administrative regulation. (Note: KRS 224.46-520(4) establishes that the postclosure care period is a minimum of thirty (30) years after closure of the disposal facility.)

Section 9. Postclosure Plan; Amendment of Plan. (1) Written plan. By May 19, 1981, the owner or operator of a hazardous waste disposal unit shall have a written postclosure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure shall prepare a postclosure plan and submit it to the cabinet within ninety (90) days of the date that the owner or operator or the cabinet determines that the hazardous waste management unit or facility shall be closed as a landfill, subject to the requirements of Sections 8 to [~~through~~] 11 of this administrative regulation.

(2) Until final closure of the facility, a copy of the most current postclosure plan shall be furnished to the cabinet upon request, including request by mail. In addition, for facilities without approved postclosure plans, the most current postclosure plan shall also be provided during site inspections, on the day of inspection, to any designated officer, employee or representative of the cabinet who is duly designated by the cabinet. After final closure has been certified, the person or office specified in subsection (3)(c) of this section shall keep the approved postclosure plan during the postclosure period.

(3) For each hazardous waste management unit subject to the requirements of this section, the postclosure plan shall identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(a) A description of the planned monitoring activities and the frequencies at which they will be performed to comply with 401 KAR 35:060, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230 during the postclosure care period; and

(b) A description of the planned maintenance activities, and the frequencies at which they will be performed, to ensure:

1. The integrity of the cap and final cover or other containment systems in accordance with the requirements of 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230; and

2. The function of the monitoring equipment in accordance with the requirements of 401 KAR 35:060, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230; and

(c) The name, address and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the postclosure care period.

(4) Amendment of plan. The owner or operator may amend the postclosure plan any time during the active life of the facility or during the postclosure care period. An owner or operator with an approved postclosure plan shall submit a written request to the cabinet to authorize a change to the approved plan. The written request shall

include a copy of the amended postclosure plan for approval by the cabinet.

(a) The owner or operator shall amend the postclosure plan whenever:

1. Changes in operating plans or facility design affect the postclosure plan; or

2. Events which occur during the active life of the facility, including partial and final closures, affect the postclosure plan.

(b) The owner or operator shall amend the postclosure plan at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the postclosure plan.

(c) An owner or operator with an approved postclosure plan shall submit the modified plan to the cabinet at least sixty (60) days prior to the proposed change in facility design or operation, or no more than sixty (60) days after an unexpected event has occurred which has affected the postclosure plan. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with Section 6(2) of 401 KAR 35:200 or Section 7(1) of 401 KAR 35:210 is required to close as a landfill in accordance with Section 4 of 401 KAR 35:230, the owner or operator shall submit a postclosure plan within ninety (90) days of the determination by the owner or operator or cabinet that the unit shall be closed as a landfill. If the amendment to the postclosure plan is a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modification to the plan shall be approved according to the procedures in subsection (6) of this section.

(d) The cabinet may request modifications to the plan under the conditions described in paragraph (a) of this subsection. An owner or operator with an approved postclosure plan shall submit the modified plan within no later than sixty (60) days of the request from the cabinet. If the amendment to the plan is considered a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modifications to the postclosure plan shall be approved in accordance with the procedures in subsection (6) of this section. If the cabinet determines that an owner or operator of a surface impoundment or waste pile who intended to remove all hazardous wastes at closure shall close the facility as a landfill, the owner or operator shall submit a postclosure plan for approval to the cabinet within ninety (90) days of the determination.

(5) The owner or operator of a facility with hazardous waste management units subject to these requirements shall submit his postclosure plan to the cabinet at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date when he "expects to begin closure" of the first hazardous waste disposal unit shall be either within thirty (30) days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one (1) year after the date on which the unit received the most recent volume of hazardous waste. The owner or operator shall submit the postclosure plan to the cabinet no later than fifteen (15) days after:

(a) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(b) Issuance of a judicial decree or final orders under KRS Chapter 224 to cease receiving wastes or close.

(6) The cabinet shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the postclosure plan and request modifications to the plan no later than thirty (30) days from the date of the notice. The cabinet shall also, in response to a request or at its own discretion hold a public hearing whenever a hearing might clarify one (1) or more issues concerning a postclosure plan. The cabinet shall give public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two (2) notices may be combined). The cabinet shall approve, modify, or disapprove the plan within ninety (90) days of its receipt. If the cabinet does not approve the plan it shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall modify the plan or submit a new plan for approval within thirty (30) days after receiving such written statement. The cabinet shall approve or modify this plan in writing within sixty (60) days. If the cabinet modifies the plan, this modified plan shall become the approved postclosure plan. The cabinet shall ensure that the approved postclosure plan is consistent with Sections 8 to [~~through~~] 11 of this administrative regulation. A copy of the modified plan with a detailed statement of reasons for the modifications shall be mailed to the owner or operator. [~~If an owner or operator planned to begin closure before November 19, 1981, he was required to submit the postclosure plan by May 19, 1981.~~]

(7) The postclosure plan and length of the postclosure care period may be modified any time prior to the end of the postclosure care period in either of the following two (2) ways:

(a) The owner or operator or any member of the public may petition the cabinet to extend or reduce the postclosure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the postclosure care period based on cause.

1. The petition shall include evidence demonstrating that:

a. The secure nature of the hazardous waste management unit or facility makes the postclosure care requirement(s) unnecessary or supports reduction of the postclosure care period specified in the current postclosure plan (for example, [~~e.g.,~~] leachate or groundwater monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the facility is secure) and the site has been closed for thirty (30) years; or

b. The requested extension in the postclosure care period or alteration of postclosure care requirements is necessary to prevent threats to human health and the environment (for example, [~~e.g.,~~] leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

2. These petitions shall be considered by the cabinet only when they present new and relevant information not previously considered by the cabinet. Whenever the cabinet is considering a petition, it shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within thirty (30) days of the date of the notice. The cabinet shall also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one (1) or more issues concerning the postclosure plan. The cabinet shall give the public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two (2) notices may be combined). After considering the comments, the cabinet shall issue a final determination, based upon the criteria set forth in this paragraph.

3. If the cabinet denies the petition, it shall send the petitioner a brief written response giving a reason for the denial.

(b) The cabinet may tentatively decide to modify the postclosure plan if it deems it necessary to prevent threats to human health and the environment. The cabinet may propose to extend or reduce (except that the postclosure period shall not be less than thirty (30) years) the postclosure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the postclosure care period based on cause.

1. The cabinet shall provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within thirty (30) days of the date of the notice and the opportunity for a public hearing as in paragraph (a)2 of this subsection. After considering the comments, the cabinet shall issue a final determination.

2. The cabinet shall base its final determination upon the same criteria as required for petitions under paragraph (a)1 of this subsection. A modification of the postclosure plan may include, where appropriate, the temporary suspension rather than permanent deletion of one (1) or more postclosure care requirements. At the end of the specified period of suspension, the cabinet shall then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment. The suspension or discontinuance shall be based on the risk assessment provisions in KRS 224.01-400.

Section 10. Postclosure Notices. (1) No later than sixty (60) days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the cabinet, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(2) Within sixty (60) days of certification of closure of the first hazardous waste disposal unit and within sixty (60) days of certification of closure of the last hazardous waste disposal unit, the owner or operator shall:

(a) Record, in accordance with state law, a notation on the deed to the facility property - or on some other instrument which is normally examined during title search - that shall in perpetuity notify any potential purchaser of the property that:

1. The land has been used to manage hazardous wastes; and

2. Its use is restricted under this administrative regulation; and

3. The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Section 7 of this administrative regulation and subsection (1) of this section have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the cabinet; and

(b) Submit to the cabinet a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph (a) of this subsection, and a copy of the document in which the notation has been placed.

(3) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he shall request a modification to the approved postclosure plan in accordance with the requirements of Section 9(7) of this administrative regulation. The owner or operator shall demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 8(3) of this administrative regulation. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter and 401 KAR Chapter 32. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the cabinet approve either:

(a) The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

(b) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

Section 11. Certification of Completion of Postclosure Care. No later than sixty (60) days after the completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator shall submit to the cabinet by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification shall be signed by the owner or operator and an independent professional engineer registered in the Commonwealth of Kentucky. Documentation supporting the independent registered professional engineer's certification shall be furnished to the cabinet upon request until it releases the owner or operator from the financial assurance requirements for postclosure care under Section 11 of 401 KAR 35:100.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This proposed administrative regulation affects owners and operators of hazardous waste sites or facilities that decide to accept nonhazardous waste after the final receipt of hazardous waste at a unit. There are less than ten interim status facilities operating in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be increased costs associated with complying with this administrative regulation only if a hazardous waste site or facility decides to accept nonhazardous waste after the final receipt of hazardous waste at a unit. In that case the facility will be required to obtain a permit modification and remains subject to all existing closure and postclosure provisions of a hazardous waste permit. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS 224.

2. Continuing costs or savings: Costs will continue if a facility decides to continue to accept waste.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: A reporting or paperwork requirements associated with maintaining a hazardous waste permit will be required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be costs associated with reviewing closure and postclosure documents for facilities that decide to accept nonhazardous waste after final receipt of hazardous waste.

2. Continuing costs or savings: Costs will continue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: When the state receives authorization for this activity, Kentucky facilities will submit closure and postclosure documents to the cabinet. The cabinet will maintain records and will make a determination.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to the standards in the federal regulations were considered by the cabinet. The federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal programs for the state to be authorized to operate the program in lieu of the federal government. The cabinet evaluated the proposed administrative regulation and determined that it complies with the intent of the state and federal statutes.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate this proposed administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This proposed administrative regulation is taken from 40 CFR 264.110 through .120. However, there is no federal mandate to promulgate this administrative regulation. The federal Resource Conservation and Recovery Act requires that state programs be consistent with and no less stringent than the federal programs for the state to be authorized to operate the program in lieu of the federal government. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This proposed administrative regulation complies with KRS Chapter 13A and 224.46-520.

3. Minimum or uniform standards contained in the federal mandate: This proposed administrative regulation conforms to the language in 40 CFR 264.110 through .120.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 35:080. General financial requirements (IS).

RELATES TO: KRS 224.10, 224.40, 224.43,224.46, 224.99
STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520
NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes the~~] general financial requirements for sites or facilities qualifying for interim status.

Section 1. Financial Requirement Definitions [~~General~~]. (1) When used in this administrative regulation the following terms shall have the meanings indicated:

(a) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 35:070.

(b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 35:090.

(c) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 35:100.

(d) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 35:070.

(2) The following terms are used in the specifications for the financial test for closure, postclosure care and liability self-insurance. The definitions are intended to assist in the understanding of these administrative regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

(a) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(b) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(c) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(d) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(e) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(f) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(g) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(h) "Net working capital" means current assets minus current

liabilities.

(i) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(j) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(3) In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable Kentucky statutes. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The cabinet intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions of the terms given below are intended to assist in the understanding of these administrative regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

(3) The definitions given below of the terms are intended to assist in the understanding of these administrative regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

(a) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(b) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(c) "Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.

(d) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(4) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet. [~~(1) This regulation and 401 KAR 35:090 through 35:130 inclusively contain the financial requirements to establish adequate financial responsibility as required by KRS 224.866(3) for hazardous waste sites or facilities. A reference to this section is a citation of this regulation and 401 KAR 35:090 through 35:130.~~

~~(2) Except as specifically provided in this regulation and 401 KAR 35:090 through 35:130, no variance (Section 2 of 401 KAR 30:020) or other waivers of these financial requirements shall be granted by the secretary or the director.~~]

Section 2. Applicability. (1) The requirements of 401 KAR 35:090, 401 KAR 35:120 and 401 KAR 35:130 apply to owners or operators of all hazardous waste sites or facilities, except as provided otherwise in this section or in Section 1 of 401 KAR 35:010.

(2) The requirements of 401 KAR 35:100 and 35:110 apply only to owners and operators of disposal facilities and tank systems that are required under Section 5 of 401 KAR 35:190 to meet the requirements for landfills.

(3) States and the federal government are exempt from the requirements of Section 1 of this administrative regulation.

Section 3. General Financial Requirements [~~Definitions~~]. (1) This administrative regulation and 401 KAR 35:090 to 35:130, inclusively, contain the financial requirements to establish adequate financial responsibility for interim status facilities as required by KRS 224.46-520(3) for hazardous waste sites or facilities. A reference to this section is a citation of this administrative regulation and 401 KAR 35:090 to 35:130.

(2) Except as specifically provided in this administrative regulation and 401 KAR 35:090 to 35:130, no variance (Section 2 of 401 KAR 30:020) or other waivers of these financial requirements shall be granted by the cabinet. [~~When used in Section 1 of this regulation the following terms shall have the meanings given below:~~

~~(a) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 35:070.~~

~~(b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 35:090.~~

~~(c) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a),(b) and (c).~~

~~(d) "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 35:100.~~

~~(e) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.~~

~~(f) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 through 11 of 401 KAR 35:070.~~

~~(2) The following terms are used in the specifications for the financial test for closure, postclosure care and liability self insurance. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.~~

~~(a) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.~~

~~(b) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.~~

~~(c) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.~~

~~(d) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.~~

~~(e) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.~~

~~(f) "Net working capital" means current assets minus current liabilities.~~

~~(g) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.~~

~~(h) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.~~

~~(3) In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable Kentucky statutes. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The cabinet intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.~~

~~(a) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the~~

~~standpoint of the insured.~~

~~(b) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.~~

~~(c) "Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.~~

~~(d) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.~~]

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 15, 1993 at 11 a .m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: These proposed amendments affect all hazardous waste sites or facilities that qualify for interim status.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings associated with the proposed amendments. The changes proposed include restructuring existing language to conform to KRS Chapter 13A and add a definitions for "fiscal year" and "substantial business relationship".

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with this proposed amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no additional costs or savings to the administrative body associated with this proposed amendment.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with this proposed amendment.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues associated with these changes to the administrative regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternatives considered by the cabinet. The Resource Conservation and Recovery Act mandates that authorized state programs must be consistent with and at least as stringent as the federal program. The agency is proposing to adopt new definitions for the terms "fiscal year" and "substantial business relationship" to clarify the requirements for companies that rely upon a financial test instrument to demonstrate closure, postclosure and liability coverage.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap, or duplicate this proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment restructures this administrative regulation to comply with the requirement in KRS 13A to place definitions in the first section of an administrative regulation. The federal system places the applicability section first. Thus, these changes do not conform to the federal regulation. However, because the federal language has been adopted (out of order), the proposed amendment is equivalent to the federal regulation at 40 CFR 264.141 and 264.140, in effect on September 16, 1992.

2. State compliance standards: This amendment complies with KRS 224.46-520 which requires all hazardous waste facilities to demonstrate adequate financial assurance for closure, postclosure and liability.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 264.140 and 264.141 in effect on September 16, 1992.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendment adds clarifying definitions for the term "fiscal year". This is not a definition in the federal regulations. "Substantial business relationship" is also defined in this proposed amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: According to the US EPA, the financial test mechanism relies upon 12 months of fiscal data for accuracy. However, the Internal Revenue Service recognized abbreviated fiscal years. Because the legitimacy of a financial test submittal has been challenged by the state agency due to the use of an abbreviated fiscal year, it became essential to clarify the intent of the administrative regulations which rely on fiscal year data to perform the critical ratio tests used on the financial test.

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

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

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.99
STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520
NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes the~~] closure financial requirements for sites or facilities qualifying for interim status.

Section 1. Cost Estimate for Facility Closure. (1) The owner or operator shall [~~must~~] have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 2 to [~~through~~] 6 of 401 KAR 35:070 and applicable closure requirements of Section 5 of 401 KAR 35:190, Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, Section 4 of 401 KAR 35:230, Section 5 of 401 KAR 35:240, Section 5 of 35:250, and Section 5 of 401 KAR 35:260.

(a) The estimate shall [~~must~~] equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see Section 3(2) of 401 KAR 35:070); and

(b) The closure cost estimate shall [~~must~~] be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator (see definition of parent corporation in Section 1[~~(c)~~] of 401 KAR 35:080). The owner or operator shall [~~may~~] use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(c) The closure cost estimate shall [~~may~~] not incorporate any salvage value that may be realized by the sale of hazardous wastes, or nonhazardous wastes if applicable under Section 4(4) of 401 KAR 35:070, facility structures or equipment, land, or other facility assets at the time of partial or final closures.

(d) The owner or operator shall [~~may~~] not incorporate a zero cost for hazardous wastes, or nonhazardous wastes if applicable under Section 4(4) of 401 KAR 35:070, that might have economic value.

(2) During the active life of the facility, the owner or operator shall [~~must~~] adjust the closure cost estimate for inflation within sixty (60) days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section 2 of this administrative regulation. For owners and operators using the financial test or corporate guarantee, the closure cost estimate shall [~~must~~] be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before submission of updated information to the cabinet [~~director~~] as specified in Section 7(3) of this administrative regulation. The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (a) and (b) of this subsection. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(a) The first adjustment shall be [~~is~~] made by multiplying the closure cost estimate by the inflation factor. The result shall be [~~is~~] the adjusted closure cost estimate.

(b) Subsequent adjustments shall be [~~are~~] made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(3) During the active life of the facility, the owner or operator shall [~~must~~] revise the closure cost estimate no later than thirty (30) days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate shall [~~must~~] be revised no later than thirty (30) days after the cabinet [~~director~~] has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall [~~must~~] be adjusted for inflation as specified in subsection (2) of this section.

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

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

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

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

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

(2) The trust agreement, including the formal certification of acknowledgement, shall [~~must~~] be executed on the form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet containing wording identical to the wording specified in Section 1 of 401 KAR 34:140 and the trust agreement shall [must] be accompanied by a formal certification of acknowledgment (for an example, see Section 2 of 401 KAR 34:140).~~] Schedule A of the trust agreement shall [~~must~~] be updated within sixty (60) days after a change in the amount of the current closure cost estimate covered by the agreement.

(3) Payments to the trust fund shall [~~must~~] be made annually by the owner or operator over twenty (20) years beginning with October 8, 1982, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the "pay-in period." The payments into the closure trust fund shall [~~must~~] be made as follows:

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

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

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

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

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the closure cost estimate

at the time the fund is established. However, he shall [~~must~~] maintain the value of the fund at no less than the value the fund would have been if annual payments were made as specified in subsection (3) of this section.

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

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

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

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

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

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the cabinet [~~director~~]. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than sixty (60) days after receiving bills for partial or final closure activities, the cabinet [~~director~~] will instruct the trustees to make reimbursements in those amounts as the cabinet [~~director~~] specifies in writing, if the cabinet [~~director~~] determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the cabinet [~~director~~] has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with Section 11 of this administrative regulation, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the cabinet [~~director~~] does not instruct the trustee to make such reimbursements, he shall [~~will~~] provide to the owner or operator a detailed written statement of reasons.

(11) The cabinet shall [~~director will~~] agree to termination of the trust when:

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

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

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

(2) The surety bond shall [~~must~~] be executed on the form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:144.~~]

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

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

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

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

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

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

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

(4) The bond shall [~~must~~] guarantee that the owner or operator shall [~~will~~]:

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

(b) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an order to begin final closure issued by the secretary becomes final, or within fifteen (15) days after an order to begin final closure is issued by a circuit court or other court of competent jurisdiction pursuant to KRS Chapter 224, or within fifteen (15) days after issuance of a notice of termination of the permit pursuant to 401 KAR Chapter 38; or

(c) Provide alternate financial assurance as specified in this administrative regulation and obtain the cabinet's [~~director's~~] written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the cabinet [~~director~~] of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall [~~will~~] become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall [~~must~~] be in an amount at least equal to the amount of the current closure cost estimate, except as provided in Section 9 of this administrative regulation.

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

(8) Under the terms of the bond, the surety may cancel the bond by sending a notice of cancellation by certified mail to the owner or operator and to the cabinet [~~director~~]. Cancellation shall not [~~cannot~~] occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the cabinet [~~director~~], as evidenced by return receipt.

(9) The owner or operator may cancel the bond if the cabinet

[~~director~~] has given prior written consent based on the cabinet's [~~director's~~] receipt of evidence of alternate financial assurance as specified in this administrative regulation.

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

(2) The [~~wording of the~~] letter of credit shall [~~must~~] be executed on the form incorporated by reference in Section 14 of 401 KAR 34:080. The Trust Agreement required to be filed with the letter of credit shall be executed on the form incorporated by reference in Section 14 of 401 KAR 34:080. [~~identical to the wording specified in Section 2 of 401 KAR 34:152.~~]

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this administrative regulation shall [~~must~~] also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the cabinet shall [~~director will~~] be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the cabinet [~~director~~]. This standby trust fund shall [~~must~~] meet the requirements of the trust fund specified in Section 3 of this administrative regulation, except that:

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

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

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

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

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

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

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

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

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

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

(8) Following a final administrative determination pursuant to KRS 224.10-100 that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the cabinet [~~director~~] may draw on the letter of credit.

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

(10) The cabinet shall [~~director will~~] return the letter of credit to the issuing institution for termination when:

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

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

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

(2) The certificate of insurance shall [~~must~~] be executed on the [~~a~~] form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:156.~~]

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

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

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the cabinet [~~director~~]. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for

closure activities, the cabinet shall [~~director will~~] instruct the insurer to make reimbursements in such amounts as the cabinet [~~director~~] specifies in writing if the cabinet [~~director~~] determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the cabinet [~~director~~] has reason to believe that the maximum cost of closure over the remaining life of the facility shall [~~will~~] be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with Section 11 of this administrative regulation, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the cabinet [~~director~~] does not instruct the insurer to make such reimbursements, he shall [~~will~~] provide to the owner or operator a detailed written statement of reasons.

(6) The owner or operator shall [~~must~~] maintain the policy in [~~full force and~~] effect until the cabinet [~~director~~] consents to termination of the policy by the owner or operator as specified in subsection (10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this administrative regulation, shall [~~will~~] constitute a significant violation of these administrative regulations, warranting such remedy as the cabinet [~~director~~] deems necessary. Such violation will be deemed to begin upon receipt by the cabinet [~~director~~] of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall [~~must~~] contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(8) The policy shall [~~must~~] provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall [~~must~~], at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the cabinet [~~director~~]. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the cabinet [~~director~~] and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall [~~will~~] remain in [~~full force and~~] effect in the event that on or before the date of expiration:

(a) The cabinet [~~director~~] deems the facility abandoned; or

(b) Interim status is terminated or revoked; or

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

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

(e) The premium due is paid.

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

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

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

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

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

(a) The owner or operator shall [~~must~~] have:

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

2. Net working capital and tangible net worth each at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. Tangible net worth of at least $10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(b) The owner or operator shall [~~must~~] have:

1. A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. Tangible net worth of at least $10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of his total assets or at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in subparagraphs 1 to [~~through~~] 4 of the letter from the owner's or operator's chief financial officer [~~(see 401 KAR 34:159)~~]. The phrase "current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to [~~through~~] 4 of the letter from the owner's and operator's chief financial officer (see 40 CFR 144.0(f)).

(3) To demonstrate that he meets this test, the owner or operator shall [~~must~~] submit the following three (3) items to the cabinet [~~director~~]:

(a) A letter executed on the form incorporated by reference in Section 14 of 401 KAR 34:080 [~~provided by the cabinet~~], signed by the owner's or operator's chief financial officer [~~and worded as specified in 401 KAR 34:159~~]; and

(b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in subsection (3) of this section if the fiscal year of the owner or operator ends during the ninety (90) days prior to October 8, 1982 and if the year-end financial statements for that fiscal year shall [~~will~~] be audited by an independent certified public accountant. The extension shall [~~will~~] end no later than ninety (90) days after the end of the owner's or

operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall [~~must~~] send, by October 8, 1982, a letter to the cabinet [~~director~~]. This letter from the chief financial officer shall [~~must~~]:

(a) Request the extension;

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

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

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

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

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

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

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

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

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

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

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

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

(10) An owner or operator may meet the requirements of this administrative regulation by obtaining a written guarantee, hereafter referred to as the "corporate guarantee." The guarantor shall [~~must~~] be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" as defined in Section 1 of 401 KAR 35:080 with the owner or operator. The guarantor shall [~~must~~] meet the requirements for owners or operators in subsections (1) to [~~through~~] (8) of this section and shall [~~must~~] comply with the terms of the corporate guarantee. The corporate guarantee shall [~~must~~] be executed on the [~~a~~] form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:165.~~] The corporate guarantee shall [~~must~~] accompany the items sent to the cabinet [~~director~~] as specified in subsection (3) of this section. One (1) of the items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the owner or operator, this letter shall describe this substantial business relationship and the value received in consideration of the guarantee. The terms of the corporate guarantee shall [~~must~~] provide that:

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

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

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

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

(2) The bond shall [~~must~~] be executed on the [~~a~~] form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet which has wording identical to the wording specified in Section 1 of 401 KAR 34:168.~~] The escrow agreement for the cash account or certificate(s) of deposit shall [~~must~~] be executed on the [~~a~~] form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet which has wording identical to the wording specified in Section 2 of 401 KAR 34:168.~~]

(3) The cabinet shall [~~must~~] be the beneficiary of the escrow agreement for the cash account or certificate(s) of deposit. The cabinet shall [~~director must~~] be empowered to draw upon the funds if the owner or operator fails to perform closure or postclosure care in accordance with the closure plan and other permit requirements.

(4) The sum of the cash account or certificate(s) of deposit shall [~~must~~] be in an amount at least equal to the amount of the current closure cost estimate, except as provided in Section 9 of this administrative regulation.

(5) After each interest period is completed, whenever the current closure cost estimate changes, the owner or operator shall [~~must~~]

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

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

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

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

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

Section 9. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this administrative regulation by establishing more than one (1) financial mechanism per facility. These mechanisms shall be [~~are~~] limited to trust funds, surety bonds, letters of credit, insurance, certificate(s) of deposit and cash accounts. The mechanisms shall [~~must~~] be as specified in Sections 3, 4, 5, 6, and 8, respectively, of this administrative regulation, except that it is the combination of mechanisms rather than each single mechanism which shall [~~must~~] provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The cabinet [~~director~~] may use any or all of the mechanisms to provide for closure of the facility.

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

Section 11. Release of the Owner or Operator from the Requirements of this administrative regulation. Within sixty (60) days after approving [~~receiving~~] certifications from the owner or operator and an [~~independent professional~~] engineer [~~who is registered in Kentucky~~] that final closure has been completed in accordance with the approved closure plan, the cabinet shall [~~director will~~] notify the owner or operator in writing that he is no longer required by this administrative regulation to maintain financial assurance for final closure of the facility, unless the cabinet [~~director~~] has reason to believe that final closure has not been in accordance with the approved closure plan. The cabinet [~~director~~] shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This amendment adds applicable nonhazardous wastes to the prohibition of incorporating salvage value and zero costs in preparing closure cost estimates for all hazardous waste sites or facilities that qualify for interim status and are subject to financial requirements for closure.

(a) Direct and indirect costs or savings to those affected:

1. First year: The majority of the proposed amendments to this administrative regulation are mandated by KRS Chapter 13A and will

result in no anticipated costs or savings. Other proposed amendments to the administrative regulation adopting existing federal requirements that would be applicable in Kentucky even if the state did not have authorization to operate the program in lieu of the federal government. Continued state authorization is dependent upon adopting this amendment. Section 11 has been amended to clarify existing requirements for the cabinet to approve the closure certification prior to release of financial responsibility. This will result in no new cost to the regulated community since financial responsibility requirements have not been released until confirmation of the adequacy of closure in the past.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: These proposed amendments will not result in any additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no new costs or savings to the administrative body associated with these proposed amendments. The text added to Section 11 is not identical to federal regulations, but it clarifies the appropriate protocol for release of financial responsibility. Although the cabinet has relied upon the statutory definition of "termination" in conjunction with KRS 224.46-520, amendments to Section 11 clarify the existing requirements for cabinet approval of the closure certification and release from financial responsibility.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: These proposed amendments will not result in any additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to adopting the federal text were considered by the cabinet. The federal Resource Conservation and Recovery Act mandates that states be authorized to operate the program in lieu of the federal government only if the state's program is consistent with and no less stringent than the federal program. The cabinet evaluated the proposed amendments to this administrative regulation and has determined that the changes are consistent with statutory intent and clarify how release of financial responsibility has occurred historically.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statutes, regulations or government policies were identified which may conflict, overlap, or duplicate the proposed amendments.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment was taken from 40 CFR 265.142 to .143(h). The Resource Conservation and Recovery Act mandates that authorized state programs be consistent with and no less stringent than the federal program. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This amendment complies with KRS 224.46-520 which requires financial assurance demonstrations for closure of all hazardous waste facilities.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language of 40 CFR 265.142 and 265.143 as amended May 2, 1986, and KRS Chapter 13A.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments made to Section 11 of this administrative regulation impose requirements different than the federal program. The proposed amendments stipulate that the cabinet must approve closure certification prior to the release from financial responsibility which is consistent with the cabinet's existing requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The proposed amendments to Section 11 conform to the requirements in KRS 224.46-520 which releases the facility from financial responsibility requirements upon "termination". KRS 224.01-010 defines the term as an action taken by the cabinet when postclosure monitoring and maintenance activities cease. Because of statutory authority, the cabinet has historically approved closure certifications prior to releasing a facility from financial responsibility requirements. This proposed amendment clarifies the regulatory language to be consistent with the statute and existing operating practices.

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

401 KAR 35:100. Postclosure financial requirements (IS).

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.46-505, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-505 and 224.46-520 relative to postclosure financial requirements for hazardous waste sites or facilities qualifying for interim status. [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This administrative regulation establishes the postclosure financial requirements.~~]

Section 1. Cost Estimate for Facility Postclosure Care. (1) The owner or operator of a hazardous waste disposal unit shall [~~must~~] have a detailed written estimate, in current dollars, of the annual cost of postclosure monitoring and maintenance of the facility in accordance with the applicable postclosure administrative regulations in Sections 8 to [~~through~~] 11 of 401 KAR 35:070, Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, and Section 4 of 401 KAR 35:230.

(a) The postclosure cost estimate shall [~~must~~] be based on the costs to the owner or operator of hiring a third party to conduct postclosure care activities. A third party is a party who is neither a parent nor subsidiary of the owner or operator (see definition of parent corporation in Section 1 [~~3(1)(c)~~] of 401 KAR 35:080.

(b) The postclosure cost estimate shall be [~~is~~] calculated by multiplying the annual postclosure cost estimate by the number of

years of postclosure care required under Section 8 of 401 KAR 35:070.

(2) During the active life of the facility, the owner or operator shall [~~must~~] adjust the postclosure cost estimate for inflation within sixty (60) days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Sections 2 to [~~through~~] 11 of this administrative regulation. For owners or operators using the financial test or corporate guarantee, the postclosure care cost estimate shall [~~must~~] be updated for inflation no later than thirty (30) days after the close of the firm's fiscal year and before submission of updated information to the cabinet [~~director~~] as specified in Section 6(5) of this administrative regulation. The adjustment may be made by recalculating the postclosure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in paragraphs (a) and (b) of this subsection. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(a) The first adjustment is made by multiplying the postclosure cost estimate by the inflation factor. The result is the adjusted postclosure cost estimate.

(b) Subsequent adjustments are made by multiplying the latest adjusted postclosure cost estimate by the latest inflation factor.

(3) During the active life of the facility, the owner or operator shall [~~must~~] revise the postclosure cost estimate no later than thirty (30) days after a revision the postclosure plan which increases the cost of postclosure care. If the owner or operator has an approved postclosure plan, the postclosure cost estimate shall [~~must~~] be revised no later than thirty (30) days after the cabinet [~~director~~] has approved the request to modify the plan, if the change in the postclosure plan increases the cost of postclosure care. The revised postclosure cost estimate shall [~~must~~] be adjusted for inflation as specified in subsection (2) of this section.

(4) The owner or operator shall [~~must~~] keep the following at the facility during the operating life of the facility: The latest postclosure cost estimate prepared in accordance with subsections (1) and (3) of this section and, when this estimate has been adjusted in accordance with subsection (2) of this section, the latest adjusted postclosure cost estimate.

Section 2. Financial Assurance for Postclosure Care. [~~By May 2, 1986,~~] An owner or operator of a facility with a hazardous waste disposal unit shall [~~must~~] establish financial assurance for postclosure care of the disposal unit(s). Financial assurance shall [~~must~~] be established as specified in Sections 3 to [~~through~~] 8 of this administrative regulation.

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

(2) The trust agreement shall [~~must~~] be executed on the form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet containing wording identical to the wording specified in Section 1 of 401 KAR 34:140 and~~] The trust agreement shall [~~must~~] be accompanied by a formal certification of acknowledgment [~~(for an example, see Section 2 of 401 KAR 34:140)~~]. Schedule A of the trust agreement shall [~~must~~] be updated within sixty (60) days after a change in the amount of the current postclosure cost estimate covered by the agreement.

(3) Payments to the trust fund shall [~~must~~] be made annually by the owner or operator over the twenty (20) year period beginning with October 8, 1982, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the postclosure trust fund shall [~~must~~] be made as follows:

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

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

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

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

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

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

(6) After the pay-in period is completed, whenever the current postclosure cost estimate changes during the operating life of the facility, the owner or operator shall [~~must~~] compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, shall [~~must~~] either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current postclosure cost estimate, or obtain other financial assurance as specified in this administrative regulation to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current postclosure cost estimate, the owner or operator may submit a written request to the cabinet [~~director~~] for release of the amount in excess of the current postclosure cost estimate.

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

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

(10) During the period of postclosure care, the cabinet [~~director~~] may approve a release of funds if the owner or operator demonstrates to the cabinet [~~director~~] that the value of the trust fund exceeds the remaining cost of postclosure care.

(11) An owner or operator or any other person authorized to conduct postclosure care may request reimbursements for postclosure expenditures by submitting itemized bills to the cabinet [~~director~~]. Within sixty (60) days after receiving bills for postclosure care activities, the cabinet shall [~~director will~~] instruct the trustee to make reimbursement in those amounts as the cabinet [~~director~~] specifies in

writing, if the cabinet [~~director~~] determines that the postclosure expenditures are in accordance with the approved postclosure plan or otherwise justified. If the cabinet [~~director~~] does not instruct the trustee to make such reimbursements, he shall [~~will~~] provide the owner or operator with a detailed written statement of reasons.

(12) The cabinet shall [~~director will~~] agree to termination of the trust when:

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

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

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

(2) The surety bond shall [~~must~~] be executed on the form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:144.~~]

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

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

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

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

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

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

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

(4) The bond shall [~~must~~] guarantee that the owner or operator shall [~~will~~]:

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

(b) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an order to begin final closure issued by the secretary becomes final, or within fifteen (15) days after an order to begin final closure is issued by a circuit court or other court of competent jurisdiction; or

(c) Provide alternate financial assurance as specified in this administrative regulation, and obtain the cabinet's [~~director's~~] written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the cabinet [~~director~~] of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall [~~will~~] become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall [~~must~~] be in an amount at least equal to the amount of the current postclosure cost estimate, except as provided in Section 9 of this administrative regulation.

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

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to both the owner or operator and to the cabinet [~~director~~]. Cancellation shall not [~~cannot~~] occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the cabinet [~~director~~], as evidenced by return receipt.

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

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

(2) The [~~wording of the~~] letter of credit shall [~~must~~] be executed on the form incorporated by reference in Section 14 of 401 KAR 34:080. The Trust Agreement required to be filed with the letter of credit shall be executed on the form incorporated by reference in Section 14 of 401 KAR 34:080. [~~identical to the wording specified in Section 2 of 401 KAR 34:152.~~]

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this administrative regulation shall [~~must~~] also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the cabinet shall [~~director will~~] be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the cabinet [~~director~~]. This standby trust fund shall [~~must~~] meet the requirements of the trust fund specified in Section 3 of this administrative regulation, except that:

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

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

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

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

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

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

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

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

evidenced by the return receipts.

(6) The letter of credit shall [~~must~~] be issued in an amount at least equal to the current postclosure cost estimate, except as provided in Section 9 of this administrative regulation.

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

(8) During the period of postclosure care, the cabinet [~~director~~] may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the cabinet [~~director~~] that the amount exceeds the remaining cost of postclosure care.

(9) Following a final administrative determination pursuant to KRS 224.46-520 that the owner or operator has failed to perform postclosure care in accordance with the approved postclosure plan and other permit requirements, the cabinet [~~director~~] may draw on the letter of credit.

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

(11) The cabinet shall [~~director will~~] return the letter of credit to the issuing institution for termination when:

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

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

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

(2) The certificate of insurance shall [~~must~~] be executed on the [a] form incorporated by reference in Section 14 of 401 KAR 34:080. [~~provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:156.~~]

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

(4) The postclosure insurance policy shall [~~must~~] guarantee that funds shall [~~will~~] be available to provide postclosure care of the facility whenever the postclosure care period begins. The policy shall [~~must~~] also guarantee that once postclosure care begins, the insurer shall [~~will~~] be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the cabinet [~~director~~] to such party or parties as the cabinet [~~director~~] specifies.

(5) An owner or operator or any other person authorized to perform postclosure care may request reimbursement for postclosure expenditures by submitting itemized bills to the cabinet [~~director~~]. Within sixty (60) days after receiving bills for postclosure care activities, the cabinet shall [~~director will~~] instruct the insurer to make reimbursements in such amounts as the cabinet [~~director~~] specifies in writing, if the cabinet [~~director~~] determines that the postclosure expenditures are in accordance with the approved postclosure plan or otherwise justified. If the cabinet [~~director~~] does not instruct the insurer to make such reimbursements, he shall [~~will~~] provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall [~~must~~] maintain the policy in [~~full force and~~] effect until the cabinet [~~director~~] consents to termination of the policy by the owner or operator as specified in subsection (11) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this administrative regulation, shall [~~will~~] constitute a significant violation of these administrative regulations, warranting such remedy as the cabinet [~~director~~] deems necessary. Such violation shall [~~will~~] be deemed to begin upon receipt by the cabinet [~~director~~] of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall [~~must~~] contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

(8) The policy shall [~~must~~] provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall [~~must~~], at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the cabinet [~~director~~]. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by the cabinet [~~director~~] and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in [~~full force and~~] effect in the event that on or before the date of expiration:

(a) The cabinet [~~director~~] deems the facility abandoned; or

(b) Interim status is terminated or revoked; or

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

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

(e) The premium due is paid.

(9) Whenever the current postclosure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, shall [~~must~~] either cause the face amount to be increased to an amount at least equal to the current postclosure

cost estimate and submit evidence of such increase to the cabinet [~~director~~], or obtain other financial assurance as specified in this administrative regulation to cover the increase. Whenever the current postclosure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current postclosure cost estimate following written approval by the cabinet [~~director~~].

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall [~~will~~] thereafter annually increase the face amount of the policy. Such increase shall [~~must~~] be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five (85) percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for twenty-six (26) week Treasury securities.

(11) The cabinet shall [~~director will~~] give written consent to the owner or operator that he may terminate the insurance policy when:

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

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

Section 7. Financial Test with Corporate Guarantee for Postclosure Care. (1) An owner or operator may satisfy the requirements of this administrative regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall [~~must~~] meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The owner or operator shall [~~must~~] have:

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

2. Net working capital and tangible net worth each at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. Tangible net worth of at least $10 million; and

4. Assets in the United States amounting to at least ninety (90) percent of his total assets or at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(b) The owner or operator shall [~~must~~] have:

1. A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. Tangible net worth of at least $10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of his total assets or at least six (6) times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to [~~through~~] 4 of the letter from the owner's or operator's chief financial officer [~~(see 401 KAR 34:159)~~]. The phrase "current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f).

(3) To demonstrate that he meets this test, the owner or operator shall [~~must~~] submit the following three (3) items to the cabinet [~~director~~]:

(a) A letter executed on the form incorporated by reference in Section 14 of 401 KAR 34:080 [~~provided by the cabinet~~], signed by the owner's or operator's chief financial officer [~~and worded as specified in 401 KAR 34:159~~]; and

(b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

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

(a) Request the extension;

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

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

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

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

(f) Certify that the year-end financial statements of the owner or operator for such fiscal year shall [~~will~~] be audited by an independent certified public accountant.

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

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

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

(8) The cabinet [~~director~~] may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's

or operator's financial statements (see subsection (3) of this section). An adverse opinion or a disclaimer of opinion shall [will] be cause for disallowance. The cabinet shall [director will] evaluate other qualifications on an individual basis. The owner or operator shall [must] provide alternate financial assurance as specified in this administrative regulation within thirty (30) days after notification of the disallowance.

(9) During the period of postclosure care, the cabinet [director] may approve a decrease in the current postclosure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the cabinet [director] that the amount of the cost estimate exceeds the remaining cost of postclosure care.

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

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

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

(11) An owner or operator may meet the requirements of this administrative regulation by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor shall [must] be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" as defined in Section 1 of 401 KAR 35:080 with the owner or operator. The guarantor shall [must] meet the requirements for owners or operators in subsections (1) to [through] (9) of this section and shall [must] comply with the terms of the corporate guarantee. The corporate guarantee shall [must] be executed on the [a] form incorporated by reference in Section 14 of 401 KAR 34:080. The corporate guarantee shall [provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:165. The corporate guarantee must] accompany the items sent to the cabinet [director] as specified in subsection (3) of this section. One (1) of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the owner or operator, this letter shall describe this substantial business relationship and the value received in consideration of the guarantee. The terms of the corporate guarantee shall [must] provide that:

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

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

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

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

(2) The bond shall [must] be executed on the [a] form incorporated by reference in Section 14 of 401 KAR 34:080. [provided by the cabinet which has wording identical to the wording specified in Section 1 of 401 KAR 34:168.] The escrow agreement for the cash account or certificate(s) of deposit shall [must] be executed on the [a] form incorporated by reference in Section 14 of 401 KAR 34:080. [provided by the cabinet which has wording identical to the wording specified in Section 2 of 401 KAR 34:168.]

(3) The cabinet shall [must] be the beneficiary of the escrow agreement for the cash account or certificate(s) of deposit. The cabinet shall [director must] be empowered to draw upon the funds if the owner or operator fails to perform postclosure care in accordance with the postclosure care plan and other permit requirements.

(4) The sum of the cash account or certificate(s) of deposit shall [must] be in an amount at least equal to the amount of the current postclosure cost estimate, except as provided in Section 9 of this administrative regulation.

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

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

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

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

(9) An owner or operator or any other person authorized to conduct postclosure may request reimbursement for postclosure expenditures by submitting itemized bills to the cabinet [director]. Within sixty (60) days after receiving bills for postclosure activities, the cabinet [director] may instruct the bank or financial institution to make reimbursements in those amounts as the cabinet [director] specifies in writing if the cabinet [director] determines that the postclosure expenditures are in accordance with the postclosure plan or otherwise justified.

Section 9. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this administrative regulation by establishing more than one (1) financial mechanism per facility.

These mechanisms are limited to trust funds, surety bonds, letters of credit, insurance, cash accounts and certificate(s) of deposit. The mechanisms shall [~~must~~] be as specified in Sections 3, 4, 5, 6, and 8, respectively, of this administrative regulation except that it is the combination of mechanisms rather than the single mechanism which shall [~~must~~] provide financial assurance for an amount at least equal to the current postclosure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The cabinet [~~director~~] may use any or all of the mechanisms to provide for postclosure care of the facility.

Section 10. Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this administrative regulation to meet the requirements of this administrative regulation for more than one (1) facility of which he is the owner or operator provided the facilities are all within the Commonwealth. Evidence of financial assurance submitted to the cabinet shall [~~director must~~] include a list showing for each facility the EPA identification number, name, address, and the amount of funds for postclosure care assured by the mechanism. The amount of funds available through the mechanism shall [~~must~~] be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for postclosure care of any of the facilities covered by the mechanism, the cabinet [~~director~~] may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

Section 11. Release of the Owner or Operator from the Requirements of this Administrative Regulation. Within sixty (60) days after approving [~~receiving~~] certifications from the owner or operator and an [~~independent professional~~] engineer [~~registered in the Commonwealth of Kentucky~~] that the postclosure care period has been completed in accordance with the approved postclosure plan, the cabinet shall [~~director will~~] notify the owner or operator in writing that he is no longer required by this administrative regulation to maintain financial assurance for postclosure care of that unit, unless the cabinet [~~director~~] has reason to believe that postclosure care has not been in accordance with the approved postclosure plan. The cabinet shall [~~director will~~] provide the owner or operator a detailed written statement of any such reason to believe that postclosure care has not been in accordance with the approved postclosure plan.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This amendment affects all owners or operators of sites or facilities that qualify for interim status and are subject to post closure financial requirements.

(a) Direct and indirect costs or savings to those affected:

1. First year: The majority of the amendments to this administrative regulation are changes required by KRS Chapter 13A and will result in no anticipated costs or savings. They adopt existing federal requirements that would be applicable in Kentucky if the state were not authorized to operate in lieu of the federal government. Continued authorization of the state program is dependent upon the adoption of this amendment.

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 new reporting or paperwork requirements associated with these amendments.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no new costs or savings to the administrative body associated with the amendments to this administrative regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no new reporting or paperwork requirements associated with these amendments.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to adopting the federal text were considered by the cabinet. The federal Resource Conservation and Recovery Act mandates that states be authorized to operate the program in lieu of the federal government only if the state's program is consistent with and no less stringent than the federal program. The cabinet evaluated the amendments to this administrative regulation and determined that they are consistent with statutory intent.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statute, administrative regulation or government policy was identified which may conflict, overlap or duplicate the amendments to this administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This administrative regulation follows the requirements of 40 CFR Subpart H. However, the amendments proposed in this administrative regulation are for the purpose of complying with KRS Chapter 13A and to make changes in references to other administrative regulations that are being amended. No change is being made to this administrative regulation as the result of a federal mandate.

2. State compliance standards: This amendment complies with KRS 13A and 224.46-505 and 520 relative to postclosure financial requirements for hazardous waste sites or facilities qualifying for interim status.

3. Minimum or uniform standards contained in the federal mandate: These amendments are not required as the result of federal statutes or regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This proposed amendment is different in that owners and operators will be allowed to complete a form which is incorporated by reference elsewhere in the package. The form will require the same information but will allow owners and operators an option that may be more convenient.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 35:120. Liability requirements (IS).

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.99
STATUTORY AUTHORITY: KRS 224.46-505, 224.46-520, 224.46-530
NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-505, 224.46-520, and 224.46-530 relative to liability requirements for hazardous waste sites or facilities qualifying for interim status. [~~KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This administrative regulation establishes the liability requirements.~~]

Section 1. Coverage for Sudden Accidental Occurrences. [~~By October 8, 1982,~~] An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1,000,000 per occurrence with an annual aggregate of at least $2,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated [~~in one (1) of three (3) ways,~~] as specified in subsections (1) to (6) [~~, (2), and (3)~~] of this section.

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The liability endorsement shall be executed on the form incorporated by reference in Section 14 of 401 KAR 34:080. [~~a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:172.~~] The certificate of liability insurance shall be on the form incorporated by reference in Section 14 of 401 KAR 34:080. [~~a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:176.~~] The owner or operator shall submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet. If requested by the cabinet, the owner or operator shall provide an originally signed duplicate of the insurance policy.

(b) Each primary insurance policy shall be issued by an insurer which, at a minimum, is authorized [~~licensed~~] to transact [~~the business of~~] primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall be issued by an insurer which, at a minimum, is licensed to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator may meet the requirements of this administrative regulation by passing a financial test or using the corporate guarantee for liability coverage as specified in Sections 6 and 7 of this administrative regulation.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in Section 8 of this administrative regulation.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in Section 9 of this administrative regulation.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in Section 10 of this administrative regulation.

(6) An owner or operator may demonstrate the required liability coverage through use of combinations of the financial test, insurance, the corporate guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor [~~a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance~~]. The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the cabinet in writing within thirty (30) days whenever:

(a) A claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section;

(b) The amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by subsections (1) to (6) of this section is reduced; or

(c) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subsections (1) to (6) of this section.

Section 2. Coverage for Nonsudden Accidental Occurrences. An owner or operator of a surface impoundment, landfill, facility for land disposal as specified in KRS 224.01-010, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental

occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain additional liability coverage for nonsudden accidental occurrences in the amount of at least $3,000,000 per occurrence with an annual aggregate of at least $6,000,000, exclusive of legal defense costs. An owner or operator who is required to meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated [~~in one (1) of three (3) ways,~~] as specified in subsections (1) to (6) [~~, (2), and (3)~~] of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The liability endorsement shall be executed on the form incorporated by reference in Section 14 of 401 KAR 34:080. [~~on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:172.~~] The certificate of liability insurance shall be executed in accordance with [~~on a form provided by the cabinet containing wording identical to the wording specified in~~] 401 KAR 34:176 on the form incorporated by reference in Section 13 of 401 KAR 34:090. The owner or operator shall submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet. If requested by the cabinet, the owner or operator shall provide an originally signed duplicate of the insurance policy.

(b) Each primary insurance policy shall be issued by an insurer which, at a minimum is authorized [~~licensed~~] to transact the business of primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall be issued by an insurer which, at a minimum is authorized [~~licensed~~] to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator shall notify the cabinet in writing within thirty (30) days whenever:

(a) A claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or against an instrument providing financial assurance for liability coverage under this section;

(b) The amount of financial assurance for liability coverage under this section, provided by a financial instrument authorized by this subsection, is reduced; or

(c) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or against an instrument that is providing financial assurance for liability coverage under subsections (1) to (6) of this section.

(3) An owner or operator may meet the requirements of this administrative regulation by passing a financial test, or using the corporate guarantee for liability coverage as specified in Sections 6 and 7 of this administrative regulation.

(4) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in Section 8 of this administrative regulation.

(5) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in Section 9 of this administrative regulation.

(6) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in Section 10 of this administrative regulation.

(7) [~~(3)~~] An owner or operator may demonstrate the required liability coverage through use of combinations of the financial test, insurance, the corporate guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. [~~a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance.~~] The amounts of coverage demonstrated shall total at least the minimum amounts required by this section.

(8) [~~(4)~~] The required liability coverage for nonsudden accidental occurrences shall be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceding October 8, 1982, shall determine which of the dates apply. If the owner and operator of a facility are two (2) different parties, or if there is more than one (1) owner or operator, the sales or revenues of the owner or operator with the largest sales or revenues shall determine the date by which the coverage shall be demonstrated. The dates are as follows:

(a) For an owner or operator with sales or revenues totaling $10,000,000 or more, February 24, 1983.

(b) For an owner or operator with sales or revenues greater than $5,000,000 but less than $10,000,000, February 24, 1984.

(c) For all other owners or operators, February 24, 1985.

Section 3. Adjustments by the Cabinet. If the cabinet determines that the levels of financial responsibility required by Sections 1 and 2 of this administrative regulation are not consistent with the degree and duration of risks associated with treatment, storage, or disposal at any facility or group of facilities, the cabinet may increase the level of financial responsibility required under Sections 1 and 2 of this administrative regulation as may be necessary to protect human health and the environment. This adjusted level shall be based on the cabinet's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of [~~such~~] facilities. In addition, if the cabinet determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the cabinet may require that the owner or operator of the facility comply with Section 2 of this administrative regulation. An owner or operator shall furnish to the cabinet, within a reasonable time, any information which the cabinet requests to determine whether cause exists for such adjustments of the level or type of coverage. Any adjustment of the level of required coverage for a facility that has a permit shall be treated as a permit modification under Section 2(1)(e) of 401 KAR 38:040 and subject to the procedures of Section 2 of 401 KAR 38:050. Notwithstanding any other provision, the cabinet may hold a public hearing at its discretion or whenever the cabinet finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to adjust the level or type of required coverage.

Section 4. Request for a Variance. If an owner or operator can demonstrate to the satisfaction of the cabinet that the increased level of financial responsibility required by Section 1 or 2 [~~3~~] of this administrative regulation is not consistent with the degree and duration of risks associated with the treatment, storage, or disposal at each facility or group of facilities, the owner or operator may obtain a variance from the cabinet. The request for a variance shall be submitted to the cabinet in writing. The cabinet shall not grant any requests for a variance which seek to decrease the level of financial responsibility below the minimums required by KRS 224.46-520(3)(c). If granted, the variance shall take the form of an adjusted level of required liability coverage, such level to be based on the cabinet's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of facilities. The

cabinet may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the cabinet to determine a level of financial responsibility other than that required by Sections 1 and 2 of this administrative regulation. Any request for a variance for a permitted facility shall be treated as a request for a permit modification under Section 2 of 401 KAR 38:040 and subject to the procedures of Section 2 of 401 KAR 38:050. Notwithstanding any other provision, the cabinet may hold a public hearing at its discretion or whenever the cabinet finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to grant a variance.

Section 5. Period of Coverage. An owner or operator shall continuously provide liability coverage for a facility as required by this administrative regulation until the cabinet approves the certification from the owner or operator and an engineer that final closure has been completed in accordance with the approved closure plan. The cabinet shall then notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the cabinet has reason to believe that closure has not been in accordance with the approved closure plan. [~~certification of termination pursuant to the requirements of KRS 224.46-520.~~]

Section 6. Liability Self-insurance. (1) An owner or operator may satisfy the requirements of this administrative regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall demonstrate that the level of self-insurance does not exceed ten (10) percent of equity and shall meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The owner or operator shall have:

1. Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test; and

2. Tangible net worth of at least $10 million; and

3. Assets in the United States amounting to either, at least, ninety (90) percent of his total assets or, at least six (6) times the amount of [~~sum of the appropriate~~] liability coverage to be demonstrated by this test.

(b) The owner or operator shall have:

1. A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth of at least $10 million; and

3. Tangible net worth at least six (6) times the amount of the liability coverage to be demonstrated by this test; and

4. Assets located in the United States amounting to either, at least, ninety (90) percent of his total assets or, at least, six (6) times the amount of the liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in subsection (1) of this section refers to the annual aggregate amounts for which coverage is required under Sections 1 and 2 of this administrative regulation.

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three (3) items to the cabinet:

(a) A letter signed by the owner's or operator's chief financial officer and executed on the form incorporated by reference in Section 14 of 401 KAR 34:080. If an owner or operator is using the financial test to demonstrate both liability coverage and assurance for closure or postclosure care (as specified by Section 8 of 401 KAR 34:090, Section 8 of 401 KAR 34:100, Section 7 of 401 KAR 35:090, and Section 7 of 401 KAR 35:100), he shall submit the letter on the form incorporated by reference in Section 14, of 401 KAR 34:080, to cover both forms for financial responsibility a separate letter is not required; [~~a form provided by the cabinet which is worded as specified in 401 KAR 34:162;~~]

(b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(d) The owner or operator may obtain a one (1) time extension of the time allowed for submission of the documents specified in subsection (3) of this section if the fiscal year of the owner or operator ends during the ninety (90) days prior to the effective date of this administrative regulation and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension shall end no later than ninety (90) days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer is required to send a letter to the cabinet. This letter from the chief financial officer shall:

1. Request the extension;

2. Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

3. Specify for each facility to be covered by the test the EPA identification number, name, address, the amount of liability coverage and, when applicable, current closure and postclosure cost estimates to be covered by the test;

4. Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

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

6. Certify that the year-end financial statements of the owner or operator for such fiscal year shall be audited by an independent certified public accountant.

(4) An owner or operator of a new facility shall submit the items specified in subsection (3) of this section to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal.

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

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a corporate guarantee for the entire amount of required liability coverage as specified in this administrative regulation. Evidence of insurance shall be submitted to the cabinet within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

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

(8) The cabinet may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subsection (3)(c) of this section). An adverse opinion or a disclaimer of opinion shall be cause for

disallowance. The cabinet shall evaluate other qualifications on an individual basis. The owner or operator shall provide liability insurance for the entire amount of liability coverage as specified in this administrative regulation within thirty (30) days after notification of the disallowance.

Section 7. Corporate Guarantee for Liability Coverage. (1) Subject to subsection (2) of this section, an owner or operator may meet the requirements of this administrative regulation by obtaining a written guarantee, hereinafter referred to as "corporate guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator. The guarantee shall meet the requirements for owners or operators in Section 6(1) to (7) [~~through (8)~~] of this administrative regulation. The [~~wording of the~~] corporate guarantee shall be executed on the form incorporated by reference in Section 14 of 401 KAR 34:080 [~~identical to the wording specified in Section 1(2) of 401 KAR 34:165~~]. A certified copy of the corporate guarantee shall accompany the items sent to the cabinet as specified in Section 6(3) of this administrative regulation. One (1) of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the owner or operator, this letter shall describe the substantial business relationship and the value received in consideration of the guarantee. The terms of the corporate guarantee shall provide that:

(a) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(b) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the cabinet. This guarantee may not be terminated unless and until the cabinet approves alternate liability coverage complying with 401 KAR 35:120 or this administrative regulation.

(2)(a) In the case of corporations incorporated in the United States, a corporate guarantee may be used to satisfy the requirements of this administrative regulation only if the Attorney General or insurance commissioner of the state in which the guarantor is incorporated, each state in which a facility covered by the guarantee is located and in the state in which it has its principle place of business, have submitted a written statement to the director that a corporate guarantee executed as described in this administrative regulation and [~~Section 1(2) of 401 KAR 34:165~~] is a legally valid and enforceable obligation in that state and in [~~the Commonwealth of~~] Kentucky.

(b) In the case of corporations incorporated outside of the United States, a corporate guarantee may be used to satisfy the requirements of this section only if the non-U.S. corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located, and in the state in which it has its principle place of business, and the Attorney General or insurance commissioner of each state in which a facility covered by the guarantee is located, and the state in which the guarantor corporation has its principle place of business, and the cabinet's Department of Law or the insurance commissioner of [~~the Commonwealth of~~] Kentucky has [~~have~~] submitted a written statement to the cabinet that a corporate guarantee executed as described in this section and [~~Section 1(2) of 401 KAR 34:165~~] is a legally valid and enforceable obligation in that state and in [~~the Commonwealth of~~] Kentucky.

(c) A corporate guarantee may be used to satisfy the requirements of this administrative regulation only if the assets to be collected are located in the United States. Failure to provide the written statement referenced in paragraphs (a) and (b) of this subsection shall be grounds for denial of the instrument.

Section 8. Letter of Credit for Liability Coverage. (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable stand-by letter of credit that conforms to the requirements of this administrative regulation and submitting a copy of the letter of credit to the cabinet.

(2) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the federal or state agency.

(3) The letter of credit shall be submitted on the form incorporated by reference in Section 14 of 401 KAR 34:080.

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(5) The standby trust shall be on the form incorporated by reference in Section 14 of 401 KAR 34:080.

Section 9. Surety Bond for Liability Coverage. (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this administrative regulation and submitting a copy of the bond to the cabinet.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The letter of credit shall be submitted on the form incorporated by reference in Section 14 of 401 KAR 34:080.

(4) A surety bond may be used to satisfy the requirements of this section only if the attorney general or insurance commissioners of the state in which the surety is incorporated, and each state in which a facility covered by the surety bond is located have submitted a written statement to the cabinet that a surety bond executed on the form incorporated by reference in Section 14 of 401 KAR 34:080 is a legally valid and enforceable obligation in that state.

Section 10. Trust Fund for Liability Coverage. (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this administrative regulation and submitting an originally signed duplicate of the trust agreement to the cabinet.

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(3) The trust fund or liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the trust fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this administrative regulation to cover the difference. For purposes of this administrative regulation, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator by this administrative regulation, less the amount

of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 15, 1993 at 11 a.m

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: This amendment affects all owners or operators of hazardous waste sites or facilities that qualify for interim status.

(a) Direct and indirect costs or savings to those affected:

1. First year: The amendments made to this administrative regulation are to clarify wording and incorporate changes required by KRS Chapter 13A, but do not add substantive new requirements other than a requirement for owners or operators to notify the cabinet if an incident results in an insurance claim being filed against them.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Owners or operators must notify the cabinet in the event of an incident that results in an insurance claim being filed against them.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no significant costs or savings to the administrative body as a result of these proposed amendments.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet will receive notices from owners or operators.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to the federal text were considered by the cabinet. The federal Resource Conservation and Recovery Act mandates that state programs be consistent with and no less stringent than the federal program. These proposed amendments adopt the wording of federal regulations. Because the changes are not substantive, the cabinet did not seek alternatives.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, regulations, or government policies that were identified which conflict, overlap, or duplicate the requirements in these proposed amendments.

(a) Necessity of proposed administrative regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment was taken from 40 CFR 265.147(a) to .147(g). The state's mandate to regulate the management of hazardous waste is contained in KRS Chapter 224. The Resource Conservation and Recovery Act mandates that authorized states have programs that are consistent with and no less stringent than the federal program.

2. State compliance standards: This amendment complies with KRS 224.46-505, 520, and 530 which requires hazardous waste sites or facilities to demonstrate liability coverage for sudden and nonsudden accidental occurrences. Liability coverage provides for both bodily injury and property damage to third parties.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR 265.147(a) to .147(g).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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

401 KAR 35:190. Tanks (IS).

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46.520 and to establish [~~requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46.520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This administrative regulation establishes~~] minimum standards for tanks qualifying for interim status.

Section 1. Applicability. The regulations of this chapter apply to owners or operators of sites or facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in subsections (1) [~~and~~] (2), and (3) of this section or in Section 1 of 401 KAR 35:010.

(1) Tank systems that are used to store or treat hazardous waste which contain no free liquids and that are situated inside a building with an impermeable floor are exempted from the requirements of Section 4 of this administrative regulation. To demonstrate the absence or presence of free liquids in the stored/treated waste, EPA Method 9095 (paint filter liquids test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication No. SW-846) incorporated by reference in subsection (4) [~~(3)~~] of this section, shall be used.

(2) Tank systems, including sumps, as defined in Section 1 of 401 KAR 30:010, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Section 4(1) of this administrative regulation.

(3) Tanks, sumps, and other collection devices used in conjunction with drip pads as defined in 401 KAR 30:010 and regulated under 401 KAR 35:285, shall meet the requirements of this administrative regulation.

(4) The paint filter liquids test, Method 9095 in the EPA publication SW-846, is being incorporated into this administrative regulation 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, 14 [~~Frankfort Office Park, 18~~] Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716 between 8 a.m. and 4:30 p.m., EST, Monday through Friday.

Section 2. Assessment of Existing Tank System's Integrity. (1) For each existing tank system that does not have secondary containment meeting the requirements of Section 4 of this administrative regulation, the owner or operator shall determine that the tank system is not leaking or is unfit for use. Except as provided in subsection (3) of this section, the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by an [~~independent, qualified, professional~~] engineer [~~registered in the Commonwealth of Kentucky~~], in accordance with Section 7(4) of 401 KAR 38:070, that attests to the tank system's integrity no later than 180 days from the date of promulgation of this administrative regulation.

(2) This assessment shall determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste to be stored or treated to ensure that it shall [~~will~~] not collapse, rupture, or fail. At a minimum, this assessment shall [~~must~~] consider the following:

(a) Design standards, if available, according to which the tank and ancillary equipment were constructed;

(b) Hazardous characteristics of the waste that have been or shall be handled;

(c) Existing corrosion protection measures;

(d) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(e) Results of a leak test, internal inspection, or other tank integrity examination such that:

1. For nonenterable underground tanks, this assessment shall consist of a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects; and

2. For other than nonenterable underground tanks and for ancillary equipment, this assessment shall be either a leak test, or as described above, or an internal inspection and other tank integrity examination certified by an [~~independent, qualified, professional~~] engineer [~~registered in the Commonwealth of Kentucky~~] in accordance with Section 7(4) of 401 KAR 38:070, that addresses cracks, leaks, corrosion, and erosion.

(3) Tank systems that store or treat materials that become hazardous wastes after the effective [~~subsequent to~~] date [~~of promulgation~~] of this administrative regulation shall conduct this assessment within twelve (12) months after the date that the waste becomes a hazardous waste.

(4) If, as a result of the assessment conducted in accordance with subsection (1) of this section, a tank system is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of Section 7 of this administrative regulation.

Section 3. Design and Installation of New Tank Systems or Components. (1) Owners or operators of new tanks systems or components shall ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste to be stored or treated, and corrosion protection so that it shall not collapse, rupture, or fail. The owner or operator shall obtain a written assessment reviewed and certified by an [~~independent, qualified professional~~] engineer [~~registered in the Commonwealth of Kentucky~~] in accordance with Section 7(4) of 401 KAR 38:070, attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment shall include, at a minimum, the following information:

(a) Design standards according to which the tank and the ancillary equipment is or shall be constructed;

(b) Hazardous characteristics of the waste to be handled;

(c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or shall be in contact with the soil or with water, a determination by a corrosion expert of:

1. Factors affecting the potential for corrosion, including but not limited to:

a. Soil moisture content;

b. Soil pH;

c. Soil sulfides level;

d. Soil resistivity;

e. Structure to soil potential;

f. Influence of nearby underground metal structures ([~~e.g.,~~] piping);

g. Stray electric current;

h. Existing corrosion-protection measures ([~~e.g.,~~] coating, cathodic protection); and

2. The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one (1) or more of the following:

a. Corrosion-resistant materials of construction such as special alloys or [~~,~~] fiberglass-reinforced plastic[~~, etc.~~];

b. Corrosion-resistant coating (such as epoxy or [~~,~~] fiberglass[~~, etc.~~]) with cathodic protection (such as [~~e.g.,~~] impressed current or sacrificial anodes); and

c. Electrical isolation devices such as insulating joints and [~~,~~] flanges, etc.

(d) For underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that shall [~~will~~] protect the tank system against potential damage; and

(e) Design considerations to ensure that:

1. Tank foundations shall maintain the load of a full tank;

2. Tank systems shall be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone; and

3. Tank systems shall withstand the effects of frost heave.

(2) The owner or operator of a new tank system shall ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an [~~independent, qualified professional~~] engineer [~~registered in the Commonwealth of Kentucky~~], either of whom is trained and experienced in the proper installation of tank systems, shall inspect the system or component for the presence of any of the following items:

(a) Weld breaks;

(b) Punctures;

(c) Scrapes of protective coatings;

(d) Cracks;

(e) Corrosion; or

(f) Other structural damage or inadequate construction or installation. All discrepancies shall be remedied before the tank system is covered, enclosed, or placed in use.

(3) New tank systems or components and piping that are placed underground and that are backfilled shall be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is carefully installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(4) All new tanks and ancillary equipment shall be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak in the system shall be performed prior to the tank system being covered, enclosed, or placed in use.

(5) Ancillary equipment shall be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(6) The owner or operator shall provide the type and degree of corrosion protection necessary, based on the information provided under subsection (1)(c) of this section, to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated shall be supervised by an independent corrosion expert to ensure proper installation.

(7) The owner or operator shall obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (2) to [~~through~~] (6) of this section to attest that the tank system was properly designed and installed and that repairs, pursuant to subsections (2) and (4) of this section were performed. These written statements shall also include the certification statement as required in Section 7(4) of 401 KAR 38:070.

Section 4. Containment and Detection of Releases. (1) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section shall be provided (except as provided in subsections (6) and (7) of this section):

(a) For all new tank systems or components, prior to their being put into service;

(b) For all existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, by January 12, 1991;

(c) For those existing tank systems of known and documentable age, by January 12, 1991 or when the tank systems have reached fifteen (15) years of age, whichever comes later;

(d) For those existing tank systems for which the age cannot be documented within eight (8) years of January 12, 1987, but if the age of the facility is greater than seven (7) years, secondary containment shall be provided by the time the facility reaches fifteen (15) years of age, or within two (2) years of January 12, 1987, whichever comes later; and

(e) For tanks systems that store or treat materials that become hazardous wastes subsequent to the effective date of [~~promulgation of~~] this administrative regulation within the time intervals required in subsections (1)(a) to [~~through~~] (d) of this section, except that the date that a material becomes a hazardous waste shall be used in place of the effective date [~~of promulgation~~] of this administrative regulation.

(2) Secondary containment systems shall be:

(a) Designed, installed, and operated, to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(b) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(3) To meet the requirements of subsection (2) of this section, secondary containment systems shall be at a minimum:

(a) Constructed of or lined with materials that are compatible with the waste to be placed in the tank system and shall have sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which they are exposed climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);

(b) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(c) Provided with a leak-detection system that is designed and operated so that it shall detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within twenty-four (24) hours, or at the earliest practicable time if the existing detection technology or sites conditions shall not allow detection of a release within twenty-four (24) hours; and

(d) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation shall be removed from the secondary containment system within twenty-four (24) hours, or in as timely a manner as is possible to prevent harm to human health or the environment, if removal of the released waste or accumulated precipitation cannot be accomplished within twenty-four (24) hours.

(4) Secondary containment for tanks shall include one (1) or more of the following devices:

(a) A liner (external to the tank);

(b) A vault;

(c) A double-walled tank; or

(d) An equivalent device as approved by the cabinet.

(5) In addition to the requirements of subsections (2), (3), and (4) of this section, secondary containment systems shall satisfy the following requirements:

(a) External liner systems shall be:

1. Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

2. Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour rainfall event;

3. Free of cracks or gaps; and

4. Designed and installed to completely surround the tank and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank (that is [~~i.e.,~~] capable of preventing lateral as well as vertical migration of the wastes).

(b) Vault systems shall be:

1. Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

2. Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the

collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour rainfall event;

3. Constructed with chemical-resistant water stops in place at all joints (if any);

4. Provided with an impermeable interior coating or lining that is compatible with the stored waste and that shall prevent migration of waste into the concrete;

5. Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

a. Meets the definition of ignitable waste under Section 2 of 401 KAR 31:030; or

b. Meets the definition of reactive waste under Section 4 of 401 KAR 31:030 and which may form an ignitable or explosive vapor.

6. Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(c) Double-walled tanks shall be:

1. Designed as an integral structure (that is [i.e.,] an inner tank within an outer shell) so that any release from the inner tank is contained by the outer shell;

2. Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

3. Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four (24) hours or at the earliest practicable time, if the owner or operator can demonstrate to the cabinet, and the cabinet concurs, that the existing leak detection technology or site conditions shall not allow detection of a release within twenty-four (24) hours.

(6) Ancillary equipment shall be provided with full secondary containment (for example, [e.g.,] trench, jacketing, double-walled piping) that meets the requirements of subsections (2) and (3) of this section except for:

(a) Aboveground piping (exclusive of flanges, joints, valves, and connections) that is [are] visually inspected for leaks on a daily basis;

(b) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(c) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(d) Pressurized aboveground piping systems with automatic shutoff devices (for example, [e.g.,] excess flow check valves, flow metering shutdown devices, loss of pressure actuated shutoff devices) that are visually inspected for leaks on a daily basis.

(7) The owner or operator may obtain a variance from the requirements of this section if the cabinet finds, as a result of a demonstration by the owner or operator, either: that alternative design and operating practices, together with location characteristics, shall prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water at least as effectively as secondary containment during the active life of the tank system; or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard shall be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with paragraph (b) of this subsection, be exempted from the secondary containment requirements of this section. Application for a variance as allowed in this subsection does not waive compliance with the requirements of this administrative regulation for new tank systems.

(a) In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the cabinet shall consider:

1. The nature and quantity of the waste;

2. The proposed alternate design and operation;

3. The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and

4. All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to groundwater or surface water.

(b) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the cabinet shall consider:

1. The potential adverse effects on groundwater, surface water, and land quality taking into account:

a. The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

b. The hydrogeological characteristics of the facility and surrounding land;

c. The potential for health risks caused by human exposure to waste constituents;

d. The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

e. The persistence and permanence of the potential adverse effects;

2. The potential adverse effects of a release on groundwater quality, taking into account:

a. The quantity and quality of groundwater and the direction of groundwater flow;

b. The proximity and withdrawal rates of groundwater in the area;

c. The current and future uses of groundwater in the area; and

d. The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

3. The potential adverse effects of a release on surface water quality taking into account:

a. The quantity and quality of groundwater and the direction of groundwater flow;

b. The patterns of rainfall in the region;

c. The proximity of the tank system to surface waters;

d. The current and future uses of surface waters in the area and any water quality standards established for those surface waters; and

e. The [This] existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality; and

4. The potential adverse effects of a release on the land surrounding the tank system, taking into account:

a. The patterns of rainfall in the region; and

b. The current and future uses of the surrounding land.

(c) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), shall:

1. Comply with the requirements of Section 7 of this administrative regulation except subsection (4) of that section; and

2. Decontaminate or remove contaminated soil to the extent necessary to:

a. Enable the tank system for which the variance was granted to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release; and

b. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and

3. If contaminated soil cannot be removed or decontaminated in accordance with subparagraph 2 of this paragraph, comply with the requirements in Section 8(2) of this administrative regulation.

(d) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), shall:

1. Comply with the requirements of Sections 7(1), (2), (3), and (4) of this administrative regulation;

2. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if groundwater has been contaminated, the owner or operator shall comply with the requirements of Section 8(2) of this administrative regulation; and

3. If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of subsections (1) to [~~through~~] (6) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in Section 3 of this administrative regulation if the tank system is replaced. The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

(8) The following procedures shall be followed in order to request a variance from secondary containment:

(a) The cabinet shall be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from a secondary containment as allowed in subsection (7) of this section according to the following schedule:

1. For existing tank systems, at least twenty-four (24) months prior to the date that secondary containment shall be provided in accordance with subsection (1) of this section.

2. For new tank systems, at least thirty (30) days prior to entering into a contract for installation of the tank system.

(b) As part of the notification, the owner or operator shall also submit to the cabinet a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in subsection (7)(a) or (b) of this section.

(c) The demonstration for a variance shall be completed and submitted to the cabinet within 180 days after notifying the cabinet of an intent to conduct the demonstration; and

(d) The cabinet shall inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notification shall be placed in a daily or weekly major local newspaper of general circulation, and shall provide at least thirty (30) days from the date of the notice for the public to review and comment on the demonstration for a variance. The cabinet also shall hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one (1) or more issues concerning the demonstration for a variance. Public notice of the hearing shall be given at least thirty (30) days prior to the date of the hearing and may be given the same time as notice of the opportunity for the public to review and comment on the demonstration. These two (2) notices may be combined.

(e) The cabinet shall approve or disapprove the request for a variance within ninety (90) days of receipt of the demonstration from the owner or operator and shall notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the ninety (90) day time period shall begin when the cabinet receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in paragraph (d) of this subsection is extended, the ninety (90) day time period shall be similarly extended.

(9) All tank systems, until such time as secondary containment meeting the requirements of this section is provided, shall comply with the following:

(a) For nonenterable underground tanks, a leak test that meets the requirements of Section 2(2)(e) of this administrative regulation shall be conducted at least annually.

(b) For other than nonenterable underground tanks and for all ancillary equipment, an annual leak test, as described in subsection (9)(a) of this section or an internal inspection or other tank integrity examination by an [~~independent, qualified, professional~~] engineer [~~registered in the Commonwealth of Kentucky~~] that addresses cracks, leaks, corrosion and erosion shall be conducted at least annually. The owner or operator shall remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed.

(c) The owner or operator shall maintain on file at the facility a record of the results of the assessments conducted in accordance with subsections (1)(a) to [~~through~~] (c) of this section.

(d) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in subsections (1)(a) to [~~through~~] (c) of this section, the owner or operator shall comply with the requirements of Section 7 of this administrative regulation.

Section 5. General Operating Requirements. (1) Hazardous wastes or treatment reagents shall not be placed in a tank system if they could cause the tank, its ancillary equipment, or the secondary containment system to rupture, leak, corrode or otherwise fail.

(2) The owner or operator shall use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include at a minimum:

(a) Spill prevention controls (for example, [~~e.g.,~~] check valves or [,] dry discount couplings);

(b) Overfill prevention controls (for example, [~~e.g.,~~] level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(c) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(3) The owner or operator shall comply with the requirements of Section 7 of this administrative regulation if a leak or spill occurs in the tank system.

(4) Tanks holding hazardous waste shall be labeled "hazardous waste" upon the date that hazardous waste is first added to the tank.

Section 6. Inspections. (1) The owner or operator shall inspect, where present, at least once each operating day:

(a) Overfilling and [~~/~~] spill control equipment (for example, [~~e.g.,~~] waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

(b) The aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(c) Data gathered from monitoring equipment and leak-detection equipment (for example, [~~e.g.,~~] pressure and temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and

(d) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including the secondary containment structures (such as [~~e.g.,~~] dikes) to detect erosion or signs of releases of hazardous waste (such as [~~e.g.,~~] wet spots or [,] dead vegetation).

(2) The owner or operator shall inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(a) The proper operation of the cathodic protection system shall be confirmed within six (6) months after initial installation and annually thereafter; and

(b) All sources of impressed current shall be inspected and tested, as appropriate, at least bimonthly [(~~i.e., every other month~~)].

(3) The owner or operator shall document in the operating record of the facility an inspection of those items in subsections (1) and (2) of this section.

Section 7. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-use Tank Systems. A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, shall be removed from service immediately, and the

owner or operator shall satisfy the following requirements:

(1) Cessation of use: prevent flow or addition of wastes. The owner or operator shall immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(2) Removal of waste from tank system or secondary containment system.

(a) If the release was from the tank system, the owner/operator shall, within twenty-four (24) hours after detection of the leak or, if the owner/operator demonstrates that is not possible, at the earliest practicable time remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(b) If the material released was to a secondary containment system, all released materials shall be removed within twenty- four (24) hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(3) Containment of visible releases to the environment. The owner/operator shall immediately conduct a visual inspection of the release and based upon that inspection:

(a) Prevent further migration of the leak or spill to soils or surface water; and

(b) Remove and properly dispose of any visible contamination of the soil or surface water.

(4) Notifications and reports.

(a) Any release to the environment except as provided in paragraph (b) of this subsection, shall be reported to the cabinet within twenty-four (24) hours of detection. If the release has been reported pursuant to 40 CFR Part 302 that report shall satisfy this requirement.

(b) A leak or spill of hazardous waste is exempted from the requirements of this subsection if it is:

1. Less than or equal to a quantity of one (1) pound; and

2. Immediately contained and cleaned up.

(c) Within thirty (30) days of detection of a release to the environment, a report containing the following information shall be submitted to the cabinet:

1. Likely route of migration of the release;

2. Characteristics of the surrounding soil(soil composition, geology, hydrogeology, climate);

3. Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty (30) days, these data shall be submitted to the cabinet as soon as they become available;

4. Proximity to downgradient drinking water, surface water, and population areas; and

5. Description of response actions taken or planned.

(5) Provision of secondary containment, repair or closure.

(a) Unless the owner/operator satisfied the requirements of paragraphs (b) to [~~through~~] (d) of this subsection, the tank system shall be closed in accordance with Section 8 of this administrative regulation.

(b) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(c) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system shall be repaired prior to returning the tank system to service.

(d) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator shall provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section 4 of this administrative regulation before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system. If the source is an aboveground component that can be inspected visually, the component shall be repaired and may be returned to service without secondary containment as long as the requirements of subsection (6) of this section are satisfied. If a component is replaced to comply with the requirements of this paragraph that component shall satisfy the requirements for new tank systems or components in Sections 3 and 4 of this administrative regulation. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (for example, [~~e.g.,~~] the bottom of an in-ground or on-ground tank), the entire component shall be provided with secondary containment in accordance with Section 4 of this administrative regulation prior to being returned to use.

(6) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with subsection (5) of this section, and the repair has been extensive (for example, [~~e.g.,~~] installation of an internal liner, repair of a ruptured primary containment or secondary containment vessel), the tank system shall not be returned to service unless the owner/operator has obtained a certification by an [~~independent qualified, professional~~] engineer [~~registered in the Commonwealth of Kentucky~~] in accordance with Section 7(4) of 401 KAR 38:070 that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification shall be submitted to the cabinet within seven (7) days after returning the tank system to use.

Section 8. Closure and Postclosure Care. (1) At closure of a tank system, the owner/operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, for example [~~etc.~~]), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless Section 3(4) of 401 KAR 31:010 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems shall meet all of the requirements specified in 401 KAR 35:070 to [~~through~~] 35:130.

(2) If the owner or operator demonstrates that not all contaminated soil can be practicably removed or decontaminated as required in subsection (1) of this section, then the owner or operator shall close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to landfills in Section 4 of 401 KAR 35:230. In addition, for the purposes of closure, postclosure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner/operator shall meet all of the requirements for landfills specified in 401 KAR 35:070 to [~~through~~] 35:130.

(3) If an owner or operator has a tank system which does not have secondary containment that meets the requirements in Section 4(2) to [~~through~~] (6) of this administrative regulation and which is not exempt from the secondary containment requirements in accordance with Section 4(7) of this administrative regulation then:

(a) The closure plan for the tank system shall include both a plan for complying with subsection (1) of this section and a contingent plan for complying with subsection (2) of this section.

(b) A contingent postclosure plan for complying with subsection (2) of this section shall be prepared and submitted as part of the permit application.

(c) The cost estimates calculated for closure and postclosure care shall reflect the costs of complying with the contingent closure plan and the contingent postclosure plan, if these costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (1) of this section.

(d) Financial assurance shall be based on the cost estimates in paragraph (c) of this subsection.

(e) For the purposes of the contingent closure and postclosure plans, such a tank system is considered to be a landfill, and the contingent plans shall meet all of the closure, postclosure and financial responsibility requirements for landfills under 401 KAR 35:070 to [~~through~~] 35:130.

(f) For new tank systems that [~~shall~~] close in accordance with

subsection (2) of this section, the owner or operator shall demonstrate compliance with 401 KAR 38:500.

Section 9. Special Requirements for Ignitable or Reactive Waste. (1) Ignitable or reactive waste shall not be placed in a tank unless:

(a) The waste is treated, rendered or mixed before or immediately after placement in the tank system so that:

1. The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under Sections 2 or 4 of 401 KAR 31:030; and

2. Section 8(2) of 401 KAR 35:020 is complied with; or

(b) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(c) The tank system is used solely for emergencies.

(2) The owner or operator of a facility where ignitable or reactive waste is stored or treated in tanks shall comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 to [~~through~~] 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981), incorporated by reference in Section 3 of 401 KAR 30:010.

Section 10. Special Requirements for Incompatible Wastes. (1) Incompatible wastes, or incompatible wastes and materials shall not be placed in the same tank system, unless Section 8(2) of 401 KAR 35:020 is complied with.

(2) Hazardous waste shall not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless Section 9(2) of 401 KAR 35:020 is complied with.

Section 11. Waste Analysis and Trial Tests. [~~(1)~~] In addition to performing the waste analysis required by Section 4 of 401 KAR 35:020, the owner/operator shall whenever a tank system is to be used to [~~treat~~] chemically treat or to store a hazardous waste that is substantially different from waste previously treated or stored in that tank system; or [~~treat~~] chemically treat hazardous waste with a substantially different process than any previously used in that tank system:

(1) [~~; (2)~~] Conduct waste analyses and trial treatment or storage tests (for example, [~~e.g.,~~] bench scale or pilot plant scale tests); or

(2) [~~(3)~~] Obtain written, documented information on similar waste under similar operating conditions, to show that the proposed treatment or storage shall meet the requirements of Section 5(1) of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, November 29, 1993, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by November 24, 1993, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the department with a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by November 24, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on November 29, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by November 24, 1993. CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact: James Hale

(1) Type and number of entities affected: The proposed amendment affects all owners and operators of hazardous waste treatment, storage, and disposal facilities. There are approximately 90 of these facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: 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

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: There are no alternatives.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: None

(a) Necessity of proposed administrative regulation if in conflict: There is no conflict.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information or comment.

Tiering: Was tiering applied? Yes. This administrative regulation applies to hazardous waste generators, transporters, recyclers and owners and operators of hazardous waste facilities, and standards have been tiered to reflect the need to protect human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: This amendment is taken from 40 CFR 264.190 to .199; however, there is no actual federal mandate to make these changes. The mandate to regulate the management of hazardous waste is contained in KRS Chapter 224.

2. State compliance standards: This amendment complies with KRS 224.46-520.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR Parts 260 to 299.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those