NOVEMBER 1, 1993

ADMINISTRATIVE REGISTER

PART 2

Due to the size of the November 1, 1993, Administrative Register, it could not be stapled as one document. Therefore, this section is a continuation of the November Register.

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 35:200. Surface impoundments (IS).

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 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 relative to surface impoundments 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. KRS 224.46-530 requires that corrective action shall be initiated prior to permit issuance, renewal or amendment; groundwater monitoring and corrective action requirements applicable to new surface impoundments are applicable to interim status surface impoundments which continue to receive waste after July 26, 1982; additional requirements necessary to protect public health and the environment may be imposed at existing surface impoundments; and air emissions at surface impoundments may be regulated, monitored or controlled. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This administrative regulation establishes minimum standards for surface impoundments.~~]

Section 1. Applicability. The requirements in this administrative regulation apply to owners and operators of sites or facilities that use surface impoundments to treat, store or dispose of hazardous waste, except as Section 1 of 401 KAR 35:010 provides otherwise.

Section 2. Action Leakage Rate. [~~General Operating Requirements.~~] (1) The owner or operator of surface impoundment units subject to Section 10(1) of this administrative regulation shall submit a proposed action leakage rate to the cabinet when submitting the notice required under Section 10(2) of this administrative regulation. Within sixty (60) days of receipt of the notification, the cabinet shall:

(a) Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or

(b) Extend the review period for up to thirty (30) days. If no action is taken by the cabinet before the original sixty (60) or extended ninety (90) day review periods, the action leakage rate shall be approved as proposed by the owner or operator. However, upon written notice by the cabinet to the owner or operator, the action leakage rate may be modified by the cabinet.

(2) The cabinet shall approve an action leakage rate for surface impoundment units subject to Section 10(1) 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 siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures).

(3) 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 5(2) 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 closes in accordance with Section 10(1)(b) of this administrative regulation monthly during the postclosure care period when monthly monitoring is required under Section 5(2) of this administrative regulation.

(4) A surface impoundment shall maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or a storm. There shall be at least sixty (60) centimeters (approximately two (2) feet) of freeboard.

Section 3. Response Actions. [~~Containment System.~~] (1) The owner or operator of surface impoundment units subject to Section 10(1) of this administrative regulation shall submit a response action plan to the cabinet when submitting the proposed action leakage rate under Section 2 of this administrative regulation. 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 subsection (2)(c), (d), and (e) of this section, 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. [~~All earthen dikes shall have a protective cover, such as grass, shale or rock, to minimize wind and water erosion and to preserve their structural integrity.~~]

Section 4. Waste Analysis and Trial Tests. In addition to the waste analyses required by Section 4 of 401 KAR 35:020, whenever a surface impoundment is to be used to:

(1) Chemically treat a hazardous waste which is substantially different from waste previously treated in that impoundment; or

(2) Chemically treat hazardous waste with a substantially different process than any previously used in that impoundment, the owner or operator shall, before treating the different waste or using the different process:

(a) Conduct waste analyses and trial treatment tests (e.g., bench scale or pilot scale tests); or

(b) Obtain written, documented information on similar treatment of similar waste under similar operating conditions, to show that this treatment shall comply with Section 8(2) of 401 KAR 35:020.

Section 5. Monitoring and Inspections. The owner or operator shall inspect:

(1) The freeboard level at least once each operating day to ensure compliance with Section 2 of this administrative regulation; and

(2)(a) An owner or operator required to have a leak detection system under Section 10(1) 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 period.

(3) The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration or failures in the impoundment.

Section 6. Closure and Postclosure Care. (1) At closure, the owner or operator shall:

(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(4) of 401 KAR 31:010 applies; or

(b) Close the impoundment and provide postclosure care for a landfill under 401 KAR 35:070 and Section 4 of 401 KAR 35:230 including the following:

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 the 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 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) In addition to the requirements of 401 KAR 35:070 and Section 4 of 401 KAR 35:230 during the postclosure care period, the owner or operator of a surface impoundment in which wastes, waste residues, or contaminated materials remain after closure in accordance with the provisions of subsection (1)(b) of this section shall:

(a) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover 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 5(2) and 10(3)(b)4 and (3)(c) of this administrative regulation and comply with all other applicable leak detection system requirements of this chapter.

(c) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of 401 KAR 35:060; and

(d) [~~(c)~~] Prevent run-on and run-off from eroding or otherwise damaging the final cover.

Section 7. Special Requirements for Ignitable or Reactive Waste. Ignitable or reactive waste shall 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 placement in the impoundment so that: the resulting waste mixture no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; 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 35:330 for examples) shall not be placed in the same surface impoundment.

Section 9. Recordkeeping. The owner or operator shall record the level of liquid in the surface impoundment every day with respect to a fixed reference elevation.

Section 10. Design and Operating Requirements. (1) The owner or operator of each new surface impoundment 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 above and between such liners, and operate the leachate collection and removal systems, in accordance with Section 10(3) of this administrative regulation (unless exempted under Section 10(4) or (6) of this administrative regulation). "Construction commences" is defined in 401 KAR 30:010 under "existing facility". [~~The owner or operator of a surface impoundment shall install two (2) or more liners and a leachate collection system in accordance with Section 2(3) of 401 KAR 34:200, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.~~]

(2) The owner or operator of each unit referred to in subsection (1) of this section shall notify the cabinet at least sixty (60) days prior to receiving waste. The owner or operator of each facility submitting notice shall file a Part B application within six (6) months of the receipt of such notice by the cabinet.

(3) The owner or operator of any replacement surface impoundment unit is exempt from subsection (1) of this section if:

(a) The existing unit was constructed in compliance with design standards of (Section 3004(o)(1)(A)(i) and (o)(5) of RCRA); and

(b) There is no reason to believe that the liner is not functioning as designed. [~~Subsection (1) of this section shall 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, shall 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.~~]

(4) The double liner requirement set forth in subsection (1) 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 are considered hazardous only because they exhibit toxicity characteristics classifying them under EPA hazardous waste numbers D004 through D017 (see Section 5 of 401 KAR 31:030); and

(b) The owner or operator demonstrates that:

1. The monofill:

a. Has at least one (1) liner for which there is no evidence that such liner is leaking. For the purposes of this administrative regulation 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 (1) 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 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 comply with appropriate postclosure requirements, including but not limited to ground water monitoring and corrective action;

b. Is located more than one-fourth (1/4) mile from an underground source of drinking water (as that term is defined in 401 KAR 30:010); and

c. Is in compliance with generally applicable ground water monitoring requirements for facilities with permits issued in accordance with 401 KAR Chapter 38; or

2. 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.

3. In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of subsection (1) of this section and in good faith for compliance with subsection (1) of this section and with guidance documents governing liners and leachate collection systems under subsection (1) of this section, no liner or leachate collection system which is different from that which was so installed pursuant to subsection (1) of this section shall be required for such unit by the cabinet when issuing the first permit to such facility, except that the cabinet not be precluded from requiring installation of a new liner when the cabinet has reason to believe that any liner installed pursuant to the requirements of subsection (1) of this section is leaking.

(5) A surface impoundment shall maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or a storm. There shall be at least sixty (60) centimeters (approximately two (2) feet) of freeboard.

(6) All earthen dikes shall have a protective cover, such as grass, shale, or rock to minimize wind and water erosion and to preserve their structural integrity.

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 of hazardous waste sites or facilities that qualify for interim status. There are less than 10 interim status facilities operating in Kentucky.

(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 265.220 to .230; 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 265.220-230.

3. Minimum or uniform standards contained in the federal mandate: This amendment conforms to the language in 40 CFR Parts 265.220 to .230.

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 35:210. Waste piles (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 relative to waste piles 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 minimum standards for waste piles.~~]

Section 1. Applicability. The requirements in this administrative regulation apply to owners and operators of sites or facilities that treat or store hazardous waste in piles, except as Section 1 of 401 KAR 35:010 provides otherwise. Alternatively, a pile of hazardous waste may be managed as a landfill under 401 KAR 35:230.

Section 2. Protection from Wind. The owner or operator of a pile containing hazardous waste which could be subject to dispersal of wind shall [~~must~~] cover or otherwise manage the pile so that wind dispersal is controlled.

Section 3. Waste Analysis. (1) In addition to the waste analysis required by Section 4 of 401 KAR 35:020, the owner or operator shall [~~must~~] analyze a representative sample of waste from each incoming movement before adding the waste to any existing pile, unless:

(a) The only wastes the facility receives which are amenable to piling are compatible with each other, or

(b) The waste received is compatible with the waste in the pile to which it is to be added.

(2) The analysis conducted shall [~~must~~] be capable of differentiating between the types of hazardous waste the owner or operator place in piles, so that mixing of incompatible waste does no inadvertently occur. The analysis shall [~~must~~] include a visual comparison of color and texture.

Section 4. Containment. If leachate or run-off from a pile is a hazardous waste then either subsection (1) or (2) of this section shall [~~must~~] be complied with:

(1)(a) The pile shall [~~must~~] be place on an impermeable base that is compatible with the waste under the conditions of treatment or storage;

(b) 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;

(c) 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; and

(d) Collection and holding facilities ([~~e.g.,~~] tanks or basins) associated with run-on and run-off control systems shall [~~must~~] be emptied or otherwise manage expeditiously to maintain design capacity of the system; or

(2)(a) The pile shall [~~must~~] be protected from precipitation and run-on by some other means; and

(b) No liquids or wastes containing free liquids may be placed in the pile.

Section 5. Special Requirements for Ignitable or Reactive Waste. Ignitable or reactive wastes shall [~~must~~] not be placed in a pile unless the waste and pile satisfy all applicable requirements of 401 KAR Chapter 37; and [~~prior to addition of the waste to an existing pile.~~]

(1) The waste or mixture no longer meets [~~meeting~~] the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; and

(2) The waste is managed in accordance [~~Complies~~] with Section 8(2) of 401 KAR 35:020 so that it is protected from any material or conditions that may cause it to ignite or react.

Section 6. Special Requirements for Incompatible Wastes. (1) Incompatible wastes or incompatible wastes and materials (see 401 KAR 35:330 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, 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 area where incompatible wastes or materials were previously piled, unless that area has been decontaminated sufficiently to ensure compliance with Section 8(2) of 401 KAR 35:020.

Section 7. Closure and Postclosure Care. (1) At closure the owner or operator shall [~~must~~] 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(4) of 401 KAR 31:010 applies; or

(2) If, after removing or decontaminating all residue 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

requirements that apply to landfills (see Section 4 of 401 KAR 35:230). If the owner or operator did not list the waste pile as a disposal facility in the original Part A application, the requirements of 401 KAR 38:500 shall [~~must~~] be satisfied in order to become a disposal facility.

Section 8. Design and Operating Requirements. The owner or operator of each waste pile on which construction commenced after January 29, 1992, each lateral expansion of a waste pile unit on which construction commenced after July 29, 1992, and each replacement of an existing waste pile unit that commenced reuse after July 29, 1992 shall install two (2) or more liners and a leachate collection and removal system above and between the liners, and operate the leachate collection and removal systems, in accordance with Section 2(3) of 401 KAR 34:210, unless exempted under Section 2(4), (5), or (6) of 401 KAR 34:210; and shall comply with the procedures of Section 2(2) of 401 KAR 34:200. "Construction commences" is as defined in 401 KAR 30:010 under "existing facility". [~~The owner or operator of a waste pile is subject to the requirements for liners and leachate collection systems or equivalent protection provided in Section 2 of 401 KAR 34:210, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in Part A permit application, and with respect to waste received beginning May 8, 1985.~~]

Section 9. Action Leakage Rates. (1) The owner or operator of waste pile units subject to Section 5 of this administrative regulation shall submit a proposed action leakage rate to the cabinet when submitting the notice required under Section 5 of this administrative regulation. Within sixty (60) days of receipt of the notification, the cabinet shall:

(a) Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or

(b) Extend the review period for up to thirty (30) days. If no action is taken by the cabinet before the original sixty (60) or extended ninety (90) day review periods, the action leakage rate shall be approved as proposed by the owner or operator. However, upon written notice by the cabinet to the owner or operator, the action leakage rate may be modified by the cabinet.

(2) The cabinet shall approve an action leakage rate for surface impoundment units subject to Section 5 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 must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures).

(3) 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 11 of this administrative regulation, to an average daily flow rate (gallons per acre per day for example) 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.

Section 10. Response Actions. (1) The owner or operator of waste pile units subject to Section 8 of this administrative regulation shall submit a response action plan to the cabinet when submitting the proposed action leakage rate under Section 9 of this administrative regulation. 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 receipts 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 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 subsections (2)(c), (d), and (e) of this section, 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 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.

Section 11. Monitoring and Inspection. An owner or operator required to have a leak detection system under Section 8 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.

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 of hazardous waste sites or facilities with waste piles that qualify 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: 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 35:220. Land treatment (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~~] minimum standards for land treatment facilities qualifying for interim status.

Section 1. Applicability. The requirements in this administrative regulation apply to owners and operators of hazardous waste land treatment facilities, except as Section 1 of 401 KAR 35:010 provides otherwise.

Section 2. General Operating Requirements. (1) Hazardous waste shall not be placed in or on a land treatment facility unless the waste can be made less hazardous or nonhazardous by degradation, transformation or immobilization processes occurring in or on the soil.

(2) The owner or operator shall design, construct, operate and maintain a run-on control system capable of preventing flow onto the active portions of the facility during peak discharge from at least a twenty-five (25) year storm.

(3) The owner or operator shall design, construct, operate and maintain a run-off management system capable of collecting and controlling a water volume at least equivalent to a twenty-four (24) hour, twenty-five (25) year storm.

(4) 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.

(5) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator shall manage the unit

to control wind dispersal.

Section 3. Waste Analysis. In addition to the waste analyses required by Section 4 of 401 KAR 35:020, before placing a hazardous waste in or on a land treatment facility, the owner or operator shall:

(1) Determine the concentrations in the waste of any substances which equal or exceed the maximum concentrations contained in Table 1 of 401 KAR 31:030, Section 5(3), that cause a waste to exhibit the toxicity characteristic;

(2) For any waste listed in 401 KAR 31:040, determine the concentrations of any substances which caused the waste to be listed as a hazardous waste; and

(3) If food chain crops are grown, determine the concentrations in the waste of each of the following constituents: arsenic, cadmium, lead, and mercury, unless the owner or operator has written, documented data that show that the constituent is not present.

Section 4. Food Chain Crops. (1) An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and shall be grown in the future, shall notify the cabinet within sixty (60) days after January 7, 1981.

(2)(a) Food chain crops shall not be grown on the treated area of a hazardous waste land treatment facility unless the owner or operator can demonstrate, based on field testing, that any arsenic, lead, mercury or other constituents identified under Section 3(2) of this administrative regulation:

1. Shall not be transferred to the food portion of the crop by plant uptake or direct contact, and shall not otherwise be ingested by food chain animals [~~(e.g., by grazing)~~]; or

2. Shall not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

(b) The information necessary to make the demonstration required by paragraph (a) of this subsection shall be kept at the land treatment facility and shall, at a minimum:

1. Be based on tests for the specific waste and application rates being used at the land treatment facility; and

2. Include descriptions of crop and soil characteristics, sample selection criteria, sample size determination, analytical methods and statistical procedures.

(3) Food chain crops shall not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of either paragraph (a) of this subsection or all requirements of paragraph (b) of this subsection are met.

(a)1. The pH of the waste and soil mixture is six and five-tenths (6.5) or greater at the time of each waste application, except for waste containing cadmium at concentrations of two (2) mg/kg (dry weight) or less;

2. The annual application of cadmium from waste does 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 does not exceed:

Table 1

Time Period	Annual Cd applicable rate (kg/ha)
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 does not exceed the levels in either subparagraph 3a of this paragraph or subparagraph 3b of this paragraph.

a. Table 2

Soil Cation Exchange Capacity (meq/100g)	Maximum Cumulative Application (kg/ha) Background Soil pH Less than 6.5	Background Soil pH Greater than 6.5
Less than 5	5	5
5-15	5	10
Greater than 15	5	20

b. For soils with a background pH of less than six and five-tenths (6.5), the cumulative cadmium application rate does not exceed the levels in Table 3 provided that the pH of the waste and soil mixture is adjusted and maintained at six and five-tenths (6.5) or greater whenever food chain crops are grown.

Table 3

Soil Cation Exchange Capacity (meq/100g)	Maximum Cumulative Application (kg/ha)
Less than 5	5
5-15	10
Greater than 15	20

(b)1. The only food chain crop produced is animal feed.

2. The pH of the waste and soil mixture is 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 is maintained whenever food chain crops are grown;

3. There is a facility operating plan which demonstrates how the animal feed shall be distributed to preclude ingestion by humans. The facility operating plan describes the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses.

4. Future property owners are 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 not be grown except in compliance with this paragraph.

Section 5. Unsaturated Zone (Zone of Aeration) Monitoring. (1) The owner or operator shall have in writing, and shall implement, an unsaturated zone monitoring plan which is designed to:

(a) Detect the vertical migration of hazardous waste and hazardous waste constituents under the active portion of the land treatment facility; and

(b) Provide information on the background concentrations of the hazardous waste and hazardous waste constituents in similar but untreated soils nearby; this background monitoring shall be conducted before or in conjunction with the monitoring required under paragraph (a) of this subsection.

(2) The unsaturated zone monitoring plan shall include, at a minimum:

(a) Soil monitoring using soil cores; and

(b) Soil-pore water monitoring using devices such as lysimeters.

(3) To comply with subsection (1)(a) of this section, the owner or operator shall demonstrate in his unsaturated zone monitoring plan that:

(a) The depth at which soil and soil-pore water samples are to be taken is below the depth to which the waste is incorporated into the soil;

(b) The number of soil and soil-pore water samples to be taken

is based on the variability of:

1. The hazardous waste constituents (as identified in Section 3(1) and (2) of this administrative regulation) in the waste and in the soil; and

2. The soil type; and

(c) The frequency and timing of soil and soil-pore water sampling is based on the frequency, time and rate of waste application, proximity to groundwater and soil permeability.

(4) The owner or operator shall keep at the facility his unsaturated zone monitoring plan, and the rationale used in developing this plan.

(5) The owner or operator shall analyze the soil and soil-pore water samples for the hazardous waste constituents that were found in the waste during the waste analysis under Section 3(1) and (2) of this administrative regulation.

Section 6. Recordkeeping. The owner or operator shall include hazardous waste application dates and rates in the operating record required under Section 4 of 401 KAR 35:050.

Section 7. Closure and Postclosure. (1) In the closure plan under Section 3 of 401 KAR 35:070 and the postclosure plan under Section 9 of 401 KAR 35:070, the owner or operator shall address the following objectives and indicate how they shall be achieved:

(a) Control of the migration of hazardous waste and hazardous waste constituents from the treated area into the groundwater;

(b) Control of the release of contaminated run-off from the land treatment facility into surface water;

(c) Control of the release of airborne particulate contaminants caused by wind erosion; and

(d) Compliance with Section 4 of this administrative regulation concerning the growth of food chain crops.

(2) The owner or operator shall consider at least the following factors in addressing the closure and postclosure care objectives of subsection (1) of this section:

(a) Type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

(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 (for example, [~~e.g.,~~] proximity to groundwater, surface water and drinking water sources);

(d) Climate, including amount, frequency and pH of precipitation;

(e) Geological and soil profiles and surfaces and subsurface hydrology of the site and soil characteristics including cation exchange capacity, total organic carbon and pH;

(f) Unsaturated zone monitoring information obtained under Section 5 of this administrative regulation; and

(g) Type, concentration and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

(3) The owner or operator shall consider at least the following methods in addressing the closure and postclosure care objectives of subsection (1) of this section:

(a) Removal of contaminated soils;

(b) Placement of a final cover considering:

1. Functions of the cover ([~~e.g.,~~] infiltration control, erosion and run-off control and wind erosion control for example); and

2. 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

(c) Monitoring of groundwater.

(4) In addition to the requirements of 401 KAR 35:070, during the closure period the owner or operator of a land treatment facility shall:

(a) Continue unsaturated zone monitoring in a manner and frequency specified in the closure plan;

(b) Maintain the run-on control system required under Section 2(2) of this administrative regulation;

(c) Maintain the run-off management system required under Section 2(3) of this administrative regulation; and

(d) Control wind dispersal of particulate matter which may be subject to wind dispersal.

(5) For the purpose of complying with Section 6 of 401 KAR 35:070, when closure is completed the owner or operator may submit to the cabinet certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an [~~independent professional~~] engineer [~~who is registered in Kentucky~~], that the facility has been closed in accordance with the specifications in the approved closure plan.

(6) In addition to the requirements of Section 8 of 401 KAR 35:070, during the postclosure care period the owner or operator of a land treatment facility shall:

(a) Continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the postclosure plan;

(b) Restrict access to the land treatment facility as appropriate for its postclosure use;

(c) Assure that growth of food chain crops complies with Section 4 of this administrative regulation; and

(d) Control wind dispersal of hazardous waste.

Section 8. Special Requirements for Ignitable or Reactive Waste. The owner or operator shall not apply ignitable or reactive waste to the treatment zone unless the waste and treatment zone meet all applicable requirements of 401 KAR Chapter 37 and

(1) The waste is immediately incorporated into the soil so that:

(a) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Sections 2 or 4 of 401 KAR 31:030; and [~~Ignitable or reactive waste shall not be land treated unless the waste is immediately incorporated into the soil so that:~~]

(b) [~~(1) The resulting waste, mixture or dissolution of 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 35:020 is complied with.

(2) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

Section 9. Special Requirements for Incompatible Wastes. Incompatible wastes, or incompatible wastes and materials (see 401 KAR 35:330 for examples), shall not be placed in the same land treatment area.

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 owners or operators of hazardous waste sites or facilities that qualify for interim status and treat and dispose of hazardous waste in land treatment units. 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 may be increased costs associated with complying with the provisions of 401 KAR Chapter 37.

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: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There may be additional costs associated with enforcing the provisions of this amendment.

2. Continuing costs or savings: Costs 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 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: 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 264.270 to .283; 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 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 35:230. Landfill (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~~] minimum standards for hazardous waste landfills qualifying for interim status.

Section 1. Applicability. The requirements in this administrative regulation apply to owners and operators of sites or facilities that dispose of hazardous waste in landfills, except as Section 1 of 401 KAR 35:010 provides otherwise. A waste pile used as a disposal facility is a landfill and is governed by this administrative regulation.

Section 2. Action Leakage Rate. (1) The owner or operator of landfill units subject to Section 10(1) of this administrative regulation shall submit a proposed action leakage rate to the cabinet when submitting the notice required under Section 10(2) of this administrative regulation. Within sixty (60) days of receipt of the notification, the cabinet shall:

(a) Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or

(b) Extend the review period for up to thirty (30) days. If no action is taken by the cabinet before the original sixty (60) or extended ninety (90) day review periods, the action leakage rate shall be approved as proposed by the owner or operator.

(2) The cabinet shall approve an action leakage rate for landfills subject to Section 10(1) 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, or 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 must 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, or overburden pressures).

(3) 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 12 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 12(2) of this administrative regulation.

(4) [~~(5)~~] As required by Section 4 of 401 KAR 35:020, the waste

analysis plan shall [~~must~~] include the analyses needed to comply with Sections 5, 6, and 7 of this administrative regulation. As required by Section 4 of 401 KAR 35:050, the owner or operator shall [~~must~~] place the results of these analyses in the operating record of the facility.

Section 3. Surveying and Recordkeeping. The owner or operator of a landfill shall [~~must~~] maintain the following items in the operating record required in Section 4 of 401 KAR 35:050:

(1) On a map, the exact location and dimensions, including depth of each cell with respect to permanently surveyed benchmarks; and

(2) The contents of each cell and the approximate location of each hazardous waste type within each cell.

Section 4. Closure and Postclosure Care. (1) At final closure of the landfill or upon closure of any cell, the owner or operator shall [~~must~~] 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} cm/sec.

(2) After final closure, the owner or operator shall comply with all postclosure requirements contained in Sections 8 to 11 of 401 KAR 35:070 including maintenance and monitoring throughout the postclosure care period. The owner or operator shall:

(a) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover 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)(c)4 and (2)(d) and 13 of 401 KAR 34:230, and comply with all other applicable leak detection system requirements of this chapter.

(c) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of 401 KAR 34:060;

(d) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(e) Protect and maintain surveyed benchmarks used in complying with Section 3 of this administrative regulation.

[~~(2) In the closure and postclosure plans, the owner or operator must address the following objectives and indicate how they will be achieved:~~

~~(a) Control of pollutant migration from the facility via groundwater, surface water and air;~~

~~(b) Control of surface water infiltration, including prevention of pooling; and~~

~~(c) Prevention of erosion.~~]

(3) The owner or operator shall [~~must~~] consider at least the following factors in addressing the closure and postclosure care objectives of subsection (2) 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 (for example, [~~e.g.,~~] proximity to groundwater, surface water, and drinking water sources);

(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.

(4) After final closure, the owner or operator shall [~~must~~] comply with all postclosure requirements contained in Sections 8 to [~~through~~] 11 of 401 KAR 35:070 including maintenance and monitoring throughout the postclosure care period. The owner or operator shall [~~must~~]:

(a) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

(b) Maintain and monitor the ground water monitoring system and comply with all other applicable requirements of 401 KAR 35:060;

(c) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(d) Protect and maintain surveyed benchmarks used in complying with this section.

(5) In addition to the requirements of Section 8 of 401 KAR 35:070, during the postclosure care period, the owner or operator of a hazardous waste landfill shall [~~must~~]:

(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 5. Special Requirements for Ignitable or Reactive Waste. Ignitable or reactive waste shall [~~must~~] not be placed in a landfill unless the waste and [~~is treated, rendered or mixed before placement in a~~] landfill meet all applicable requirements of 401 KAR Chapter 37 and [~~so that~~]:

(1) The resulting waste or mixture no longer meets the definition of ignitable or reactive waste under Section 2 or 3 of 401 KAR 31:030; and

(2) Section 8(2) of 401 KAR 35:020 is complied with.

Section 6. Special Requirements for Incompatible Wastes. Incompatible wastes or incompatible wastes and materials (see 401 KAR 35:330 for examples) shall [~~must~~] not be placed in the same landfill cell.

Section 7. Special Requirements for Liquid, Bulk and Containerized Waste. (1) The placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids (whether or not absorbents have been added) in any landfill is prohibited.

(2) To demonstrate the absence or presence of free liquids in either a containerized or bulk waste, the following test shall [~~must~~] 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 incorporated by reference in Section 3 of 401 KAR 30:010).

(3) The date for compliance with subsection (1) of this section is November 19, 1981. The date for compliance with subsection (2) of this section is March 22, 1982.

(4) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the cabinet or the cabinet determines that:

(a) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste;

(b) Placement in such owner's or operator's landfill or surface impoundment will not present a risk of contamination of any underground source of drinking water (as that term is defined in Section 1 of 401 KAR 30:010); and

(c) Placement in such owner's or operator's landfill or unlined surface impoundment is in compliance with the applicable provisions

of KRS Chapter 224.

Section 8. Special Requirements for Containers. Unless they are very small, such as an ampule, containers shall [~~must~~] 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 9. 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 [~~must~~] be packaged in nonleaking inside containers. The inside containers shall [~~must~~] be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the waste held therein. Inside containers shall [~~must~~] be tightly and securely sealed. The inside containers shall [~~must~~] be of the size and type specified in the [~~Department of Transportation (~~]DOT[~~)~~] hazardous materials regulations, [~~(~~]49 CFR Parts 173, 178 and 179[~~)~~], if those regulations specify a particular inside container for the waste.

(2) The inside containers shall [~~must~~] be overpacked in an open head DOT-specification metal shipping container, [~~(~~]49 CFR Parts 178 and 179[~~)~~] 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 [~~must~~] be full after packing with inside containers and absorbent material.

(3) The absorbent material used shall [~~must~~] 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 35:020.

(4) Incompatible wastes, as defined in Section 1 of 401 KAR 30:010, shall [~~must~~] not be placed in the same outside container.

(5) Reactive waste shall [~~must~~] be treated or rendered nonreactive prior to packaging in accordance with subsections (1) to [~~through~~] (4) of this section.

(6) Such disposal shall comply with the requirements of 401 KAR Chapter 37. Persons who incinerate lab packs according to the requirements in Section 4 of 401 KAR 37:040 may use fiber drums in place of metal outer containers. The fiber drums shall meet the DOT specifications in 49 CFR 173.12 and be overpacked according to the requirements in subsection (2) of this section.

Section 10. Design and Operating Requirements. (1) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit 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, and operate the leachate collection and removal systems, in accordance with Section 2(4), (5), or (f) of 401 KAR 34:230. "Construction commences" is as defined in 401 KAR 30:010 of this chapter under "existing facility".

(2) [~~(1)~~] The owner or operator of a landfill shall [~~must~~] install two (2) or more liners and leachate collection systems above and between such liners in accordance with Section 2(3) of 401 KAR 34:230 with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(3) [~~(2)~~] The owner or operator of each unit referred to in subsection (1) of this section must notify the cabinet at least sixty (60) days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six (6) months of the receipt of such notice by the cabinet.

(4) The owner or operator of any replacement landfill unit is exempt from paragraph (a) of this section if:

(a) The existing unit was constructed in compliance with the design standards of Section 3004(o)(1)(A)(i) and (o)(5) of RCRA; and

(b) There is no reason to believe that the liner is not functioning as designed.

(5) [~~(3)~~] Subsection (1) of this section will 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 [~~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.

(6) [~~(4)~~] The double liner requirement set forth in subsection (1) 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 the owner or operator demonstrates that:

1. The monofill:

a. Has at least one (1) liner for which there is no evidence that such liner is leaking;

b. Is located more than one-fourth (1/4) mile from an underground source of drinking water (as that term is defined in 401 KAR 30:010); and

c. Is in compliance with generally applicable ground water monitoring requirements for facilities with permits under 401 KAR Chapter 38; or

2. The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there shall [~~will~~] be no migration of any hazardous constituent into ground water or surface water at any future time.

(7) [~~(5)~~] In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of subsection (1) of this section and in good faith compliance with subsection (1) of this section and with guidance documents governing liners and leachate collection systems under subsection (1) of this section, no liner or leachate collection system which is different from that which was so installed pursuant to subsection (1) of this section shall [~~will~~] be required for such unit by the cabinet when issuing the first permit to such facility, except that the cabinet shall [~~will~~] not be precluded from requiring installation of a new liner if [~~when~~] the cabinet has reason to believe that any liner installed pursuant to the requirements of subsection (1) of this section is leaking.

(8) [~~Section 2. General Operating Requirements. (1)~~] 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 landfill during peak discharge from at least a twenty-five (25) year storm.

(9) [~~(2)~~] 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.

(10) [~~(3)~~] Collection and holding facilities (such as [~~e.g.,~~] tanks or basins) 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.

(11) [~~(4)~~] The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind shall [~~must~~] cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

Section 11. Response Actions. (1) The owner or operator of landfill units subject to Section 10(1) of this administrative regulation shall submit a response action plan to the cabinet when submitting the proposed action leakage rate under Section 2 of this administra-

tive regulation. 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 exceedence within seven (7) days of the determination or immediately if required by KRS 224.01-400;

(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 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 paragraphs (c) 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 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.

Section 12. Monitoring and Inspection. (1) An owner or operator required to have a leak detection system under Section 10(1) 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.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two (2) consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semiannually. If at any time during the postclosure care period the pump operating level is exceeded at units on quarterly or semiannual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the cabinet based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" shall be in accordance with Section 2(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: This amendment affects owners or operators of hazardous waste landfills that qualify 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: There may be additional costs associated with designing and installing leak detection systems.

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: Owners or operators must submit a written assessment to the cabinet if their flow rate exceeds the leakage rate established in their response action plan.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There may be additional costs associated with enforcing the provisions of this administrative regulation.

2. Continuing costs or savings: Costs will continue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet must review response action plans and assessments in the event of flow rates exceeding established leakage rates.

(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: 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 264.300 to .304; 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 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 35:240. Incinerators (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~~] minimum standards for incinerators qualifying for interim status.

Section 1. Applicability. (1) The requirements in this administrative regulation apply to owners and operators of sites or facilities that incinerate hazardous waste, except as Section 1 of 401 KAR 35:010 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) Owners and operators of incinerators burning hazardous waste are exempt from all of the requirements of this administrative regulation, except Section 5 of this administrative regulation, provided that the owner or operator has documented, in writing, that the waste shall not reasonably be expected to contain any of the hazardous constituents listed in 401 KAR 31:170, and the documentation is retained at the facility, if the waste to be burned is:

(a) 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

(b) 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 not be burned when other hazardous wastes are present in the combustion zone; or

(c) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under 401 KAR 31:030; or

(d) A hazardous waste solely because it possesses the reactivity characteristics described by Section 4(1)(a), (b), (c), (f), (g), or (h) of 401 KAR 31:030, and shall not be burned when other hazardous wastes are present in the combustion zone.

Section 2. Waste Analysis. In addition to the waste analyses required by Section 4 of 401 KAR 35:020, the owner or operator shall sufficiently analyze any waste which he has not previously burned in his incinerator to enable him to establish steady state (normal) operating conditions (including waste and auxiliary fuel feed and air flow) and to determine the type of pollutants which might be omitted. At a minimum, the analysis shall determine:

(1) Heating value of the waste;

(2) Halogen content and sulfur content in the waste; and

(3) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

Section 3. General Operating Requirements. During start-up and shutdown of an incinerator, the owner or operator shall not feed hazardous waste unless the incinerator is at steady state (normal) conditions of operation, including steady state operating temperature and air flow.

Section 4. Monitoring and Inspections. The owner or operator shall conduct, at a minimum, the following monitoring and inspections when incinerating hazardous waste:

(1) Existing instruments which relate to combustion and emission control shall be monitored at least every fifteen (15) minutes. Appropriate corrections to maintain steady state combustion conditions shall be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH and relevant level controls.

(2) The complete incinerator and associated equipment (pumps, valves, conveyors, pipes for example [~~, etc.~~]) shall be inspected at least daily for leaks, spills and fugitive emissions, and all emergency shutdown controls and system alarms shall be checked to assure proper operation.

Section 5. Closure. At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues (including but not limited to ash, scrubber waters, and scrubber sludges) from the incinerator.

Section 6. Interim Status Incinerators Burning Particular Hazardous Wastes. (1) Owners or operators of incinerators subject to this administrative regulation may burn EPA Hazardous Wastes Numbers F020, F021, F023, F026, or F027 (chlorinated dioxins, dibenzofurans, and phenols) if they receive a certification from the cabinet that they can meet the performance standards of 401 KAR 34:240 when they burn these wastes.

(2) The following standards and procedures shall be used in determining whether to certify an incinerator:

(a) The owner or operator shall submit an application to the cabinet containing applicable information in 401 KAR 38:190 and Section 3 of 401 KAR 38:060 demonstrating that the incinerator can

meet the performance standards in 401 KAR 34:240 when they burn these wastes.

(b) The cabinet shall issue a tentative decision as to whether the incinerator can meet the performance standards in 401 KAR 34:240. Notification of this tentative decision shall be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The cabinet shall accept comment on the tentative decision for sixty (60) days. The cabinet also may hold a public hearing upon request or at the cabinet's discretion.

(c) After the close of the public comment period, the cabinet shall issue a decision whether or not to certify the incinerator.

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 35:250. Thermal treatment (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~~] minimum standards for thermal treatment facilities qualifying for interim status.

Section 1. Applicability. The requirements in this administrative regulation apply to owners or operators of sites or facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion except as Section 1 of 401 KAR 35:010 provides otherwise. Thermal treatment in enclosed devices using controlled flame combustion is subject to the requirements of 401 KAR 35:240 if the unit is an incinerator, and 401 KAR 36:020 if the unit is a boiler (as defined in 401 KAR 30:010) or an industrial furnace (as defined in 401 KAR 30:010).

Section 2. General Operating Requirements. Before adding hazardous waste, the owner or operator shall [~~must~~] bring his thermal treatment process to steady state (normal) conditions of operation (including steady state operating temperature) using auxiliary fuel or other means unless the process is a noncontinuous (batch) thermal treatment process which requires a complete thermal cycle to treat a discrete quantity of hazardous waste.

Section 3. Waste Analysis. In addition to the waste analyses required by Section 4 of 401 KAR 35:020, the owner or operator shall [~~must~~] sufficiently analyze any waste which he has not previously treated in his thermal process to enable him to establish steady state (normal) or other appropriate (for a noncontinuous process) operating conditions (including waste and auxiliary fuel feed) and to determine the type of pollutants which might be emitted. At a minimum, the analysis shall [~~must~~] determine:

(1) Heating value of the waste;

(2) Halogen content and sulfur content in the waste; and

(3) Concentrations in the waste of lead and mercury unless the owner or operator has written, documented data that show that the element is not present.

Section 4. Monitoring and Inspections. The owner or operator shall [~~must~~] conduct, at a minimum, the following monitoring and inspections when thermally treating hazardous waste:

(1) Existing instruments which relate to temperature and emission control (if an emission control device is present) shall [~~must~~] be monitored at least every fifteen (15) minutes. Appropriate corrections to maintain steady state or other appropriate thermal treatment conditions shall [~~must~~] be made immediately either automatically or by the operator. Instruments which relate to temperature and emission control would normally include those measuring waste feed, auxiliary fuel feed, treatment process temperature, and relevant process flow and level controls.

(2) The stack plume (emissions), where present, shall [~~must~~] be observed visually at least hourly for normal appearance (color and opacity). The operator shall [~~must~~] immediately make any indicated operating corrections necessary to return any visible emissions to their normal appearance.

(3) The complete thermal treatment process and associated equipment (such as pumps, valves, conveyors, and pipes[~~, etc.~~]) shall [~~must~~] be inspected at least daily for leaks, spills and fugitive emissions, and all emergency shutdown controls and system alarms shall [~~must~~] be checked to assure proper operation.

Section 5. Closure. At closure, the owner or operator shall [~~must~~] remove all hazardous waste and hazardous waste residues (including but not limited to ash) from the thermal treatment process or equipment.

Section 6. Open Burning; Waste Explosives. Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include waste which has the potential to detonate and bulk military propellants which cannot safely be disposed of through other modes of treatment. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound (0.33 kilometers/second at sea level). Owners or operators choosing to open burn or detonate waste explosives shall [~~must~~] do so in accordance with Table 1 of this section and in a manner that does not threaten human health or the environment.

Table 1

Pounds of Waste Explosives or Propellants	Minimum Distance from Open Burning or Detonation to the Property of Others
0 to 100	204 meters (approx. 670 feet)
101 to 1,000	380 meters (approx. 1,250 feet)
1,001 to 10,000	530 meters (approx. 1,730 feet)
10,001 to 30,000	690 meters (approx. 2,260 feet)

Section 7. Interim Status Thermal Treatment Devices Burning Particular Hazardous Wastes. (1) Owners or operators of thermal treatment devices subject to the requirements of this administrative regulation may burn EPA Hazardous Wastes Numbers F020, F021, F022, F023, F026, or F027 (chlorinated dioxins, dibenzofurans, and phenols) if they receive a certification from the cabinet that they can meet the performance standards of 401 KAR 34:240 when they burn these wastes.

(2) The following standards and procedures shall [~~will~~] be used in determining whether to certify a thermal treatment unit:

(a) The owner or operator shall [~~will~~] submit an application to the cabinet containing the applicable information in 401 KAR 38:190 and Section 3 of 401 KAR 38:060 demonstrating that the thermal treatment unit can meet the standards of 401 KAR 34:240 when they burn these wastes.

(b) The cabinet shall [~~will~~] issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in 401 KAR 34:240. Notification of this tentative decision shall [~~will~~] be provided by newspaper advertisement and radio broadcast in the jurisdiction where the thermal treatment device is located. The cabinet shall [~~will~~] accept comment on the tentative decision for sixty (60) days. The cabinet may also hold a public hearing upon request or at his discretion.

(c) After the close of the public comment period, the cabinet shall [~~will~~] issue a decision whether or not to certify the thermal treatment unit.

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 thermal treatment 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: There are no costs or savings associated with this proposed amendment. The changes included in this administrative regulation are made to add reference to the proposed administrative regulation for boilers and industrial furnaces (401 KAR 36:020) and to make corrections 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 costs or savings associated with this proposed amendment. The changes included in this administrative regulation are made to add reference to the proposed administrative regulation for boilers and industrial furnaces (401 KAR 36:020) and to make corrections 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 additional reporting or paperwork requirements associated with this proposed amendment.

(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.

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 36:030. Recyclable materials used in a manner constituting disposal.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish [~~requires that persons engaging in recycling of hazardous waste obtain a permit. KRS 224.46.520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all hazardous waste recycling facilities. This chapter establishes minimum standards for hazardous waste recycling facilities. This regulation establishes~~] minimum standards for recyclable materials which are used in a manner constituting disposal.

Section 1. Applicability. (1) This administrative regulation applies to recyclable materials that are applied to or placed on the land:

(a) Without mixing with any other substance; or

(b) After mixing or combination with any other substance. These materials shall be referred to throughout this administrative regulation as "materials used in a manner that constitutes disposal".

(2) Products produced for [~~the general~~] public['~~s~~] use that are used in a manner that constitutes disposal and that contain recyclable materials are not subject to the provisions of 401 KAR Chapters 31 to 39 [~~requirements in this regulation~~] if the recyclable materials have undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means and if the products meet the applicable treatment standards in 401 KAR 37:040 (or applicable prohibition levels in Section 3 of 401 KAR 37:030,[~~Section 4,~~] or KRS 224.46-520, where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that

they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for [~~the general~~] public[~~'s~~] use are not presently subject to regulation. Commercial fertilizers that are produced for public use that contain recyclable materials also are not presently subject to regulation provided that they meet these same treatment standards or prohibition levels specified in 401 KAR Chapter 37 for each recyclable material that they contain.

Section 2. Standards Applicable to Generators and Transporters of Materials Used in a Manner that Constitutes Disposal. Generators and transporters of materials that are used in a manner that constitutes disposal are subject to the applicable requirements of 401 KAR Chapters 32 and 33 and the notification requirement under KRS 224.46-510(3).

Section 3. Standards Applicable to Storers of Materials That Are to be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users. Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of 401 KAR 34:010 to [~~through~~] 401 KAR 34.210, 401 KAR 35:010 to [~~through~~] 401 KAR 35:210 and 401 KAR Chapter 38 and the notification requirements under Section 2 of 401 KAR 34.020[~~, Section 2~~] and Section 2 of 401 KAR 35:020[~~, Section 2~~].

Section 4. Standards Applicable to Users of Materials that are Used in a Manner that Constitutes Disposal. (1) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of 401 KAR 34:010 to [~~through~~] 401 KAR 34:230, 401 KAR 35:010 to [~~through~~] 401 KAR 35.230 and 401 KAR Chapter 38 and the notification requirements under Section 2 of 401 KAR 34.020[~~, Section 2~~] and Section 2 of 401 KAR 35:020[~~, Section 2~~]. (These requirements do not apply to products which contain these recyclable materials under the provisions of Section 1(2) of this administrative regulation.)

(2)(a) The use of waste or used oil or other material, which is contaminated with dioxin or any other hazardous waste for dust suppression or road treatment is prohibited.

(b) In accordance with KRS 224.46-510(2), any person engaged in spreading waste or used oil or other material shall make a determination as to whether such waste is hazardous pursuant to criteria specified in 401 KAR Chapter 31. This determination shall be carried in the vehicle whenever waste or used oil or other material is being applied for dust suppression or road treatment.

PHILLIP J. SHEPHERD, Secretary
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 manage recyclable materials that are applied to or placed on the land.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed amendment adds an exemption for commercial fertilizers that are produced for public use. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS 224.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 266.20 through .023. However, there is no federal mandate to promulgate this administrative regulation. The provisions in this proposed administrative regulation were promulgated by the authority of the federal Resource Conservation and Recovery Act and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to compliance with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS 224. 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 266.020 through .023.

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 36:050. Used oil burned for energy recovery.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 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 recycling of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all hazardous waste recycling facilities. This chapter establishes minimum standards for hazardous waste recycling facilities. This regulation establishes~~] minimum standards for used oil burned for energy recovery.

Section 1. Applicability of Standards for Used Oil Burned for Energy Recovery. (1) The requirements in [~~Sections 1 through 5 of~~] this administrative regulation apply to used oil that is burned for energy recovery in any boiler or industrial furnace that is not regulated under 401 KAR 34:240 or 401 KAR 35:240, except as provided by subsections (3) and (5) of this section. Such used oil is termed "used oil fuel." Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment.

(2) "Used oil" means any oil that has been refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities.

(3) Except as provided by subsection (4) of this section, used oil that is mixed with hazardous waste and burned for energy recovery is subject to administrative regulation as hazardous waste fuel under [~~Sections 1 through 6 of~~] 401 KAR 36:020 [~~040~~]. Used oil containing more than 1000 ppm of total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 401 KAR 31:040. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 401 KAR 31:170).

(4) Used oil burned for energy recovery is subject to regulation under [~~Sections 1 through 5 of~~] this administrative regulation rather than as hazardous waste fuel under [~~Sections 1 through 6 of~~] 401 KAR 36:020 [~~040~~] if it is a hazardous waste solely because it:

(a) Exhibits a characteristic of hazardous waste identified in 401 KAR 31:030, provided that it is not mixed with a hazardous waste; or

(b) Contains hazardous waste generated only by a person subject to the special requirements for limited quantity generators under Section 5 of 401 KAR 31:010.

(5) Except as provided by subsection (3) of this section, used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under [~~Sections 1 through 5 of~~] this administrative regulation unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Used oil fuel that meets the specification is subject only to the analysis and recordkeeping requirements under Section 4(2)(a) and (f). Used oil fuel that exceeds any specification level is termed "off-specification used oil fuel."

Table 1
USED OIL EXCEEDING ANY SPECIFICATION LEVEL IS SUBJECT TO [~~SECTIONS 1 THROUGH 5 OF~~] THIS ADMINISTRATIVE REGULATION WHEN BURNED FOR ENERGY RECOVERY[a]

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100°F minimum
Total halogens	4000 ppm maximum[b]

[a]The specification does not apply to used oil fuel mixed with a hazardous waste other than limited quantity generator hazardous waste.

[b]Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under subsection (3) of this section. Such used oil is subject to Sections 1 to [~~through~~] 6 of 401 KAR 36:040 rather than [~~Sections 1 through 5 of~~] this administrative regulation when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Section 2. Prohibitions for Used Oil Burned for Energy Recovery. (1) A person may market off-specification used oil for energy recovery only:

(a) To burners or other marketers who have notified the cabinet of their used oil management activities stating the location and general description of such activities, and who have an EPA identification number; and

(b) To burners who burn the used oil in an industrial furnace or boiler identified in subsection (2) of this section.

(2) Off-specification used oil may be burned for energy recovery in only the following devices:

(a) Industrial furnaces identified in 401 KAR 30:010;

(b) Boilers, as defined in 401 KAR 30:010, that are identified as follows:

1. Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new

products, including the component parts of products, by mechanical or chemical processes;

2. Utility boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale; or

3. Used oil-fired space heaters provided that:

a. The heater burns only used oil that the owner or operator generates or used oil received from do-it-yourself oil changers who generated used oil as household waste;

b. The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and

c. The combustion gases from the heater are vented to the ambient air.

Section 3. Standards Applicable to Generators of Used Oil Burned for Energy Recovery. (1) Except as provided in subsections (2) and (3) of this section, generators of used oil are not subject to [~~Sections 1 through 5 of~~] this administrative regulation.

(2) Generators who market used oil directly to a burner are subject to Section 4 of this administrative regulation; and

(3) Generators who burn used oil are subject to Section 5 of this administrative regulation.

Section 4. Standards Applicable to Marketers of Used Oil Burned for Energy Recovery. (1) Persons who market used oil fuel are termed "marketers". Except as provided below, marketers include generators who market used oil fuel directly to a burner, persons who receive used oil from generators and produce, process, or blend used oil fuel from these used oils (including persons sending blended or processed used oil to brokers or other intermediaries), and persons who distribute but do not process or blend used oil fuel. However, the following persons are not marketers subject to [~~Sections 1 through 5 of~~] this administrative regulation:

(a) Used oil generators, and collectors who transport used oil received only from generators, unless the generator or collector markets the used oil directly to a person who burns it for energy recovery. However, persons who burn some used oil fuel for purposes of processing or other treatment to produce used oil fuel for marketing are considered to be burning incidentally to processing. Thus, generators and collectors who market to such incidental burners are not marketers subject to [~~Sections 1 through 5 of~~] this administrative regulation;

(b) Persons who market only used oil fuel that meets the specifications under Section 1(5) of this administrative regulation and who are not the first person to claim the oil meets the specification ([~~i.e.,~~] marketers who do not receive used oil from generators or initial transporters and marketers who neither receive nor market off-specification used oil fuel for example).

(2) Marketers are subject to the following requirements:

(a) Analysis of used oil fuel. Used oil fuel is subject to [~~regulation under Sections 1 through 5 of~~] this administrative regulation unless the marketer obtains analyses or other information documenting that the used oil fuel meets the specifications provided under Section 1(5) of this administrative regulation.

(b) Prohibitions. The prohibitions under Section 2(1) of this administrative regulation shall apply.

(c) Notification. Notification to the cabinet stating the location and general description of used oil management activities is required. Even if a marketer has previously notified the cabinet of his hazardous waste management activities in accordance with Section 2 of 401 KAR 34:020 and obtained an [~~U.S.~~] EPA identification number, he shall [~~must~~] renotify to identify his used oil management activities.

(d) Invoice system. When a marketer initiates a shipment of off-specification used oil, he shall [~~must~~] prepare and send the receiving facility an invoice containing the following information:

1. An invoice number;

2. His own EPA identification number and the EPA identification number of the receiving facility;

3. The names and addresses of the shipping and receiving facilities;

4. The quantity of off-specification used oil to be delivered;

5. The date(s) of shipment or delivery; and

6. The following statement: "This used oil is subject to EPA regulation under 40 CFR Part 266 or Kentucky administrative regulation under 401 KAR Chapter 36."

(e) Required notices.

1. Before a marketer initiates the first shipment of off-specification used oil to a burner or other marketer, he shall [~~must~~] obtain a one (1) time written and signed notice from the burner or marketer certifying that:

a. The burner or marketer has notified EPA stating the location and general description of his used oil management activities; and

b. If the recipient is a burner, the burner shall [~~will~~] burn the off-specification used oil only in an industrial furnace or boiler identified in Section 2(2) of this administrative regulation; and

2. Before a marketer accepts the first shipment of off-specification used oil from another marketer subject to the requirements of this section, he shall [~~must~~] provide the marketer with a one (1) time written and signed notice certifying that he has notified EPA of his used oil management activities; and

(f) Recordkeeping.

1. Used oil fuel that meets the specification. A marketer who first claims under paragraph (a) of this subsection that used oil fuel meets the specification shall [~~must~~] keep copies of analysis (or other information used to make the determination) of used oil for three (3) years. Such marketers shall [~~must~~] also record in an operating log and keep for three (3) years the following information on each shipment of used oil fuel that meets the specification. Such used oil fuel is not subject to further regulation, unless it is subsequently mixed with hazardous waste or unless it is mixed with used oil so that it no longer meets the specification.

a. The name and address of the facility receiving the shipment;

b. The quantity of used oil fuel delivered;

c. The date of shipment or delivery; and

d. A cross-reference to the record of used oil analysis (or other information used to make the determination that the oil meets the specification) required under this subparagraph.

2. Off-specification used oil fuel. A marketer who receives or initiates an invoice under the requirements of this section shall [~~must~~] keep a copy of each invoice for three (3) years from the date the invoice is received or prepared. In addition, a marketer shall [~~must~~] keep a copy of each certification notice that he receives or sends for three (3) years from the date he last engages in an off-specification used oil fuel marketing transaction with the person who sends or receives the certification notice.

Section 5. Standards Applicable to Burners of Used Oil Burned for Energy Recovery. Owners and operators of facilities that burn used oil fuel are "burners" and are subject to the following requirements:

(1) Prohibitions. The prohibitions under Section 2(2) of this administrative regulation shall apply.

(2) Notification. Burners of off-specification used oil fuel, and burners of used oil fuel who are the first to claim that the oil meets the specification provided under Section 1(5) of this administrative regulation, except burners who burn specification oil that they generate, shall [~~must~~] notify the cabinet stating the location and general description of used oil management activities. Burners of used oil fuel that meets the specification who receive such oil from a marketer that previously notified the cabinet are not required to notify. Owners and operators of used oil-fired space heaters that burn used oil fuel under the provisions of Section 2(2)(b) of this administrative regulation are exempt from this notification requirement. Even if a burner has previously notified the cabinet of his hazardous waste management activities in accordance with Section 2 of 401 KAR

34:020 and obtained an EPA identification number, he shall [~~must~~] renotify to identify his used oil management activities.

(3) Required notices. Before a burner accepts the first shipment of off-specification used oil fuel from a marketer, he shall [~~must~~] provide the marketer a one (1) time written and signed notice certifying that:

(a) He has notified the cabinet stating the location and general description of his used oil management activities; and

(b) He shall [~~will~~] burn the used oil only in an industrial furnace or boiler identified in Section 2(2) of this administrative regulation.

(4) Used oil fuel analysis.

(a) Used oil fuel burned by the generator is subject to regulation under Sections 1 to [~~through~~] 5 of this administrative regulation unless the burner obtains analysis (or other information) documenting that the used oil meets the specifications provided under Section 1(5) of this administrative regulation.

(b) Burners who treat off-specification used oil fuel by processing, blending, or other treatment to meet the specification provided under Section 1(5) of this administrative regulation shall [~~must~~] obtain analyses (or other information) documenting that the used oil meets the specifications.

(5) Recordkeeping. A burner who receives an invoice under the requirements of this section shall [~~must~~] keep a copy of each invoice for three (3) years from the date the invoice is received. Burners shall [~~must~~] also keep for three (3) years copies of analyses of used oil fuel as may be required by subsection (4) of this section. In addition, he shall [~~must~~] keep a copy of each certification notice that he sends to a marketer for three (3) years from the date he last receives off-specification used oil from that marketer

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 administrative regulation affects owners and operators of hazardous waste sites or facilities where used oil is burned for energy recovery in a boiler or industrial furnace.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed amendment corrects references to the proposed changes to other administrative regulations submitted with this package. 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: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 266 Subpart D. However, there is no federal mandate to promulgate this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. 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. 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 266 Subpart D.

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 37:010. General provisions for land disposal restrictions.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99, 40 CFR 268.1 to [~~through~~] 268.8, 40 CFR 268.10 to [~~through~~] 268.12

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520[~~, 40 CFR 268.1 through 268.8, 40 CFR 268.10 through 268.12~~]

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-505, 224.46-520, relative to land disposal restrictions. [~~KRS 224.46-520 enables the cabinet to prohibit the land disposal of any hazardous wastes. KRS 224.46-520 requires that the cabinet allow land disposal of hazardous waste when the disposal methods have been determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous. 401 KAR Chapter 37 establishes land disposal restrictions and treatment standards for hazardous wastes. This regulation establishes waste specific prohibitions on land disposal.~~] Applicability dates set forth in this administrative regulation are consistent with those adopted by USEPA. This administrative regulation reflects those federal dates to assure consistency with the federal program. Enforcement of applicable provisions preceding the effective date of this administrative regulation was the responsibility of USEPA. The cabinet assumed enforcement responsibility from USEPA upon the effective date of this administrative regulation.

Section 1. Definitions Applicable to 401 KAR Chapter 37. (1) When used in 401 KAR Chapter 37 the following terms have the meanings given below:

(a) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond which are listed under 401 KAR 37:110.

(b) "Hazardous constituent or constituents" means those constituents listed in 401 KAR 31:170.

(c) "Land disposal", as set forth in KRS 224.01-010, means placement in or on the land and includes, but is not limited, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.

(d) "Nonwastewaters" are wastes that do not meet the criteria for wastewaters in paragraph (f) of this section.

(e) "Polychlorinated biphenyls" or "PCB" are halogenated organic compounds defined in accordance with 40 CFR 761.2 as of July 1989.

(f) "Wastewaters" are wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

1. F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in Section 2 of 401 KAR 37:040 in Table CCWE.

2. K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated.

3. K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(g) "Inorganic solid debris" means nonfriable inorganic solids contaminated with D004-D011 hazardous wastes that are incapable of passing through a nine and five-tenths (9.5) mm standard sieve; and that require cutting, or crushing and grinding in mechanical sizing equipment prior to stabilization; and, are limited to the following inorganic or metal materials:

1. Metal slags (either dross or scoria);
2. Glassified slag;
3. Glass;
4. Concrete (excluding cementitious or pozzolanic stabilized hazardous wastes);
5. Masonry and refractory bricks;
6. Metal cans, containers, drums, or tanks;
7. Metal nuts, bolts, pipes, pumps, valves, appliances, or industrial equipment;
8. Scrap metal as defined in Section 1(3)(f) of 401 KAR 31:010.

(2) All other terms have the meanings given under Section 1 of 401 KAR 30:010, Section 2 and 3 of 401 KAR 31:010 or Section 2 of 401 KAR 38:010.

Section 2. Purpose, Scope and Applicability. (1) This chapter identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(2) Except as specifically provided otherwise in 401 KAR Chapter 31 or 37, the requirements of 401 KAR Chapter 37 apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(3) Prohibited wastes may continue to be land disposed as follows:

(a) Where persons have been granted an extension to the effective date of a prohibition under 401 KAR 37:030 or pursuant to Section 5 of this administrative regulation, with respect to those wastes covered by the extension;

(b) Where persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of this administrative regulation, with respect to those wastes and units covered by the petition;

(c) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited from land disposal under this chapter, are not prohibited from land disposal if the wastes:

1. Are disposed into a nonhazardous or hazardous injection well as defined in 40 CFR 144.6(a); and

2. Do not exhibit any prohibited characteristic or hazardous waste at the point of injection.

[~~(c) Where the waste is generated by limited quantity generators as defined in Section 5 of 401 KAR 31:010; or~~

~~(d) Where a farmer is disposing of waste pesticides in accordance with 401 KAR 32:050, Section 10;~~

~~(e) Prior to May 8, 1990, a landfill or surface impoundment unit where all applicable persons are in compliance with the requirements of Section 8 of this regulation, with respect to wastes that are not subject to the treatment standards set forth in 401 KAR 37:040 and not subject to the prohibitions in 401 KAR 37:030, Section 4, or KRS 224.46-520.~~]

(4) The requirements of this chapter shall not affect the availability of a waiver under Section 121(d)(4) of [~~the Comprehensive Environ-~~

~~mental Response, Compensation, and Liability Act of 1980 (~~]CERCLA[~~)~~].

(5) The following hazardous wastes are not subject to any provision of 401 KAR Chapter 37:

(a) Waste generated by small quantity generator of less than 100 kilograms of nonacute hazardous waste or less than one (1) kilogram of acute hazardous waste per month as specified in Section 5 of 401 KAR 31:010.

(b) Waste pesticides that a farmer disposes of pursuant to Section 10 of 401 KAR 32:050;

(c) Wastes identified or listed as hazardous after November 8, 1984 for which EPA has not promulgated land disposal prohibitions or treatment standards.

Section 3. Dilution Prohibited as a Substitute for Treatment. (1) Except as provided in subsection (2) of this section, no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with 401 KAR 37:040, to circumvent the effective date of a prohibition in 401 KAR 37:030, to otherwise avoid a prohibition in 401 KAR 37:030, or to circumvent a land disposal prohibition imposed by RCRA Section 3004.

(2) Dilution of wastes that are hazardous only because they exhibit a characteristic in a treatment system which treats wastes subsequently discharged to a water of the United States pursuant to a permit issued under Section 402 of the CWA or which treats wastes for purposes of pretreatment requirements under Section 307 of the CWA is not impermissible dilution for purposes of this section unless a method has been specified as the treatment standard in Section 4 of 401 KAR 37:040, or unless the waste is a D003 reactive cyanide wastewater or nonwastewater. [~~No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with 401 KAR 37:040 to circumvent the effective date of a prohibition in 401 KAR 37:030, to otherwise avoid a prohibition in 401 KAR 37:030, or to circumvent a land disposal prohibition imposed by KRS 224.46-520.~~]

Section 4. Treatment Surface Impoundment Exemption. (1) Wastes which are otherwise prohibited from land disposal under 401 KAR Chapter 37 may be treated in a surface impoundment or series of impoundments provided that:

(a) Treatment of such wastes occurs in the impoundments;

(b) The following conditions are met:

1. Sampling and testing. For wastes with treatment standards in 401 KAR 37:040 or prohibition levels in 401 KAR 37:030 or KRS 224.46-520, the residues from treatment are analyzed, as specified in Section 7 of this administrative regulation or Section 4 of 401 KAR 37:030[~~, Section 4~~], to determine if they meet the applicable treatment standards or where no treatment standards have been established for the waste, the applicable prohibition levels. The sampling method specified in the waste analysis plan under Section 4 of 401 KAR 34:020[~~, Section 4,~~] or Section 4 of 401 KAR 35:020[~~, Section 4,~~] shall be designed so that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples.

2. Removal. The following treatment residues (including any liquid waste) shall be removed at least annually: residues which do not meet the treatment standards of 401 KAR 37:040; residues which do not meet the prohibition levels established under 401 KAR 37:030 or imposed by statute (where no treatment standards have been established); residues which are from the treatment of wastes prohibited from land disposal under 401 KAR 37:030 (where no treatment standards have been established and no prohibition levels apply); or residues from managing listed wastes which are not delisted under Section 2 of 401 KAR 31:050[~~, Section 2~~]. However, residues which are the subject of a valid certification under Section 8 of this administrative regulation made no later than a year after placement of the wastes in an impoundment are not required to be removed annually. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement.

3. Subsequent management. Treatment residues shall [~~may~~] not be placed in any other surface impoundment for subsequent management unless the residues are the subject of a valid certification under Section 8 of this administrative regulation which allows disposal in surface impoundments meeting the requirements of Section 8(1) of this administrative regulation.

4. Recordkeeping. The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residues which do not meet the treatment standards, or prohibition levels (where no treatment standards have been established), or which are from the treatment of wastes prohibited from land disposal under 401 KAR 37:030 (where no treatment standards have been established and no prohibition levels apply), shall be specified in the facility's waste analysis plan as required under 401 KAR 34:020, Section 4, or 401 KAR 35:020, Section 4.

(c) The impoundment meets the design requirements of Section 2(3) of 401 KAR 34:200 or Section 10(1) of 401 KAR 35:200, regardless that the unit may not be new, expanded, or a replacement, and it is [~~be~~] in compliance with applicable groundwater monitoring requirements of 401 KAR 34:060 or 401 KAR Chapter 35 unless:

1. It is exempted pursuant to Section 2(4) or (5) of 401 KAR 34:200, or to Section 10(3) or (4) of 401 KAR 35:200; or

2. Upon application by the owner or operator, the cabinet after notice and an opportunity to comment has granted a waiver of the requirements on the basis that the surface impoundment:

a. Has at least one (1) liner, and [~~for which~~] there is no evidence that such liner is leaking;

b. Is located more than one-quarter (1/4) mile from an underground source of drinking water; and

c. Is in compliance with generally applicable groundwater monitoring requirements for facilities with permits; or

3. Upon application by the owner or operator, the cabinet, after notice and an opportunity to comment, has granted a modification to the requirements on the basis of a demonstration that the surface impoundment is located, designed, and operated so as to assure that there shall be no migration of any hazardous constituent into groundwater or surface water at any future time.

(d) The owner or operator submits to the cabinet a written certification that the requirements of paragraph (c) of this subsection have been met and submits a copy of the waste analysis plan required under paragraph (b) of this subsection. The following certification is required:

I certify under penalty of law that the requirements of Section 4(1)(c) of 401 KAR 37:010 have been met for all surface impoundments being used to treat restricted wastes. I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(2) Evaporation of hazardous constituents as the principal means of treatment is not considered to be treatment for purposes of an exemption under this section.

Section 5. Procedures for Case-by-case Extensions to an Effective Date. (1) Any person who generates, treats, stores, or disposes of a hazardous waste may submit an application to the cabinet for an extension to the effective date of any applicable restriction established under 401 KAR 37:030. The applicant shall demonstrate the following:

(a) He has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established under 401 KAR 37:030;

(b) He has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery ([~~e.g.,~~] recycling for example), or disposal capacity that meets the treatment standards specified in 401 KAR 37:040 or, where treatment standards have not been specified, such treatment, recovery, or disposal capacity is protective of human health and the environment;

(c) Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity shall result in the capacity not being available by the applicable effective date;

(d) The capacity being constructed or otherwise provided by the applicant shall be sufficient to manage the entire quantity of waste that is the subject of the application;

(e) He provides a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity shall be available;

(f) He has arranged for adequate capacity to manage his waste during an extension and has documented in the application the location of all sites at which the waste will [~~shall~~] be managed; and

(g) Any waste managed in a surface impoundment or landfill during the extension period shall meet the requirements of subsection (8)(b) of this section.

(2) An authorized representative signing an application described under subsection (1) of this section shall make the following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) After receiving an application for an extension, the cabinet may request any additional information which it deems necessary to evaluate the application.

(4) An extension shall apply only to the waste generated at the individual facility covered by the application and shall not apply to restricted waste from any other facility.

(5) On the basis of the information referred to in subsection (1) of this section, after notice and opportunity for comment, and after consultation with appropriate state agencies in all affected states, the cabinet may grant an extension of up to one (1) year from the effective date. The cabinet may renew this extension for up to one (1) additional year upon the request of the applicant if the demonstration required in subsection (1) of this section can still be made. In no event shall an extension continue beyond twenty-four (24) months from the applicable effective date specified in 401 KAR 37:030. The length of any extension authorized shall be determined by the cabinet based on the time required to construct or obtain the type of capacity needed by the applicant as described in the completion schedule discussed in subsection (1)(e) of this section. The cabinet shall give public notice of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition shall be published in the Kentucky Administrative Register.

(6) Any person granted an extension under this section shall immediately notify the cabinet as soon as he has knowledge of any change in the conditions certified to in the application.

(7) Any person granted an extension under this section shall submit written progress reports at intervals designated by the cabinet. Such reports shall describe the overall progress made toward constructing or otherwise providing alternative treatment, recovery or disposal capacity; shall identify any event which may cause or has caused a delay in the development of the capacity; and shall summarize the steps taken to mitigate the delay. The cabinet may revoke the extension at any time if the applicant does not demonstrate a good-faith effort to meet the schedule for completion, if the cabinet denies or revokes any required permit, if conditions certified in the application change, or for any violation of this chapter.

(8) Whenever the cabinet establishes an extension to an effective date under this section, during the period for which such extension is in effect:

(a) The storage restrictions under Section 2(1) of 401 KAR 37:050 do not apply; and

(b) The hazardous waste may be disposed of in a landfill or surface impoundment unit only if the unit is in compliance with the following requirements:

1. The landfill, if in interim status, is in compliance with the requirements of 401 KAR 35:060 and Section 10(1), (3) and (4) of 401 KAR 35:230;

2. The landfill, if permitted, is in compliance with the requirements of 401 KAR 34:060 and Section 10(3), (4), and (5) of 401 KAR 34:230;

3. The surface impoundment, if in interim status, is in compliance with the requirements of 401 KAR 35:060 and Section 10(1), (3) and (4) of 401 KAR 35:200 [~~and KRS 224.46-520~~]; or

4. The surface impoundment, if permitted, is in compliance with the requirements of 401 KAR 34:060 and Section 10(3), (4), and (5) of 401 KAR 34:200; or

5. The landfill, if disposing of containerized liquid hazardous wastes containing PCB's at concentrations greater than or equal to fifty (50) ppm but less than 500 ppm, is also in compliance with 40 CFR 761.75 and 401 KAR Chapters 34 and 35.

(9) Pending a decision on the application the applicant is required to comply with all restrictions on land disposal under 401 KAR Chapter 37 once the effective date for the waste has been reached.

[~~(10) Any decisions of the cabinet relating to an application for an extension to the effective date of any applicable restriction established under 401 KAR 37:030 shall not supersede the authority of the Environmental Protection Agency under 40 CFR 268.5 (1989).~~]

Section 6. Petitions to Allow Land Disposal of a Waste Prohibited Under 401 KAR 37:030. (1) Any person seeking an exemption from a prohibition under 401 KAR 37:030 for the disposal of a restricted hazardous waste in a particular unit or units shall submit a petition to the cabinet demonstrating, to a reasonable degree of certainty, that there shall be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The demonstration shall include the following components:

(a) An identification of the specific waste and the specific unit for which the demonstration shall be made;

(b) A waste analysis to describe fully the chemical and physical characteristics of the subject waste;

(c) A comprehensive characterization of the disposal unit site including an analysis of background air, soil, and water quality;

(d) A monitoring plan that detects migration at the earliest practicable time; and

(e) Sufficient information to assure the cabinet that the owner or operator of a land disposal unit receiving restricted waste shall comply with other applicable federal, state, and local laws.

(2) The demonstration referred to in subsection (1) of this section shall meet the following criteria:

(a) All waste and environmental sampling, test, and analysis data shall be accurate and reproducible to the extent that state-of-the-art techniques allow;

(b) All sampling, testing, and estimation techniques for chemical and physical properties of the waste and all environmental parameters shall have been approved by the cabinet;

(c) Simulation models shall be calibrated for the specific waste and site conditions, and verified for accuracy by comparison with actual measurements;

(d) A quality assurance and quality control plan that addresses all aspects of the demonstration shall be approved by the cabinet; and

(e) An analysis shall be performed to identify and quantify any aspects of the demonstration that contribute significantly to uncertainty. This analysis shall include an evaluation of the consequences of predictable future events, including, but not limited to, earthquakes, floods, severe storm events, droughts, or other natural phenomena.

(3) Each petition referred to in subsection (1) of this section shall include the following:

(a) A monitoring plan that describes the monitoring program installed at or around the unit to verify continued compliance with the conditions of the variance. This monitoring plan shall provide information on the monitoring of the unit or the environment around the unit. The following specific information shall be included in the plan:

1. The media monitored in the case where monitoring of the environment around the unit is required;

2. The type of monitoring conducted at the unit, in the cases where monitoring of the unit is required;

3. The location of the monitoring stations;

4. The monitoring interval (frequency of monitoring at each station);

5. The specific hazardous constituents to be monitored;

6. The implementation schedule for the monitoring program;

7. The equipment used at the monitoring stations;

8. The sampling and analytical techniques employed; and

9. The data recording and reporting procedures.

(b) Where applicable, the monitoring program described in paragraph (a) of this subsection shall be in place for a period of time specified by the cabinet, as part of the approval of the petition, prior to receipt of prohibited waste at the unit.

(c) The monitoring data collected according to the monitoring plan specified under paragraph (a) of this subsection shall be sent to the cabinet according to a format and schedule specified and approved in the monitoring plan.

(d) A copy of the monitoring data collected under the monitoring plan specified under paragraph (a) of this subsection shall be kept on site at the facility in the operating record.

(e) The monitoring program specified under paragraph (a) of this subsection shall meet the following criteria:

1. All sampling, testing, and analytical data shall be approved by the cabinet and shall provide data that is accurate and reproducible.

2. All estimation and monitoring techniques shall be approved by the cabinet.

3. A quality assurance and quality control plan addressing all aspects of the monitoring program shall be provided to and approved by the cabinet.

(4) Each petition shall be submitted to the cabinet.

(5) After a petition has been approved, the owner or operator shall report any changes in conditions at the unit or the environment around the unit that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the units as follows:

(a) If the owner or operator plans to make changes to the unit design, construction, or operation, the change shall be proposed, in writing, and the owner or operator shall submit a demonstration to the cabinet at least thirty (30) days prior to making the change. The cabinet shall determine whether the proposed change invalidates the terms of the petition and shall determine the appropriate response. Any change shall be approved by the cabinet prior to being made.

(b) If the owner or operator discovers that a condition at the site which was modeled or predicted in the petition does not occur as predicted, this change shall be reported, in writing, to the cabinet within ten (10) days of discovering the change. The cabinet shall determine whether the reported change from the terms of the petition requires further action, which may include termination of waste acceptance and revocation of the petition, petition modifications, or other responses.

(6) If the owner or operator determines that there is migration of hazardous constituents from the unit, the owner or operator shall:

(a) Immediately suspend receipt of restricted waste at the unit;

(b) Notify the cabinet, in writing, within ten (10) days of the determination that the release has occurred; and

(c) Following receipt of the notification the cabinet shall determine, within sixty (60) days of receiving notification, whether the owner or operator can continue to receive prohibited waste in the unit and whether the variance is to be revoked. The cabinet shall also determine whether further examination of any migration is warranted under applicable provisions of 401 KAR Chapters 34 and 35.

(7) Each petition shall include the following statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(8) After receiving a petition, the cabinet may request any additional information that reasonably may be required to evaluate the demonstration.

(9) If approved, the petition shall apply to land disposal of the specific restricted waste at the individual disposal unit described in the demonstration and shall not apply to any other restricted waste at that disposal unit, or to that specific restricted waste at any other disposal unit.

(10) The cabinet shall give public notice in the Kentucky Administrative Register of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition shall be published in the Kentucky Administrative Register.

(11) The term of a petition granted under this section shall be no longer than the term of the hazardous waste site or facility permit if the disposal unit is operating under a hazardous waste site or facility permit, or up to a maximum of ten (10) years from the date of approval provided under subsection (7) of this section if the unit is operating under interim status. In either case, the term of the granted petition shall expire upon the termination or denial of a hazardous waste site or facility permit, or upon the termination of interim status or when the volume limit of waste to be land disposed during the term of petition is reached.

(12) Prior to the cabinet's decision, the applicant is required to comply with all restrictions on land disposal under 401 KAR Chapter 37 once the effective date for the waste has been reached.

(13) The petition granted by the cabinet does not relieve the petitioner of his responsibilities in the management of hazardous waste under the hazardous waste management administrative regulations.

(14) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 500 ppm are not eligible for an exemption under this section.

[~~(15) Any decisions of the cabinet relating to petitions to seek an exemption from a prohibition under 401 KAR 37:030 for the disposal of a restricted hazardous waste in a particular unit shall not supersede the authority of the Environmental Protection Agency under 40 CFR 268.6 (1989).~~]

Section 7. Waste Analysis. (1) Except as specified in Section 3 of 401 KAR 37:030[~~, Section 4,~~] or Section 5 of 401 KAR 37:040[~~, Section 6~~], the generator shall test his waste or an extract developed using the test method described in 401 KAR 37:100, or use knowledge of the waste to determine if the waste is restricted from land

disposal under 401 KAR Chapter 37 except as specified in Section 3 of 401 KAR 37:030, if a generator's waste exhibits one (1) or more of the characteristics set out in 40 CFR Part 261, Subpart C, the generator must test an extract using the test method described in Appendix IX of this chapter, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this chapter.

(a) If a generator determines that he is managing a restricted waste under 401 KAR Chapter 37 and the waste does not meet the applicable treatment standards set forth in 401 KAR 37:040 or exceeds the applicable prohibition levels set forth in Section 3 of 401 KAR 37:030[~~, Section 4~~] or KRS 224.46-520, with each shipment of waste the generator shall notify the treatment or storage facility in writing of the appropriate treatment standards set forth in 401 KAR 37:040 and any applicable prohibition levels set forth in Section 3 of 401 KAR 37:030[~~, Section 4~~] or KRS 224.46-520. The notice shall include the following information:

1. EPA hazardous waste number;

2. The corresponding treatment standards for wastes F001-F005, F039, and wastes prohibited pursuant to Section 3 of 401 KAR 37:030 or Section 3004(d) of RCRA. Treatment standards for all other restricted wastes shall either be included, or be referenced by including on the notification the applicable wastewater, as defined in Section 2(6) of this administrative regulation or nonwastewater, as defined in Section 2(4) of this administrative regulation, category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the applicable treatment standards of this chapter. Where the applicable treatment standards are expressed as specified technologies in Section 3 of 401 KAR 37:040, the applicable five (5) letter treatment code found in Table 1 of Section 3 of 401 KAR 37:040 also shall be listed on the notification;

[~~2. The corresponding treatment standards and all applicable prohibitions set forth in 401 KAR 37:030, Section 4, or KRS 224.46-520;~~]

3. The manifest number associated with the shipment of waste; and

4. Waste analysis data, where available.

(b) If a generator determines that he is managing a restricted waste under 401 KAR Chapter 37, and determines that the waste can be land disposed without further treatment, with each shipment of waste he shall submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets applicable treatment standards set forth in 401 KAR 37:040 and the applicable prohibition levels set forth in Section 3 of 401 KAR 37:030[~~, Section 4,~~] or KRS 224.46-520.

1. The notice shall include the following information:

a. EPA hazardous waste number;

b. The corresponding treatment standards for wastes F001-F005, F039, and wastes prohibited pursuant to Section 3 of 401 KAR 37:030 or Section 3004(d) of RCRA. Treatment standards for all other restricted wastes shall either be included, or be referenced by including on the notification the applicable wastewater (as defined in Section 2(6) of this administrative regulation) or nonwastewater (as defined in Section 2(4) of this administrative regulation) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the administrative regulation or administrative regulations in which the applicable treatment standard appear. Where the applicable treatment standards are expressed as specified technologies in Section 3 of 401 KAR 37:040, the applicable five (5) letter treatment code found in Table 1 of Section 3 of 401 KAR 37:040 also shall be listed on the notification;

[~~b. The corresponding treatment standard and all applicable prohibition levels set forth in 401 KAR 37:030, Section 4, or KRS 224.46-520;~~]

c. The manifest number associated with the shipment of waste; and

d. Waste analysis data, where available.

2. The certification shall be signed by an authorized representative and shall state the following:

I certify under penalty of law that I have personally examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with treatment standards specified in 401 KAR 37:040 and all applicable prohibitions set forth in 401 KAR 37:030, Section 4, or KRS 224.46-520. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(c) If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method utilized for the waste (such as, but not limited to, a case-by-case extension under Section 5 of this administrative regulation, an exemption under Section 6 of this administrative regulation, or nationwide capacity variance under 401 KAR 37:030), with each shipment of waste he shall submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The notice shall include the following information:

[~~(c) If a generator's waste is subject to a case-by-case extension under Section 5 of this regulation, an exemption under Section 6 of this regulation, or a nationwide variance under 401 KAR 37:030, he shall with each shipment of waste submit a notice to the facility receiving his waste, stating that the waste is not prohibited from land disposal. The notice shall include the following information:~~]

1. EPA hazardous waste number;

2. The corresponding treatment standards for wastes F001-F005, F039, and wastes prohibited pursuant to Section 3 of 401 KAR 37:030 or Section 3004(d) of RCRA. Treatment standards for all other restricted wastes shall either be included, or be referenced by including on the notification the applicable wastewater (as defined in Section 3(6) of this administrative regulation) or nonwastewater (as defined in Section 2(4) of this administrative regulation) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the applicable treatment standards of this chapter. Where the applicable treatment standards are expressed as specified technologies in Section 3 of 401 KAR 37:040, the applicable five (5) letter treatment code found in Table 1 of Section 3 of 401 KAR 37:040 also shall be listed on the notification;

[~~2. The corresponding treatment standards and all applicable prohibitions set forth in 401 KAR 37:040, Section 4, or KRS 224.46-520;~~]

3. The manifest number associated with the shipment of waste;

4. Waste analysis data, where available; and

5. The date the waste is subject to the prohibitions.

(d) If a generator is managing a prohibited waste in tanks or containers regulated under Section 5 of 401 KAR 32:030, and is treating such waste in the tanks or containers to meet applicable treatment standards under 401 KAR 37:040, the generator shall develop and follow a written waste analysis plan that describes the procedures the generator shall carry out to comply with the treatment standards. The plan shall be kept on site in the generator's records, and the following requirements shall be met:

1. The waste analysis plan shall be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of this part, including the selected testing frequency.

2. The plan shall be filed with the cabinet to implement 401 KAR Chapter 37 requirements a minimum of thirty (30) days prior to the treatment activity, with delivery verified.

3. Wastes shipped off site pursuant to this paragraph shall comply with the notification requirements of paragraph (b) of this subsection.

[~~(d) If a generator determines that he is managing a waste that is subject to the prohibitions under 401 KAR 37:030, Section 5(6), and is not subject to the prohibitions set forth in 401 KAR 37:030, Section 4, the generator shall with each shipment of waste notify the treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in 401 KAR 37:030, Section 5(6). The notice shall include the following information:~~

~~1. EPA Hazardous Waste Number;~~

~~2. The applicable prohibitions set forth in 401 KAR 37:030, Section 5(6);~~

~~3. The manifest number associated with the shipment of waste; and~~

~~4. Waste analysis data, where available.~~]

(e) If the generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination shall be retained on-site in the generator's files. If a generator determines whether the waste is restricted based on testing this waste or an extract developed using the test method described in Section 1 of 401 KAR 37:100[~~, Section 1,~~] all waste analysis data shall be retained on site in the generator's files.

(f) If a generator determines that he is managing a restricted waste that is excluded from the definition of hazardous or solid waste or exempt from 401 KAR 37:030, under Sections 2 to 6 of 401 KAR 31:010 subsequent to the point of generation, he shall place a one (1) time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from 401 KAR 37:030, and the disposition of the waste, in the facility's file.

(g) [~~(f)~~] Generators shall retain on site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to this section for at least five (5) years from the date that the waste that is the subject of the documentation was last sent to on-site or off-site treatment, storage, or disposal. The five (5) year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the cabinet. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under Sections 2 to 6 of 401 KAR 31:010, or exempted from 401 KAR 37:030, subsequent to the point of generation.

(h) If a generator is managing a lab pack that contains wastes identified in Section 10(2)(a) of this administrative regulation, and wishes to use the alternative treatment standard under Section 4 of 401 KAR 37:010, with each shipment of waste the generator shall submit a notice to the treatment facility in accordance with paragraph (a) of this subsection. The generator shall also comply with the requirements in paragraphs (e) and (f) of this subsection, and shall submit the following certification, which shall be signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only the wastes specified in Section 10(2)(a) of 401 KAR 37:010 or solid wastes not subject to administrative regulation under 401 KAR Chapter 31. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(i) If a generator is managing a lab pack that contains organic wastes specified in Section 10(2)(b) of this administrative regulation and wishes to use the alternate treatment standards under Section 3 of 401 KAR 37:040, with each shipment of waste the generator shall submit a notice to the treatment facility in accordance with paragraph (a) of this subsection. The generator also shall comply with the requirements in paragraphs (e) and (f) of this subsection, and shall submit the following certification which shall be signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste and that the lab pack contains only organic waste specified in Section 10(2)(b) of this administrative regulation or solid wastes not subject to regulation under 401 KAR Chapter 31. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(j) Small quantity generators with tolling agreements pursuant to Section 1(5) of 401 KAR 32:020 shall comply with the applicable notification and certification requirements of this subsection for the initial shipment of the waste subject to the agreement. Such generators shall retain on site a copy of the notification and certification, together with the tolling agreement, for at least three (3) years after termination or expiration of the agreement. The three (3) year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the cabinet.

(2) Treatment facilities shall test their wastes according to the frequency specified in their waste analysis plans as required by Section 4 of 401 KAR 30:020[~~, Section 4,~~] or Section 4 of 401 KAR 35:020[~~, Section 4~~]. The testing shall be performed as provided in paragraphs (a), (b), and (c) of this subsection.

(a) For wastes with treatment standards expressed as concentrations in the waste extract (Section 3 of 401 KAR 37:040), the owner or operator of the treatment facility shall test the treatment residues or an extract of such residues developed using the test method described in 401 KAR 37:100 to assure that the treatment residues or extract meet the applicable treatment standards.

(b) For wastes prohibited under Section 3 of 401 KAR 37:030[~~, Section 4,~~] or KRS 224.46-520 which are not subject to any treatment standards under 401 KAR 37:040, the owner or operator of the treatment facility shall test the treatment residues according to the generator testing requirements specified in Section 3 of 401 KAR 37:030[~~, Section 4,~~] to assure that the treatment residues comply with the applicable prohibitions.

(c) For wastes with treatment standards expressed as concentrations in the waste (Section 5 of 401 KAR 37:040[~~, Section 6~~]) the owner or operator of the treatment facility shall test the treatment residues (not an extract of the residues) to assure that the treatment residues meet the applicable treatment standards.

(d) A notice shall be sent with each waste shipment to the land disposal facility which includes the following information:

1. EPA hazardous waste number;

2. The corresponding treatment standards for wastes F001 to F005, F039, and all applicable prohibitions set forth in Section 3 of 401 KAR 37:030[~~, Section 4,~~] or KRS 224.46-520. Treatment standards for all other restricted wastes shall either be included, or referenced by including on the notification the applicable wastewater (as defined in Section 1(6) of this administrative regulation) or nonwastewater (as defined in Section 1(4) of this administrative regulation) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the applicable treatment standards of this chapter. Where the applicable treatment standards are expressed as specified technologies in Section 3 of 401 KAR 37:040, the applicable five (5) letter treatment code found in Table 1 of Section 3 of 401 KAR 37:040 also shall be included on the notification;

3. The manifest number associated with the shipment of waste; and

4. Waste analysis data, where available.

(e) The treatment facility shall submit a certification with each shipment of waste or treatment residue of a restricted waste to the land disposal facility stating that the waste or treatment residue has been treated in compliance with the applicable performance standards specified in 401 KAR 37:040 and applicable prohibitions set forth in Section 3 of 401 KAR 37:030[~~, Section 4,~~] or KRS 224.46-520.

1. For wastes with treatment standards expressed as concentrations in the waste extract or in the waste (Section 2 [~~3~~] of 401 KAR 37:040), or for wastes prohibited under Section 3 of 401 KAR 37:030[~~,~~

~~Section 4,~~] or KRS 224.46-520 which are not subject to any treatment standards under 401 KAR 37:040, the certification shall be signed by an authorized representative and shall state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the performance levels specified in 401 KAR 37:040 and all applicable prohibitions set forth in 401 KAR 37:030, Section 3 [4], and KRS 224.46-520 without dilution of the prohibited waste. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

2. For wastes with treatment standards expressed as technologies (Section 3 [4] of 401 KAR 37:040), the certification shall be signed by an authorized representative and shall state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of Section 3 [4] of 401 KAR 37:040. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

3. For wastes with treatment standards expressed as concentrations in the waste pursuant to Section 5 of 401 KAR 37:040, if compliance with the treatment standards in this administrative regulation is based in part or whole on the analytical detection limit alternative specified in Section 5(3) of 401 KAR 37:040, the certification also shall state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by incineration in units operated in accordance with 401 KAR 34:240 or 401 KAR 35:240, or by combustion in fuel substitution units operating in accordance with applicable technical requirements, and I have been unable to detect the nonwastewater organic constituents despite having used best good faith efforts to analyze for such constituents. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(f) If the waste or treatment residue shall be further managed at a different treatment or storage facility, the treatment, storage, or disposal facility sending the waste or treatment residue off site shall comply with the notice and certification requirements applicable to generators under this section.

~~[(g) For wastes that are subject to the prohibitions under 401 KAR 37:030, Section 5(6), and are not subject to the prohibitions set forth in 401 KAR 37:040, Section 4, with each shipment of the waste the owner or operator shall notify any subsequent treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in 401 KAR 37:030, Section 5(6). The notice shall include the following information:~~

~~1. EPA hazardous waste number;~~

~~2. The applicable prohibitions set forth in 401 KAR 37:030, Section 5(6);~~

~~3. The manifest number associated with the shipment of waste; and~~

~~4. Waste analysis data, where available.~~]

(g) ~~[(h)]~~ Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of Section 1 of 401 KAR 36:030 regarding treatment standards and prohibition levels, ~~[Section 1,]~~ the owner or operator of a treatment facility (the recycler) is not required to notify the receiving facility, pursuant to paragraph (d) of this section. With each shipment of the wastes, the owner or operator of the recycling facility shall submit a certification described in paragraph (e) of this section, and a notice which includes the information listed in paragraph (d) of this section (except the manifest number) to the cabinet. The recycling facility also shall keep records of the name and location of each entity receiving the hazardous waste-derived product.

(3) Except where the owner or operator is disposing of any waste that is a recyclable material used in a manner constituting disposal pursuant to 401 KAR 36:030, the owner or operator of any land disposal facility disposing of any waste subject to restrictions under 401 KAR Chapter 37 shall:

(a) Have copies of the notice and certifications specified in subsection (1) or (2) of this section, and the certification specified in Section 8 of 401 KAR 37:010~~[, Section 8,]~~ if applicable.

(b) Test the waste, or an extract of the waste or treatment residue developed using the test method described in Section 1 of 401 KAR 37:100~~[, Section 1,]~~ or using any methods required by generators under Section 3 of 401 KAR 37:030~~[, Section 4]~~, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in Section 3 of 401 KAR 38:040 and all applicable prohibitions set forth in Section 3 of 401 KAR 37:030~~[, Section 4,]~~ or in KRS 224.46-520. The testing shall be performed according to the frequency specified in the facility's waste analysis plan as required by Section 4 of 401 KAR 34:020~~[, Section 4,]~~ or Section 4 of 401 KAR 37:020~~[, Section 4]~~.

~~[(c) Where the owner or operator is disposing of any waste that is subject to the prohibitions under 401 KAR 37:030, Section 5(6), but not subject to the prohibitions set forth in 401 KAR 37:040, Section 4, he shall ensure that the waste is the subject of a certification according to the requirements of Section 8 of this regulation prior to disposal in a landfill or surface impoundment unit, and that the disposal is in accordance with the requirements of Section 5(8)(b) of this regulation. The same requirement applies to any waste that is subject to the prohibitions under 401 KAR 37:030, Section 5(6), and also is subject to the statutory prohibitions in KRS 224.46-520 or the codified prohibitions in 401 KAR 37:040, Section 4.~~]

Section 8. Landfill and Surface Impoundment Disposal Restrictions. (1) Prior to May 8, 1990, wastes which are otherwise prohibited from land disposal under Section 5(6) of 401 KAR 37:030~~[, Section 5(6)]~~ may be disposed in a landfill or surface impoundment which is in compliance with the requirements of Section 5(8)(b) of this administrative regulation provided that the requirements of this section are met. As of May 8, 1990, this subsection, including paragraph (a), is no longer in effect.

(a) Prior to the disposal, the generator has made a good faith effort to locate and contract with treatment and recovery facilities practically available which provide the greatest environmental benefit.

~~[(b) The generator submits to the cabinet a demonstration and certification that the requirements of paragraph (a) of this subsection have been met. The demonstration shall include a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates.~~]

(b) ~~[1.]~~ If a generator determines that there is no practically available treatment for his waste, he shall fulfill the following requirements ~~[indicate so in his demonstration, and provide a written discussion of why he was not able to obtain treatment or recovery for that waste. The generator shall also provide the following certification]~~:

1. Prior to the initial shipment of waste, the generator shall submit a demonstration to the cabinet that includes: a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates, as well as written discussion of why he was not able to obtain treatment or recovery for that waste. The generator shall also provide to the cabinet the following certification:

I certify under penalty of law that the requirements of Section 8(1)(a) of 401 KAR 37:010 have been met and that disposal in a landfill or surface impoundment is the only practical alternative to treatment currently available. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of

fine and imprisonment.

The generator does not need to wait for the cabinet's approval of the demonstration or certification before shipment of the waste. However, if the cabinet invalidates the demonstration or certification for the reasons outlined in Section 8(2)(b) of this administrative regulation the generator shall immediately cease further shipments of the waste, and immediately inform all facilities that received the waste of such invalidation, and keep records of such communication on-site in his files.

2. With the initial shipment of waste, the generator shall submit a copy of the demonstration and the certification discussed above in subparagraph 1 of this paragraph to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such a generator shall retain on site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five years from the date that the waste that is subject of such documentation was last sent to on-site or off-site disposal. The five (5) year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the cabinet.

(c) If a generator determines that there are practically available treatments for his waste, he shall contract to use the practically available technology that yields the greatest environmental benefit. He shall also fulfill the following specific requirements:

1. The generator shall submit to the cabinet, prior to the initial shipment of waste, a demonstration that includes: a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates, as well as a written discussion explaining why the treatment or recovery technology chosen provides the greatest environmental benefit. The generator shall also provide to the cabinet the following certification:

I certify under penalty of law that the requirements of Section 8(1)(a) of 401 KAR 37:010 have been met and that I have contracted to treat my waste (or otherwise provide treatment) by the practically available technology which yields the greatest environmental benefit, as indicated in my demonstration. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

The generator does not need to wait for cabinet approval of the demonstration or certification before shipment of the waste.

2. With the initial shipment of waste, the generator shall submit to the receiving facility a copy of the demonstration and the certification discussed above in subparagraph 1 of this paragraph. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. Such a generator shall retain on site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five (5) years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site disposal. The five (5) year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the cabinet.

~~[I certify under penalty of law that the requirements of 401 KAR 37:010, Section 8(1)(a), have been met and that disposal in a landfill or surface impoundment is the only practical alternative to treatment currently available. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.~~

~~2. If a generator determines that there are practically available treatments for his waste, he shall contract to use the practically available technology that yields the greatest environmental benefit, as indicated in his demonstration. He shall provide the following certification:~~

~~I certify under penalty of law that the requirements of 401 KAR 37:010, Section 8(1)(a), have been met and that I have contracted to treat my waste (or shall otherwise provide treatment) by the practically available technology which yields the greatest environmental benefit, as indicated in my demonstration. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.~~

~~(e) Where the generator has determined that there is no practically available treatment for his waste prior to disposal, with the initial shipment of waste, the generator shall submit a copy of the demonstration and the certification required in paragraph (b)1 of this subsection to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. The generator shall retain on site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five (5) years from the date that the waste that is subject to the documentation was last sent to on-site or off-site disposal. The five (5) year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the cabinet.]~~

(d) Where the generator has determined that there is practically available treatment for his waste prior to disposal, with the initial shipment of waste, the generator shall submit a copy of the demonstration and certification required in paragraph (b)2 of this section to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted provided that the conditions being certified remain unchanged. The generator shall retain on site a copy of the demonstration (if applicable) and certification required for each waste shipment for at least five (5) years from the date that the waste that is the subject of the documentation was last sent to on-site or off-site disposal. The five (5) year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the cabinet.

(2) After receiving the demonstration and certification, the cabinet may request any additional information deemed necessary to evaluate the certification, and submit a new demonstration and certification as provided in this section to the receiving facility.

(a) A generator who has submitted a certification under this section shall immediately notify the cabinet when he has knowledge of any change in the conditions which formed the basis of his certification.

(b) If, after review of the certification, the cabinet determines that practically available treatment exists where the generator has certified otherwise, or that there exists some other method of practically available treatment yielding greater environmental benefit than that which the generator has certified, the cabinet may invalidate the certification.

(c) If the cabinet invalidates a certification, the generator shall immediately cease further shipments of the waste, and inform all facilities that received the waste of the invalidation and keep records of the communication on site in his files.

(3) A treatment, recovery, or storage facility receiving wastes subject to a valid certification shall keep copies of the generator's demonstration (if applicable) and certification in his operating record.

(a) The owner or operator of a treatment or recovery facility shall certify that he has treated the waste in accordance with the generator's demonstration. The following certification is required:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the treatment as specified in the generator's demonstration. I am aware that there

are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) The owner or operator of a treatment, recovery, or storage facility shall, for each initial shipment of waste, send a copy of the generator's demonstration (if applicable) and certification under subsection (1)(b)1 or (c)1 of this section and certification under paragraph [~~(3)~~](a) of this subsection (if applicable) to the facility receiving the waste or treatment residues. With each subsequent waste shipment, only the certification shall be required to be submitted provided that the conditions being certified remain unchanged.

(4) The owner or operator of a disposal facility shall ensure that those wastes prohibited under Section 4(6) of 401 KAR 37:030[~~; Section 5(6),~~] are subject to a certification according to the requirements of this section prior to disposal in a landfill or surface impoundment, and that the units receiving the wastes shall meet the minimum technological requirements of Section 5(8)(b) of this administrative regulation.

(5) Once the certification is received by the cabinet, and provided that the wastes have been treated by the treatment (if any), determined by the generator to yield the greatest environmental benefit practically available, the wastes or treatment residuals may be disposed in a landfill or surface impoundment unit meeting the requirements of Section 5(8)(b) of this administrative regulation, unless otherwise prohibited by the cabinet.

Section 9. Special Rules Regarding Wastes that Exhibit a Characteristic. (1) The initial generator of a solid waste shall determine each EPA hazardous waste number (waste code) applicable to the waste in order to determine the applicable treatment standards under 401 KAR 37:040. For purposes of this chapter, the waste shall carry the waste code for any applicable listing under 401 KAR 31:040. In addition, the waste shall carry one (1) or more of the waste codes under 401 KAR 31:030, where the waste exhibits a characteristic, except in the case when the treatment standard for the waste code listed in 401 KAR 31:040 operates in lieu of the standard for the waste code under 401 KAR 31:010 as specified in subsection (2) of this section.

(2) Where a prohibited waste is both listed under 401 KAR 31:040 and exhibits a characteristic under 401 KAR 31:010, the treatment standard for the waste code listed in 401 KAR 31:040 shall operate in lieu of the standard for the waste code under 401 KAR 31:010, provided that the treatment standard for the listed waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic. Otherwise the waste shall meet the treatment standards for all applicable listed and characteristic waste codes.

(3) In addition to any applicable standards determined from the initial point of generation, no prohibited waste which exhibits a characteristic under 401 KAR 31:010 may be land disposed unless the waste complies with the treatment standards under 401 KAR 37:040.

(4) Wastes that exhibit a characteristic are also subject to Section 7 requirements of this administrative regulation, except that once the waste is no longer hazardous, for each shipment of such wastes to a 401 KAR 37:040 facility the initial generator or the treatment facility need not send a notification to such facility in accordance with Section 7 of this administrative regulation. In such circumstances, a notification and certification shall be sent to the cabinet to implement the requirements of this chapter.

(a) The notification shall include the following information:

1. The name and address of the 401 KAR 37:040 facility receiving the waste shipment;

2. A description of the waste as initially generated, including the applicable EPA hazardous waste number(s), the applicable wastewater (as defined in Section 2(6) of this administrative regulation) or nonwastewater (as defined in Section 2(4) of this administrative regulation) category, and the subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides).

3. The treatment standards applicable to the waste at the initial point of generation.

(b) The certification shall be signed by an authorized representative and shall state the language found in Section 7(2)(e)1 of this administrative regulation.

Section 10. [~~9.~~] Identification of Wastes to be Evaluated by EPA. (1) 40 CFR 268.10 to [~~through~~] 268.12 (1991), which identify wastes that are to be evaluated to determine land disposal prohibitions and treatment standards and are [~~hereby~~] incorporated into this administrative regulation by reference.

(2) The following appendices to 40 CFR Part 268 (July 1, 1992) are incorporated into this administrative regulation by reference:

(a) Appendix IV;
(b) Appendix V;
(c) Appendix VI;
(d) Appendix VII;
(e) Appendix VIII; and
(f) Appendix IX.

(3) [~~(2)~~] The appendices specified [~~federal regulations incorporated by reference~~] in subsections (1) and (2) of this section are available from [~~for copying and inspection at~~] the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716 between [~~. The business hours of the division are from~~] 8 a.m. and [~~to~~] 4:30 p.m., local 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 administrative regulation implements the land disposal restrictions and affects persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment storage, and disposal

facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. The provisions in this proposed administrative regulation were promulgated by the authority of the hazardous and solid waste amendments to the federal Resource Conservation and Recovery Act and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to compliance with this administrative regulation whether or not the state adopts these federal requirements. 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: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 268 Subpart A. However, there is no federal mandate to promulgate this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. 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. 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 268 Subpart A.

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 37:030. Prohibitions on land disposal.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 relative to land disposal restrictions. [~~requires that the cabinet may prohibit the land disposal of any hazardous wastes. KRS 224.46-520 requires that the cabinet allow land disposal of hazardous waste when the disposal methods have been determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous. This chapter establishes land disposal restrictions and treatment standards for hazardous wastes. This regulation establishes waste specific prohibitions on land disposal. Applicability dates set forth in this regulation are consistent with those adopted by USEPA. This regulation reflects those federal dates to assure consistency with the federal program. Enforcement of applicable provisions preceding the effective date of this regulation was the responsibility of USEPA. The cabinet assumed enforcement responsibility from USEPA upon the effective date of this regulation.~~]

Section 1. [~~Applicability. The requirements in this regulation apply to owners and operators of hazardous waste treatment, storage, and disposal facilities and hazardous waste generators which dispose of hazardous wastes on site or off site except as provided otherwise in Section 2(3) or 3(2) of this regulation.~~

~~Section 2.~~] Waste Specific Prohibitions - Solvent Wastes. (1) Effective November 8, 1986, the spent solvent wastes specified in Section 2 of 401 KAR 31:040 as EPA Hazardous Waste Numbers F001, F002, F003, F004, and F005, are prohibited from land disposal (except in an injection well) unless one (1) or more of the following conditions apply:

(a) The generator of the solvent waste is a [~~registered~~] small quantity generator of 100-1000 kilograms of hazardous waste per month; or

(b) The solvent waste is generated from any response action taken under [~~the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (~~]CERCLA[~~)~~] or any corrective action taken under KRS Chapter 224 except where the waste is contaminated soil or debris; or

(c) The initial generator's solvent waste is a solvent-water mixture, solvent-containing sludge or solid, or solvent- contaminated soil (non-CERCLA or KRS Chapter 224 corrective action) containing less than one (1) percent total F001-F005 solvent constituents listed in Table 1 of Section 3 of 401 KAR 37:040; or

(d) The solvent waste is a residue from treating a waste described in paragraphs (a), (b), or (c) of this subsection; or the solvent waste is a residue from treating a waste not described in paragraphs (a), (b), or (c) of this subsection provided such residue belongs to a

different treatability group than the waste as initially generated and wastes belonging to such a treatability group are described in paragraph (c) of this subsection.

(2) Effective November 8, 1988, the F001-F005 solvent wastes listed in subsection (1)(a), (b), (c), and (d) of this section are prohibited from land disposal.

(3) Effective November 8, 1990, the F001-F005 solvent wastes which are contaminated soil and debris resulting from a response action taken under Section 104 or 106 of CERCLA or a corrective action required under KRS Chapter 224 and the residues from treating these wastes are prohibited from land disposal. Between November 8, 1988, and November 8, 1990, these wastes may be disposed in a landfill or surface impoundment only if the unit is in compliance with the requirements specified in Section 5(8)(b) of 401 KAR 37:010[~~, Section 5(8)(b)~~].

(4) The requirements of subsections (1), (2), and (3) of this section do not apply if:

(a) The wastes meet the standards of 401 KAR 37:040; or

(b) Persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of 401 KAR 37:010, with respect to those wastes and units covered by the petition; or

(c) Persons have been granted an extension to the effective date of a prohibition pursuant to Section 5 of 401 KAR 37:010, with respect to those wastes and units covered by the extension.

Section 2. [~~3.~~] Waste Specific Prohibitions - Dioxin-Containing Wastes. (1) Effective November 8, 1988, the dioxin-containing wastes specified in Section 2 of 401 KAR 31:040 as EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, and F028, are prohibited from land disposal unless the F020-F023 and F026-F028 dioxin-containing waste is contaminated soil and debris resulting from a response action taken under Section 104 and 106 of CERCLA or a corrective action taken under KRS Chapter 224.

(2) Effective November 8, 1990, the F020-F023 and F026-F028 dioxin-containing wastes which are contaminated soil and debris as addressed [~~listed~~] in subsection (1) of this section are prohibited from land disposal.

(3) Between November 8, 1988, and November 8, 1990, wastes which are contaminated soil and debris as addressed [~~included~~] in subsection (1) of this section may be disposed in a landfill or surface impoundment only if the unit is in compliance with the requirements specified in 401 KAR 37:010, Section 5(8)(b) and all other applicable requirements of 401 KAR Chapters 34 and 35.

(4) The requirements of subsections (2) and (3) of this section do not apply if:

(a) The wastes meet the standards of 401 KAR 37:040; or

(b) Persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of 401 KAR 37:010[~~, Section 6~~] with respect to those wastes and units covered by the petition; or

(c) Persons have been granted an extension to the effective date of a prohibition pursuant to Section 5 of 401 KAR 37:010[~~, Section 5~~] with respect to those wastes covered by the extension.

Section 3. [~~4.~~] Waste Specific Prohibitions - California List Wastes. (1) Effective July 8, 1987, the following hazardous wastes are prohibited from land disposal (except in injection wells):

(a) Liquid hazardous wastes having a pH less than or equal to two (2);

(b) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to fifty (50) ppm;

(c) Liquid hazardous wastes that are primarily water and contain halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/l and less than 10,000 mg/l HOCs.

(2) The requirements of subsections (1) and (3) of this section do not apply until:

(a) July 8, 1989, where the wastes are contaminated soil or debris not resulting from a response action taken under section 104 or 106 of CERCLA or a corrective action taken under KRS Chapter 224 [~~RCRA Subtitle C~~]. Between July 8, 1987, and July 8, 1989, the wastes may be disposed of in a landfill or surface impoundment only if the disposal is in compliance with the requirements specified in Section 5(8)(b) of 401 KAR 37:010[~~, Section 5(8)(b)~~].

(b) November 8, 1990, where the wastes are contaminated soil or debris resulting from a response action taken under Section 104 or 106 of CERCLA or a corrective action taken under KRS Chapter 224 [~~Subtitle C of the Resource Conservation and Recovery Act~~ (]RCRA[)]. Between November 8, 1988, and November 8, 1990, the wastes may be disposed in a landfill or surface impoundment only if the unit is in compliance with the requirements specified in Section 5(8)(b) of 401 KAR 37:010[~~, Section 5(8)(b)~~].

(3) Effective November 8, 1988, the following hazardous wastes are prohibited from land disposal (subject to any administrative regulations that may be promulgated with respect to disposal in injection wells):

(a) Liquid hazardous wastes that contain HOCs in total concentration greater than or equal to 1,000 mg/l and are not prohibited under subsection (1)(c) of this section; and

(b) Nonliquid hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg/kg and are not wastes described in subsection (2) of this section.

(4) Between July 8, 1987 and November 8, 1988, the wastes included in subsection (3)(a) and (b) of this section may be disposed in a landfill or surface impoundment only if the unit [~~disposal~~] is in compliance with the requirements specified in Section 5(8)(b) of 401 KAR 37:010.

(5) The requirements of subsections (1), (2), and (3) of this section do not apply if:

(a) Persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of 401 KAR 37:010, with respect to those wastes and units covered by the petition (except for liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 500 ppm which are not eligible for such exemptions); or

(b) Persons have been granted an extension to the effective date of a prohibition pursuant to Section 5 of 401 KAR 37:010, with respect to those wastes covered by the extension; or

(c) The wastes meet the applicable standards specified in 401 KAR 37:040 or, where treatment standards are not specified, the wastes are in compliance with the applicable prohibitions set forth in this section or KRS 224.46-520.

(6) The prohibitions and effective dates specified in subsections (1)(c), (2), and (3) of this section do not apply where the waste is subject to 401 KAR 37:030 prohibition and effective date for a specified HOC (such as a hazardous waste chlorinated solvent, for example Section 2(1) of this administrative regulation).

(7)(a) To determine whether or not a waste is a liquid under subsections (1) and (3) of this section and under KRS 224.46-520 the following test shall be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", EPA Publication No. SW-846.

(b) The paint filter liquids test, Method 9095 in the EPA publication SW 846, is being incorporated by reference into this section. Publication SW-846 [~~The test method became effective in April of 1984 and~~] is available from the National Technical Information Service [~~Section~~], 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4600. This material is also available from [~~for public inspection and copying during business hours of 8 a.m. to 4:30 p.m. at~~] the Division of Waste Management, [~~Frankfort Office Park,~~] 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between 8 a.m. and 4:30 p.m., local time, Monday through Friday.

(8) Except as otherwise provided in this paragraph, the waste analysis and recordkeeping requirements of Section 7 of 401 KAR 37:010 are applicable to wastes prohibited under this chapter or KRS 224.46-520.

(a) The initial generator of a liquid hazardous waste shall test his waste (not an extract or filtrate) in accordance with the procedures specified in Section 3(1)(a) of 401 KAR 31:030, or use knowledge of the waste, to determine if the waste has a pH less than or equal to two (2). If the liquid waste has a pH less than or equal to two (2), it is restricted from land disposal and all requirements of 401 KAR Chapter 37 are applicable, except as otherwise specified in this section.

(b) The initial generator of either a liquid hazardous waste containing [~~polychlorinated biphenyls (~~]PCBs[~~)~~] or a liquid or nonliquid hazardous waste containing halogenated organic compounds (HOCs) shall test his waste (not an extract or filtrate), or use knowledge of the waste, to determine whether the concentration levels in the waste equal or exceed the prohibition levels specified in this section. If the concentration of PCBs or HOCs in the waste is greater than or equal to the prohibition levels specified in this section, the waste is restricted from land disposal and all requirements of 401 KAR Chapter 37 are applicable, except as otherwise specified in this section.

Section 4. [~~5.~~] Waste Specific Prohibitions - First Third Wastes. (1) Effective August 8, 1988, the wastes specified in Section 3 of 401 KAR 31:040[~~, Section 3~~] as EPA Hazardous Waste Nos. F006 (nonwastewater), K001, K004 wastes specified in Section 2 [~~3~~] of 401 KAR 37:040, K008 wastes specified in Section 2 [~~3~~] of 401 KAR 37:040, K016, K018, K019, K020, K021 wastes specified in Section 2 [~~3~~] of 401 KAR 37:040, K022 (nonwastewater), K024, K025 nonwastewaters specified in Section 3 of 401 KAR 37:040, K030, K036 (nonwastewater), K037, K044, K045, nonexplosive K046 (nonwastewater), K047, K060 (nonwastewater), K061 (nonwastewaters containing less than fifteen (15) percent zinc), K062, non $CaSO_4$ K069 (nonwastewaters), K086 (solvent washes), K087, K099, K100 nonwastewaters specified in Section 2 [~~3~~] of 401 KAR 37:040, K101 (wastewater), K101 (nonwastewater, low arsenic subcategory - less than one (1) percent total arsenic), K102 (wastewater), K102 (nonwastewater, low arsenic subcategory - less than one (1) percent total arsenic), K103, and K104 are prohibited from land disposal (except in an injection well). Effective August 8, 1988, and continuing until August 7, 1990, K061 wastes containing fifteen (15) percent zinc or greater are prohibited from land disposal pursuant to the treatment standards specified in Section 2 of 401 KAR 37:040[~~, Section 3~~] applicable to K061 wastes that contain less than fifteen (15) percent zinc.

(2) Effective August 8, 1990, the wastes specified in Section 3 of 401 KAR 31:040[~~, Section 3~~] as EPA Hazardous Waste No. K071 is prohibited from land disposal.

(3) Effective August 8, 1990, the wastes specified in Section 10(1) of 401 KAR 37:010[~~, Section 9(1)~~] having a treatment standard in 401 KAR 37:040 based on incineration and which are contaminated soil and debris are prohibited from land disposal.

(4) Between November 8, 1988, and August 8, 1990, wastes included in subsections (2) and (3) of this section may be disposed of in a landfill or surface impoundment only if the unit is in compliance with the requirements specified in Section 5(8)(b) of 401 KAR 37:010[~~, Section 5(8)(b)~~].

(5) The requirements of subsections (1), (2), (3), and (4) of this section do not apply if:

(a) The wastes meet the applicable standards specified in 401 KAR 37:040; or

(b) Persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of 401 KAR 37:010[~~, Section 6~~], with respect to those wastes and units covered by the petition; or

(c) Persons have been granted an extension to the effective date of a prohibition pursuant to Section 5 of 401 KAR 37:010[~~, Section 5~~], with respect to those wastes covered by the extension.

(6) Between August 8, 1988, and May 8, 1990, the wastes specified in Section 10(1) of 401 KAR 37:010[~~, Section 9(1)~~] for which treatment standards under 401 KAR 37:040 are not promulgated [~~applicable~~], including those wastes which are subject to the statutory prohibitions of KRS 224.46-520 or prohibitions under Section 3 of 401 KAR 37:030[~~, Section 4~~], but not including wastes subject to a treatment standard under Section 3 of 401 KAR 37:040 or codified prohibitions under Section 3 of this administrative regulation, or wastes subject to a treatment standard under Section 3 of 401 KAR 37:040, are prohibited from disposal in a landfill or surface impoundment unless a demonstration and certification have been submitted pursuant to Section 8 of 401 KAR 37:010. [~~, Section 4, are prohibited from disposal in a landfill or surface impoundment unless the wastes are the subject of a valid demonstration and certification pursuant to 401 KAR 37:010, Section 8.~~]

(7) To determine whether a hazardous waste listed in Section 10(1) of 401 KAR 37:010[~~, Section 9(1)~~] exceeds the applicable treatment standards specified in Sections 2 and 3 of 401 KAR 37:040[~~, Sections 3 and 4~~], the initial generator shall test a representative sample of the waste extract or the entire waste depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable sections of 401 KAR 37:040 levels, the waste is prohibited from land disposal and all requirements of 401 KAR Chapter 37 are applicable, except as otherwise specified.

Section 5. [~~6.~~] Waste Specific Prohibitions - Second Third Wastes. (1) Effective June 8, 1989, the wastes specified in Section 2 of 401 KAR 31:040[~~, Section 2~~] as EPA Hazardous Waste Nos. F010, F024, the wastes specified in Section 3 of 401 KAR 31:040[~~, Section 3~~] as EPA Hazardous Waste Nos. K005, K007, K009 (nonwastewaters), K010, K023, K027, K028, K029 (nonwastewaters), K036 (wastewaters), K038, K039, K040, K043, K093, K094, K095 (nonwastewaters), K096 (nonwastewaters), K113, K114, K115, K116, and the wastes specified in 401 KAR 31:040, Section 4 as EPA Hazardous Waste Nos. P013, P021, P029, P030, P039, P040, P041, P043, P044, P062, P063, P071, P074, P085, P089, P094, P097, P098, P099, P104, P106, P109, P111, P121, U028, U058, U069, U087, U088, U102, U107, U221, U223, and U235 are prohibited from land disposal.

(2) Effective June 8, 1989, the wastes specified in Section 3 of 401 KAR 31:040 as EPA Hazardous Waste Nos. K009 (wastewaters), K011 (nonwastewaters), K013 (nonwastewaters), and K014 (nonwastewaters) are prohibited from land disposal except when they are underground injected pursuant to 40 CFR 148.14(f) and 148.15(d).

(3) Effective July 8, 1989, the wastes specified in Section 2 of 401 KAR 31:040[~~, Section 2~~] as EPA Hazardous Waste Nos. F006-cyanide (nonwastewater), F008, F009, F011 (wastewaters) [~~and F012 (wastewaters)~~] are prohibited from land disposal.

(a) Effective July 8, 1989, the waste specified in Section 2 of 401 KAR 31:040[~~, Section 2~~] as EPA Hazardous Waste No. F007 is prohibited from land disposal except when it is underground injected pursuant to 40 CFR 148.14(f).

(b) Effective July 8, 1989, and continuing until December 8, 1989, F011 (nonwastewaters) and F012 (nonwastewaters) are prohibited from land disposal pursuant to the treatment standards specified in Sections 2 and 5 of 401 KAR 37:040[~~, Sections 3 and 6~~] applicable to F007, F008, and F009 (nonwastewaters). Effective December 8, 1989, F011 (nonwastewaters) and F012 (nonwastewaters) are prohibited from land disposal pursuant to the treatment standards specified in Sections 2 and 5 of 401 KAR 37:040[~~, Sections 3 and 6~~] applicable to F011 (nonwastewaters), and F012 (nonwastewaters).

(4) Effective June 8, 1991, the wastes specified in this section having a treatment standard in 401 KAR 37:040 based on incineration, and which are contaminated soil and debris are prohibited from land disposal.

(5) Between June 8, 1989, and June 8, 1991 (for wastes F007, F008, F009, F011, and F012 between June 8, 1989, and July 8,

1989) wastes included in subsections (3) and (4) of this section may be disposed in a landfill or surface impoundment, regardless of whether the unit is a new, replacement, or lateral expansion unit, only if the unit is in compliance with the technical requirements specified in Section 5(8)(b) of 401 KAR 37:010[, ~~Section 5(8)(b)~~].

(6) The requirements of subsections (1), (2), (3), and (4) of this section do not apply if:

(a) The wastes meet the applicable standards specified in 401 KAR 37:040; or

(b) Persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of 401 KAR 37:010[, ~~Section 6~~], with respect to those wastes and units covered by the petition.

(7) The requirements of subsections (1), (2), and (3) of this section do not apply if persons have been granted an extension to the effective date of a prohibition pursuant to Section 5 of 401 KAR 37:010[, ~~Section 5~~] with respect to those wastes covered by the extension.

(8) Between June 8, 1989, and May 8, 1990, the wastes specified in Section 10(1) of 401 KAR 37:010[, ~~Section 9(1)~~] for which treatment standards under 401 KAR 37:040 are not applicable, including California list wastes subject to the sanctuary prohibitions of [~~section 3004(d) of RCRA or~~] Section 4 of this administrative regulation, are prohibited from disposal in a landfill or surface impoundment unless the wastes are the subject of a valid demonstration and certification pursuant to Section 8 of 401 KAR 37:010[, ~~Section 8~~].

(9) To determine whether a hazardous waste listed in Section 10 of 401 KAR 37:010[, ~~Section 9~~] exceeds the applicable treatment standards specified in Sections 2 and 5 of 401 KAR 37:040[, ~~Sections 3 and 6~~], the initial generator shall test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable 401 KAR 37:040 levels, the waste is prohibited from land disposal and all requirements of 401 KAR Chapter 37 are applicable, except as otherwise specified.

Section 6. Waste Specific Prohibitions - Third Wastes. (1) Effective August 8, 1990, the following wastes are prohibited from land disposal: wastes specified in Section 2 of 401 KAR 31:040 as EPA Hazardous Waste Numbers F002 (1,1,2-trichloroethane), F005 (benzene), F005 (2-ethoxy ethanol) F005 (2-nitropropane), F006 (wastewaters), F019, F025, and F039 (wastewaters); the wastes specified in Section 3 of 401 KAR 31:040 as EPA Hazardous Waste Numbers K002, K003, K004 (wastewaters), K005 (wastewaters), K006, K008 (wastewaters), K011 (wastewaters), K013 (wastewaters), K014 (wastewaters), K015 (nonwastewaters), K017, K021 (wastewaters), K022 (wastewaters), K025 (wastewaters), K026, K029 (wastewaters), K031 (wastewaters), K032, K033, K034, K035, K041, K042, K046 (wastewaters, reactive nonwastewaters), K048 (wastewaters), K049 (wastewaters), K050 (wastewaters), K051 (wastewaters), K052 (wastewaters), K060 (wastewaters), K061 (wastewaters) and (high zinc subcategory > 15% zinc), K069 (wastewaters, calcium sulfate nonwastewaters), K073, K083, K084 (wastewaters), K085, K095 (wastewaters), K096 (wastewaters), K097, K098, K100 (wastewaters), K101 (wastewaters), K102 (wastewaters), K105, and K106 (wastewaters); the wastes specified in Section 4 of 401 KAR 31:040 as EPA Hazardous Waste Numbers P001, P002, P003, P004, P005, P006, P007, P008, P009, P010 (wastewaters), P011 (wastewaters), P012 (wastewaters), P014, P015, P016, P017, P018, P020, P022, P023, P024, P026, P027, P028, P031, P033, P034, P036 (wastewaters), P037, P038 (wastewaters), P042, P045, P046, P047, P048, P049, P050, P051, P054, P056, P057, P058, P059, P060, P064, P065 (wastewaters), P066, P067, P068, P069, P070, P072, P073, P075, P076, P077, P078, P081, P082, P084, P088, P092 (wastewaters), P093, P095, P096, P101, P102, P103, P105, P108, P110, P112, P113, P114, P115, P116, P118, P119, P120, P122, and P123; and the wastes specified in Section 4(6) of 401 KAR 31:040 as EPA Hazardous Waste Numbers U001, U002, U003, U004, U005, U006, U007, U008, U009, U010, U011, U012, U014, U015, U016, U017, U018, U019, U020, U021, U022, U023, U024, U025, U026, U027, U029, U030, U031, U032, U033, U034, U035, U036, U037, U038, U039, U041, U042, U043, U044, U045, U046, U047, U048, U049, U050, U051, U052, U053, U055, U056, U057, U059, U060, U061, U062, U063, U064, U066, U067, U068, U070, U071, U072, U073, U074, U075, U076, U077, U078, U079, U080, U081, U082, U083, U084, U085, U086, U089, U090, U091, U092, U093, U094, U095, U096, U097, U098, U099, U101, U103, U105, U106, U108, U109, U110, U111, U112, U113, U114, U115, U116, U117, U118, U119, U120, U121, U122, U123, U124, U125, U126, U127, U128, U129, U130, U131, U132, U133, U134, U135, U136 (wastewaters), U137, U138, U140, U141, U142, U143, U144, U145, U146, U147, U148, U149, U150, U151 (wastewaters), U152, U153, U154, U155, U156, U157, U158, U159, U160, U161, U162, U163, U164, U165, U166, U167, U168, U169, U170, U171, U172, U173, U174, U176, U177, U178, U179, U180, U181, U182, U183, U184, U185, U186, U187, U188, U189, U191, U192, U193, U194, U196, U197, U200, U201, U202, U203, U204, U205, U206, U207, U208, U209, U210, U211, U213, U214, U215, U216, U217, U218, U219, U220, U222, U225, U226, U227, U228, U234, U236, U237, U238, U239, U240, U243, U244, U246, U247, U248, U249; and the following wastes identified as hazardous based on a characteristic alone: D001, D002, D003, D004 (wastewaters), D005, D006, D007, D008 (except for lead materials stored before secondary smelting), D009 (wastewaters), D010, D011, D012, D013, D014, D015, D016, and D017.

(2) Effective November 8, 1990, the wastes specified in Section 3 of 401 KAR 31:040 as EPA Hazardous Waste Numbers K048 (nonwastewaters), K049 (nonwastewaters), K050 (nonwastewaters), K051 (nonwastewaters), and K052 (nonwastewaters) are prohibited from land disposal.

(3) Effective May 8, 1992, the following wastes are prohibited from land disposal: wastes specified in Section 2 of 401 KAR 31:040 as EPA Hazardous Waste Numbers F039 (nonwastewaters); the wastes specified in Section 3 of 401 KAR 31:040 as EPA Hazardous Numbers K031 (nonwastewaters); K084 (nonwastewaters); K101 (nonwastewaters); K102 (nonwastewaters); K106 (nonwastewaters); the wastes specified in Section 5(5) of this administrative regulation as EPA Hazardous Waste Numbers P010 (nonwastewaters; P011 (nonwastewaters); P012 (nonwastewaters); P036 (nonwastewaters); P038 (nonwastewaters); P065 (nonwastewaters); P087; and P092 (nonwastewaters); the wastes specified in Section 5(6) of this regulation as EPA Hazardous Waste Numbers U136 (nonwastewaters); and U151 (nonwastewaters); the following wastes identified as hazardous based on a characteristic alone: D004 (nonwastewaters); and D009 (nonwastewaters); inorganic solid debris as defined in Section 2(7) of 401 KAR 37:010 which also applies to chromium refractory bricks carrying the EPA Hazardous Waste Numbers K048-K052); and RCRA hazardous wastes that contain naturally occurring radioactive materials.

(4) Effective May 8, 1992, hazardous wastes listed in Section 10 of 401 KAR 37:010 that are mixed radioactive and hazardous wastes, and soil or debris contaminated with hazardous wastes listed in Section 10 of 401 KAR 37:010 that are mixed radioactive and hazardous wastes, are prohibited from land disposal.

(5) Effective May 8, 1993, debris that is contaminated with wastes listed in Section 10 of 401 KAR 37:010, and debris that is contaminated with any characteristic waste for which treatment standards are established in 401 KAR 37:040, are prohibited from land disposal.

(6) Between May 8, 1990 and August 8, 1990, the wastes included in subsection (1) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in Section 5(8)(b) of 401 KAR 37:010.

(7) Between May 8, 1990 and November 8, 1990, wastes included in subsection (2) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with

the requirements specified in Section 5(8)(b) of 401 KAR 37:010.

(8) Between May 8, 1990, and May 8, 1992, wastes included in subsections (3), (4), and (5) of this section may be disposed of in a landfill or surface impoundment only if the unit is in compliance with the requirements specified in Section 5(8)(b) of 401 KAR 37:010.

(9) The requirements of subsections (1) to (5) of this section do not apply if:

(a) The wastes meet the applicable alternate standards specified in 401 KAR 37:040;

(b) Persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of 401 KAR 37:010 with respect to those wastes and units covered by the petition;

(c) The wastes meet the applicable alternate standards established pursuant to a petition granted under Section 4 of 401 KAR 37:040; or

(d) Persons have been granted an extension to the effective date of a prohibition pursuant to Section 5 of 401 KAR 37:010 with respect to these wastes covered by the extension.

(10) To determine whether a hazardous waste listed in Section 10 of 401 KAR 37:010 exceeds the applicable treatment standards specified in Section 2 of 401 KAR 37:040 and Section 6 of 401 KAR 37:010 the initial generator shall test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentration in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable 401 KAR 37:040 levels, the waste is prohibited from land disposal, and all requirements of 401 KAR Chapter 37 are applicable, except as otherwise specified.

(11) Effective May 8, 1993, D008 lead materials stored before secondary smelting are prohibited from land disposal. On or before March 1, 1993, the owner or operator of each secondary lead smelting facility shall submit the following to the cabinet: A binding contractual commitment to construct or otherwise provide capacity for storing such D008 wastes prior to smelting which complies with all applicable storage standards; documentation that the capacity to be provided will be sufficient to manage the entire quantity of such D008 wastes; and a detailed schedule for providing such capacity. Failure by a facility to submit such documentation shall render such D008 wastes managed by that facility prohibited from land disposal effective March 1, 1993. In addition, no later than July 27, 1992 the owner or operator of each facility shall place in the facility record documentation of the manner and location in which such wastes will be managed pending completion of such capacity, demonstrating that such management capacity will be adequate and complies with all applicable requirements in 401 KAR Chapters 30-39.

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 persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment storage, and disposal facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. The provisions in this proposed administrative regulation were promulgated by the authority of the federal Resource Conservation and Recovery Act and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to compliance with this administrative regulation whether or not the state adopts these federal requirements 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: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 268 Subpart C. However, there is no federal mandate to promulgate this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. 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. 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 268 Subpart C.

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 37:040. Treatment standards.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99[~~, 40 CFR 268.43~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520, 224.46-530[~~, 40 CFR 268.43~~]

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-505, 224.46-520, and 224.46-530, relative to hazardous waste standards. [~~KRS 224.46-520 provides that the cabinet may prohibit the land disposal of any hazardous wastes. KRS 224.46-520 requires that the cabinet allow land disposal of hazardous waste when the disposal methods have been determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous. This chapter establishes land disposal restrictions and treatment standards for hazardous wastes. This regulation establishes treatment standards expressed either as concentrations in waste extract or as specified technologies. This regulation also establishes the procedure for obtaining a variance from the treatment standard.~~]

Section 1. [~~Applicability. The requirements in this regulation apply to hazardous waste generators and hazardous waste treatment sites or facilities.~~

~~Section 2.~~] Applicability of Treatment Standards. (1) A restricted waste identified in Section 3 of this regulation may be land disposed only if an extract of the waste or of the treatment residue of the waste developed using the test method of Section 1 of 401 KAR 37:100 does not exceed the value shown in Table CCWE (Constituent Concentrations in Waste Extract) [~~referenced~~] in Section 2 [~~3~~] of this regulation for any hazardous constituent listed [~~in Table CCWE~~] for that waste, with the following exceptions: D004, D008, K031, K084, K101, K102, P010, P011, P012, P036, P038, and U136. Table CCWE identifies the restricted wastes D004, D008, P038, and U136 and the concentrations of their associated constituents which may not be exceeded by the extract of a waste or waste treatment residual developed using the test method incorporated by reference in 401 KAR 31:100 or 401 KAR 37:100 for the allowable land disposal of such wastes.

(2) A restricted waste for which a treatment technology is specified under Section 3 [~~4~~](1) of this regulation may be land disposed after it is treated using that specified technology or an equivalent treatment method approved by the cabinet under the procedures set forth in Section 3 [~~4~~](2) of this regulation.

(3) Except as otherwise specified in Section 5(3) of this administrative regulation, a restricted waste identified in Section 5 [~~6~~] of this regulation may be land disposed only if the constituent concentrations in the waste or treatment residue of the waste do not exceed the value shown in Table CCW (Constituent Concentrations in Waste) referenced in Section 5 [~~6~~] of this regulation for any hazardous constituent listed in Table CCW for that waste.

Section 2. [~~3.~~] Treatment Standards Expressed as Concentrations in Waste Extract. (1) Table CCWE [~~(Constituent Concentrations in Waste Extract)~~] identifies the restricted wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the extract of a waste or waste treatment residual developed using the test method in Section 1 of 401 KAR 37:100 for the allowable land disposal of [~~such~~] wastes, with the exception of wastes D004, D008, D031, K084, K101, K102, P010, P011, P012, P036, and U136 and the concentrations of their associated constituents which may not be exceeded by the extract or waste treatment residual developed using the test methods in 401 KAR 31:110 for the allowable land disposal of such wastes. (Section 2 of 401 KAR 37:100 provides the cabinet guidance on treatment methods that have been shown to achieve the Table CCWE levels for the respective wastes. Section 2 of 401 KAR 31:100 is not a regulatory requirement but is provided to assist generators and owners or operators in their selection of appropriate treatment methods.) Compliance with these concentrations shall be required based upon grab samples, unless otherwise noted in Table CCWE. Table CCWE identifies the restricted wastes D004, D008, K031, K084, K101, K102, P010, P011, P012, P036, P038, and U136 and the concentrations of their associated constituents which may not be exceeded by the extract of a waste or waste treatment residual developed using the test method in Sections 1 or 2 of 401 KAR 37:100 for the allowable land disposal of such wastes. (Section 2 of 401 KAR 37:100 provides cabinet guidance on treatment methods that have been shown to achieve the Table CCWE levels for the respective wastes. Section 2 of 401 KAR 37:100 is not a regulatory requirement but is provided to assist generators and owners or operators in their selection of appropriate treatment methods.)

Table CCWE.-Constituent Concentrations in Waste Extract

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/l)	Notes
D004	NA	Table CCW in Section 5	Arsenic	7440-38-2	NA		5.0	(1)
D005	NA	Table CCW in Section 5	Barium	7440-39-3	NA		100	
D006	NA	Table CCW in Section 5	Cadmium	7440-43-9	NA		1.0	
D007	NA	Table CCW in Section 5	Chromium (Total)	7440-47-32	NA		5.0	
D008	NA	Table CCW in Section 5	Lead	7439-92-1	NA		5.0	(1)
D009 (Low Mercury Subcategory-less than 260 mg/kg Mercury)	NA	Table 2 in Section 3 and Table CCW in Section 5	Mercury	7439-97-6	NA		0.20	
D010	NA	Table CCW in Section 5	Selenium	7782-49-2	NA		5.7	
D011	NA	Table CCW in Section 5	Silver	7440-22-4	NA		5.0	
*F001-F005 spent solvents	NA	Table CCW in Section 5	Acetone	67-64-1	0.05		0.59	
			n-Butyl alcohol	71-36-3	5.0		5.0	
			Carbon disulfide	75-15-0	NA		4.8	
			Carbon tetrachloride	56-23-5	0.05		0.96	
			Chlorobenzene	108-90-7	0.15		0.05	
			Cresols (and cresylic acid)		2.82		0.75	
			Cyclohexanone	108-94-1	NA		0.75	
			1,2-Dichlorobenzene	95-50-1	0.65		0.125	
			Ethyl acetate	141-78-6	0.05		0.75	
			Ethylbenzene	100-41-4	0.05		0.053	
			Ethyl ether	60-29-7	0.05		0.75	
			Isobutanol	78-83-1	5.0		5.0	
			Methanol	67-56-1	NA		0.75	
			Methylene chloride	75-9-2	0.20		0.96	
			Methyl ethyl ketone	78-93-3	0.05		0.75	
			Methyl isobutyl ketone	108-10-1	0.05		0.33	
			Nitrobenzene	98-95-3	0.66		0.125	
			Pyridine	110-86-1	1.12		0.33	
			Tetrachloroethylene	127-18-4	0.079		0.05	
			Toluene	108-88-3	1.12		0.33	

			1,1,1,-Trichloro-ethane	71-55-6	1.05		0.41
			1,1,2-Trichloro-1,2,2-Trifluor-ethane	76-13-1	1.05		0.96
			Trichloroethylene	79-01-6	0.062		0.091
			Trichlorofluoro-methane	75-69-4	0.05		0.96
			Xylene		0.05		0.15
F006	NA	Table CCW in Section 5	Cadmium	7440-43-9	NA		0.066
			Chromium (To-tal)	7440-47-32	NA		5.2
			Lead	7439-92-1	NA		0.51
			Nickel	7440-02-0	NA		0.32
			Silver	7440-22-4	NA		0.072
F007	NA	Table CCW in Section 5	Cadmium	7440-43-9	NA		0.066
			Chromium (To-tal)	7440-47-32	NA		5.2
			Lead	7439-92-1	NA		0.51
			Nickel	7440-02-0	NA		0.32
			Silver	7440-22-4	NA		0.072
F008	NA	Table CCW in Section 5	Cadmium	7440-43-9	NA		0.066
			Chromium (To-tal)	7440-47-32	NA		5.2
			Lead	7439-92-1	NA		0.51
			Nickel	7440-02-0	NA		0.32
			Silver	7440-22-4	NA		0.072
F009	NA	Table CCW in Section 5	Cadmium	7440-43-9	NA		0.066
			Chromium (To-tal)	7440-47-32	NA		5.2
			Lead	7439-92-1	NA		0.51
			Nickel	7440-02-0	NA		0.32
			Silver	7440-22-4	NA		0.072
F011	NA	Table CCW in Section 5	Cadmium	7440-43-9	NA		0.066
			Chromium (To-tal)	7440-47-32	NA		5.2
			Lead	7439-92-1	NA		0.51
			Nickel	7440-02-0	NA		0.32
			Silver	7440-22-4	NA		0.072
F012	NA	Table CCW in Section 5	Cadmium	7440-43-9	NA		0.066
			Chromium (To-tal)	7440-47-32	NA		5.2
			Lead	7439-92-1	NA		0.51
			Nickel	7440-02-0	NA		0.32
			Silver	7440-22-4	NA		0.072

F019	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA	5.2
F020-F023 and F026-F028 dioxin containing wastes[2]	NA	NA	HxCDD-All Hexachloro-dibenzo-p-dioxins		<1 ppb	<1 ppb
			HxCDF-All Hexachloro-dibenzo-furans		<1 ppb	<1 ppb
			PeCDD-All Pentachloro-dibenzo-p-dioxins		<1 ppb	<1 ppb
			PeCDF-All Pentachloro-dibenzo-furans		<1 ppb	<1 ppb
			TCDD-All Tetrachloro-dibenzo-p-dioxins			
			TCDF-All Tetrachloro-dibenzo-furans		<1 ppb	<1 ppb
			2,4,5-Trichlorophenol	95-95-4	<0.05 ppm	<0.05 ppm
			2,4,6-Trichlorophenol	88-06-2	<0.05 ppm	<0.05 ppm
			2,3,4,6-Tetrachlorophenol	58-90-2	<0.05 ppm	<0.05 ppm
			Pentachlorophenol	87-86-5	<0.01 ppm	<0.01 ppm
F024	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA	0.073
			Lead	7439-92-1	NA	[Reserved]
			Nickel	7440-02-0	NA	0.088
*F037	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA	1.7
			Nickel	7440-02-0	NA	0.20
*F038	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA	1.7
			Nickel	7440-02-0	NA	0.20
F039	NA	Table CCW in Section 2	Antimony	7440-36-0	NA	0.23
			Arsenic	7440-38-2	NA	5.0
			Barium	7440-39-3	NA	52
			Cadmium	7440-43-9	NA	0.066
			Chromium (Total)	7440-47-32	NA	5.2
			Lead	7439-92-1	NA	0.51
			Mercury	7439-97-6	NA	0.025
			Nickel	7440-02-0	NA	0.32
			Selenium	7782-49-2	NA	5.7
			Silver	7440-22-4	NA	0.072

K001	NA	Table CCW in Section 2	Lead	7439-92-1	NA		0.51	
K002	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		0.094	
			Lead	7439-92-1	NA		0.37	
K003	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		0.094	
			Lead	7439-92-1	NA		0.37	
K004	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		0.094	
			Lead	7439-92-1	NA		0.37	
K005	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		0.094	
			Lead	7439-92-1	NA		0.37	
K006 (anhydrous)	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		0.094	
			Lead	7439-92-1	NA		0.37	
K006 (hydrated)	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		5.2	
K007	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		0.094	
			Lead	7439-92-1	NA		0.37	
K008	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		0.094	
			Lead	7439-92-1	NA		0.37	
K015	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		1.7	
			Nickel	7440-02-0	NA		0.2	
K021	NA	Table CCW in Section 2	Antimony	7440-36-0	NA		0.23	
K022	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		5.2	
			Nickel	7440-02-0	NA		0.32	
K028	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		0.073	
			Lead	7439-92-1	NA		0.021	
			Nickel	7440-02-0	NA		0.088	
K031	NA	Table CCW in Section 2	Arsenic	7440-38-2	NA		5.6	(1)
K046	NA	Table CCW in Section 2	Lead	7439-92-1	NA		0.18	
K048	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		1.7	
			Nickel	7440-02-0	NA		0.20	
K049	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		1.7	
			Nickel	7440-02-0	NA		0.20	
K050	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		1.7	
			Nickel	7440-02-0	NA		0.20	
K051	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		1.7	

			Nickel	7440-02-0	NA	0.20	
K052	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA	1.7	
			Nickel	7440-02-0	NA	0.20	
*K061	NA	Table CCW in Section 2	Antimony	7440-36-0	NA	2.1	
			Arsenic	7440-38-2	NA	0.055	
			Barium	7440-39-3	NA	7.6	
			Beryllium	7440-41-7	NA	0.014	
			Cadmium	7440-43-9	NA	0.19	
			Chromium (Total)	7440-47-32	NA	0.33	
			Lead	7439-92-1	NA	0.37	
			Mercury	7439-97-6	NA	0.009	
			Nickel	7440-02-0	NA	5	
			Selenium	7782-49-2	NA	0.16	
			Silver	7440-22-4	NA	0.3	
			Thallium		NA	0.078	
			Zinc	7440-66-6	NA	5.3	
K062	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA	0.094	
			Lead	7439-92-1	NA	0.37	
K069 (Calcium Sulfate Subcategory).	NA	Table 2 in 268.42 and Table CCW in Section 2	Cadmium	7440-43-9	NA	0.14	
			Lead	7439-92-1	NA	0.24	
K071	NA	Table CCW in Section 2	Mercury	7439-97-6	NA	0.025	
K083	NA	Table CCW in Section 2	Nickel	7440-02-2	NA	0.088	
K084	NA	Table CCW in Section 2	Arsenic	7440-38-2	NA	5.6	(1)
K086	NA	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA	0.094	
			Lead	7439-92-1	NA	0.37	
K087	NA	Table CCW in Section 2	Lead	7439-92-1	NA	0.51	
K100	NA	Table CCW in Section 2	Cadmium	7440-43-9	NA	0.066	
			Chromium (Total)	7440-47-32	NA	5.2	
			Lead	7439-92-1	NA	0.51	
K101	NA	Table CCW in Section 2	Arsenic	7440-38-2	NA	5.6	(1)
K102	NA	Table CCW in Section 2	Arsenic	7440-38-2	NA	5.6	(1)
K106 (Low Mercury Subcategory-less than 260 mg/kg Mercury - residues from RMERC).	NA	Table 2 in 268.42 and Table CCW in Section 2	Mercury	7439-97-6	NA	0.020	

K106 (Low Mercury Subcategory-less than 260 mg/kg Mercury-that are not residues from RMERC).	NA	Table 2 in 268.42 and Table CCW in Section 2	Mercury	7439-97-6	NA		0.025	
K115	NA	Table CCW in Section 2	Nickel	7440-02-0	NA		0.32	
P010	Arsenic acid	Table CCW in Section 2	Arsenic	7440-38-2	NA		5.6	(1)
P011	Arsenic pentoxide	Table CCW in Section 2	Arsenic	7440-38-2	NA		5.6	(1)
P012	Arsenic trioxide	Table CCW in Section 2	Arsenic	7440-38-2	NA		5.6	(1)
P013	Barium cyanide	Table CCW in Section 2	Barium	7440-39-3	NA		52	
P036	Dichlorophenyl arsine	Table CCW in Section 2	Arsenic	7440-38-2	NA		5.6	(1)
P038	Diethylarsine	Table CCW in Section 2	Arsenic	7440-38-2	NA		5.6	(1)
P065 (Low Mercury Subcategory-Less than 260 mg/kg Mercury - residues from RMERC).	Mercury fulminate	Table 2 in 268.42 and Table CCW in Section 2	Mercury	7439-97-6	NA		0.20	
P065 (Low Mercury Subcategory-Less than 260 mg/kg Mercury-incinerator residues (and are not residues from RMERC)).	Mercury fulminate	Table 2 in 268.42 and Table CCW in Section 2	Mercury	7439-97-6	NA		0.025	
P073	Nickel carbonyl	Table CCW in Section 2	Nickel	7440-02-0	NA		0.32	
P074	Nickel cyanide	Table CCW in Section 2	Nickel	7440-02-0	NA		0.32	
P092 (Low Mercury Subcategory-Less than 260 mg/kg Mercury-residues from RMERC).	Phenyl mercury acetate	Table 2 in 268.42 and Table CCW in Section 2	Mercury	7439-97-6	NA		0.20	
P092 (Low Mercury Subcategory-Less than 260 mg/kg Mercury-incinerator residues (and are not residues from RMERC)).	Phenyl mercury acetate	Table 2 in 268.42 and Table CCW in Section 2	Mercury	7439-97-6	NA		0.025	

P099	Potassium silver cyanide	Table CCW in Section 2	Silver	7440-22-4	NA		0.072	
P103	Selenourea	Table CCW in Section 2	Selenium	7782-49-2	NA		5.7	
P104	Silver cyanide	Table CCW in Section 2	Silver	7440-22-4	NA		0.072	
P110	Tetraethyl lead	Table CCW in Section 2	Lead	7439-92-1	NA		0.51	
P114	Thallium selenite	Table CCW in Section 2	Selenium	7782-49-2	NA		5.7	
U032	Calcium chromate	Table CCW in Section 2	Chromium (Total)	7440-47-32	NA		0.094	
U051	Creosote	Table CCW in Section 2	Lead	7439-92-1	NA		0.51	
U136	Cacodylic acid	Table CCW in Section 2	Arsenic	7440-38-2	NA		5.6	(1)
U144	Lead acetate	Table CCW in Section 2	Lead	7439-92-1	NA		0.51	
U145	Lead phosphate	Table CCW in Section 2	Lead	7439-92-1	NA		0.51	
U146	Lead subacetate	Table CCW in Section 2	Lead	7439-92-1	NA		0.51	
U151 (Low Mercury Subcategory-Less than 260 mg/kg Mercury-residues from RMERC).	Mercury	Table CCW in Section 2 and Table 2 in 268.42	Mercury	7439-97-6	NA		0.20	
U151 (Low Mercury Subcategory-Less than 260 mg/kg Mercury-that are not residues from RMERC.	Mercury	Table CCW in Section 2 and Table 2 in 268.42	Mercury	7439-97-6	NA		0.025	
U204	Selenium dioxide	Table CCW in Section 2	Selenium	7782-49-2	NA		5.7	
U205	Selenium sulfide	Table CCW in Section 2	Selenium	7782-49-2	NA		5.7	

FOOTNOTE: [1]These treatment standards have been based on EP Leachate analysis but this does not preclude the use of TCLP analysis.

FOOTNOTE: [2]These waste codes are not subcategorized into wastewaters and nonwastewaters.

Note: NA means Not Applicable.

~~[Table CCWE Constituent Concentrations in Waste Extract of 40 CFR 268.41(a), is hereby incorporated by reference. This table is available for copying and inspection at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601. The business hours of the division are from 8 a.m. to 4:30 p.m. Monday through Friday.]~~

(2) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue shall meet the lowest treatment standard for the constituent of concern.

Section 3. [~~4.~~] Treatment Standards Expressed as Specific Technologies. (1) The following wastes shall be treated using the identified technology or technologies, or an equivalent method approved by the cabinet:

(a) Liquid hazardous waste containing [~~polychlorinated biphenyls (~~]PCBs[~~)~~] at concentrations greater than or equal to fifty (50) ppm but less than 500 ppm shall be incinerated in accordance with the technical requirements of 40 CFR 761.70 [~~(1989)~~] or burned in high efficiency boilers in accordance with the technical requirements of [~~the federal regulations at~~] 40 CFR 761.60 (1989). Liquid hazardous wastes containing [~~polychlorinated biphenyls (~~]PCBs[~~)~~] at concentrations greater than or equal to 500 ppm shall be incinerated in accordance with the technical requirements of 40 CFR 761.70 (1989). Thermal treatment under this section shall also be in compliance with applicable regulations in Chapters 34, 35, and 36.

(b) Nonliquid hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg and liquid HOC-containing wastes that are prohibited under Section 4(3)(a) of 401 KAR 37:030[~~, Section 4(3)(a)~~], shall be incinerated in accordance with the requirements of 401 KAR 34:240 or 401 KAR 35:240 [~~or in boilers or industrial furnaces burning in accordance with applicable regulatory standards~~]. These treatment standards do not apply where the waste is subject to a 401 KAR 37:030 treatment standard for a specific HOC (such as a hazardous

waste chlorinated solvent for which a treatment standard[s] is established under Section 3(1) of this regulation).

(c) A mixture consisting of wastewater, the discharge of which is subject to regulation under Sections 307(b) or 402 of the CWA, and de minimis losses of materials from manufacturing operations in which these materials are used as raw materials or are produced as products in the manufacturing process, and that meet the criteria of the D001 ignitable liquids containing greater than ten (10) percent total organic constituents (TOC) subcategory, is subject to the DEACT treatment standard described in Table 1 of 40 CFR 268.42. For purposes of this paragraph, de minimis losses include those from normal material handling operations (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 from process equipment, storage tanks, or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges.

~~[(c) The nonwastewater form of the following hazardous wastes listed in Section 9 of 401 KAR 37:010 shall be incinerated in accordance with the requirements of 401 KAR 34:240 or 401 KAR 35:240, or burned in boilers or industrial furnaces burning in accordance with applicable regulatory standards: K027, K039, K113, K114, K115, K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223.~~]

(d) The wastewater form of the following hazardous wastes listed in 401 KAR 37:010 shall be treated by carbon absorption, or incineration, or pretreatment followed by carbon absorption: K027, K039, K113, K114, K115, K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223.

Table 1. Technology Codes and Description of Technology-Based Standards

Technology code	Description of technology-based standards
ADGAS:	Venting of compressed gases into an absorbing or reacting media (i.e., solid or liquid)-venting can be accomplished through physical release utilizing valves/piping; physical penetration of the container; and/or penetration through detonation.
AMLGM:	Amalgamation of liquid, elemental mercury contaminated with radioactive materials utilizing inorganic reagents such as copper, zinc, nickel, gold, and sulfur that result in a nonliquid, semisolid amalgam and thereby reducing potential emissions of elemental mercury vapors to the air.
BIODG:	Biodegradation of organics or nonmetallic inorganics (i.e., degradable inorganics that contain the elements of phosphorus, nitrogen, and sulfur) in units operated under either aerobic or anaerobic conditions such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Carbon can often be used as an indicator parameter for the biodegradation of many organic constituents that cannot be directly analyzed in wastewater residues).
CARBN:	Carbon adsorption (granulated or powdered) of non-metallic inorganics, organo-metallics, and/or organic constituents, operated such that a surrogate compound or indicator parameter has not undergone breakthrough (e.g., Total Organic Carbon can often be used as an indicator parameter for the adsorption of many organic constituents that cannot be directly analyzed in wastewater residues). Breakthrough occurs when the carbon has become saturated with the constituent (or indicator parameter) and substantial change in adsorption rate associated with that constituent occurs.
CHOXD:	Chemical or electrolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combinations of reagents: (1) Hypochlorite (e.g. bleach); (2) chlorine; (3) chlorine dioxide; (4) ozone or UV (ultraviolet light) assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permangantes; and/or (9) other oxidizing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues). Chemical oxidation specifically includes what is commonly referred to as alkaline chlorination.
CHRED:	Chemical reduction utilizing the following reducing reagents (or waste reagents) or combinations of reagents: (1) Sulfur dioxide; (2) sodium, potassium, or alkali salts or sulfites, bisulfites, metabisulfites, and polyethylene glycols (e.g., NaPEG and KPEG); (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Halogens can often be used as an indicator parameter for the reduction of many halogenated organic constituents that cannot be directly analyzed in wastewater residues). Chemical reduction is commonly used for the reduction of hexavalent chromium to the trivalent state.
DEACT:	Deactivation to remove the hazardous characteristics of a waste due to is ignitability, corrosivity, and/or reactivity.

FSUBS:	Fuel substitution in units operated in accordance with applicable technical operating requirements.
HLVIT:	Vitrification of high level mixed radioactive wastes in units in compliance with all applicable radioactive protection requirements under control of the Nuclear Regulatory Commission.
IMERC:	Incineration of wastes containing organics and mercury in units operated in accordance with the technical operating requirements of 40 CFR part 264 subpart 0 and part 265 subpart 0. All wastewater and nonwastewater residues derived from this process must then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (e.g., High or Low Mercury Subcategories).
INCIN:	Incineration in units operated in accordance with the technical operating requirements of 40 CFR part 264 subpart 0 and part 265 subpart 0.
LLEXT:	Liquid-liquid extraction (often referred to as solvent extraction) of organics from liquid wastes into an immiscible solvent for which the hazardous constituents have a greater solvent affinity, resulting in an extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and a raffinate (extracted liquid waste) proportionately low in organics that must undergo further treatment as specified in the standard.
MACRO:	Macroencapsulation with surface coating materials such as polymeric organics (e.g. resins and plastics) or with a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media. Macroencapsulation specifically does not include any material that would be classified as a tank or container according to 40 CFR 260.10.
NEUTR:	Neutralization with the following reagents (or waste reagents) or combinations of reagents: (1) Acids; (2) bases; or (3) water (including wastewaters) resulting in a pH greater than 2 but less than 12.5 as measured in the aqueous residuals.
NLDBR:	No land disposal based on recycling.
PRECP:	Chemical precipitation of metals and other inorganics as insoluble precipitates of oxides, hydroxides, carbonates, sulfides, sulfates, chlorides, flourides, or phosphates. The following reagents (or waste reagents) are typically used alone or in combination: (1) Lime (i.e., containing oxides and/or hydroxides of calcium and/or magnesium; (2) caustic (i.e., sodium and/or potassium hydroxides; (3) soda ash (i.e., sodium carbonate); (4) sodium sulfide; (5) ferric sulfate or ferric chloride; (6) alum; or (7) sodium sulfate. Additional flocculating, coagulation or similar reagents/processes that enhance sludge dewatering characteristics are not precluded from use.
RBERY:	Thermal recovery of Beryllium.
RCGAS:	Recovery/reuse of compressed gases including techniques such as reprocessing of the gases for reuse/resale; filtering/adsorption of impurities; remixing for direct reuse or resale; and use of the gas as a fuel source.
RCORR:	Recovery of acids or bases utilizing one or more of the following recovery technologies: (1) Distillation (i.e., thermal concentration); (2) ion exchange; (3) resin or solid adsorption; (4) reverse osmosis; and/or (5) incineration for the recovery of acid-Note: this does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RLEAD:	Thermal recovery of lead in secondary lead smelters.
RMERC:	Retorting or roasting in a thermal processing unit capable of volatilizing mercury and subsequently condensing the volatilized mercury for recovery. The retorting or roasting unit (or facility) must be subject to one or more of the following: (a) a National Emissions Standard for Hazardous Air Pollutants (NESHAP) for mercury; (b) a Best Available Control Technology (BACT) or a Lowest Achievable Emission Rate (LAER) standard for mercury imposed pursuant to a Prevention of Significant Deterioration (PSD) permit; or (c) a state permit that establishes emission limitations (within meaning of section 302 of the Clean Air Act) for mercury. All wastewater and nonwastewater residues derived from this process must then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (e.g., High or Low Mercury Subcategories).
RMETL:	Recovery of metals or inorganics utilizing one or more of the following direct physical/removal technologies: (1) Ion exchange; (2) resin or solid (i.e., zeolites) adsorption; (3) reverse osmosis; (4) chelation/solvent extraction; (5) freeze crystalization; (6) ultrafiltration and/or (7) simple precipitation (i.e., crystalization) - Note: This does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RORGS:	Recovery of organics utilizing one or more of the following technologies: (1) Distillation; (2) thin film evaporation; (3) steam stripping; (4) carbon adsorption; (5) critical fluid extraction; (6) liquid-liquid extraction; (7) precipitation/crystalization (including freeze crystallization); or (8) chemical phase separation techniques (i.e., addition of acids, bases, demulsifiers, or similar chemicals); - Note: this does not preclude the use of other physical phase separation techniques such as a decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RTHRM:	Thermal recovery of metals or inorganics from nonwastewaters in units identified as industrial furnaces according to 40 CFR 260.10 (1), (6), (7), (11), and (12) under the definition of "industrial furnaces".
RZINC:	Resmelting in high temperature metal recovery units for the purpose of recovery of zinc.

STABL:	Stabilization with the following reagents (or waste reagents) or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans (e.g., fly ash and cement kiln dust) - this does not preclude the addition of reagents (e.g., iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to overall reduce the leachability of the metal or inorganic.
SSTRP:	Steam stripping of organics from liquid wastes utilizing direct application of steam to the wastes operated such that liquid and vapor flow rates, as well as, temperature and pressure ranges have been optimized, monitored, and maintained. These operating parameters are dependent upon the design parameters of the unit such as, the number of separation stages and the internal column design. Thus, resulting in a condensed extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and an extracted wastewater that must undergo further treatment as specified in the standard.
WETOX:	Wet air oxidation performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues).
WTRRX:	Controlled reaction with water for highly reactive inorganic or organic chemicals with precautionary controls for protection of workers from potential violent reactions as well as precautionary controls for potential emissions of toxic/ignitable levels of gases released during the reaction.

Note 1: When a combination of these technologies (i.e., a treatment train) is specified as a single treatment standard, the order of application is specified in §268.42, Table 2 by indicating the five letter technology code that must be applied first, then the designation "fb." (an abbreviation for "followed by"), then the five (5) letter technology code for the technology that must be applied next, and so on.

Note 2: When more than one (1) technology (or treatment train) are specified as alternative treatment standards, the five (5) letter technology codes (or the treatment trains) are separated by a semicolon (;) with the last technology preceded by the word "OR". This indicates that any one (1) of these BDAT technologies or treatment trains can be used for compliance with the standard.

Table 2. Technology-Based Standards by RCRA Waste Code

Waste code	See also	Waste descriptions and/or treatment subcategory	CAS No. for regulated hazardous constituents	Technology code	
				Wastewaters	Nonwastewaters
D001	NA	Ignitable Liquids based on 261.21(a)(1)-Wastewaters.	NA	DEACT	NA
D001	NA	Ignitable Liquids based on 261.21(a)(1)-Low TOC Ingitable Liquids Subcategory-Less than 10% total organic carbon.	NA	NA	DEACT
D001	NA	Ignitable Liquids based on 261.21(a)(1)-High TOC Ingitable Liquids Subcategory-Greater than or equal to 10% total organic carbon.	NA	NA	FSUBS; RORGS; or INCIN
D001	NA	Ignitable compressed gases based on 261.21(a)(3).	NA	NA	DEACT[2]
D001	NA	Ignitable reactives based on 261.21(a)(2).	NA	NA	DEACT
D001	NA	Oxidizers based on 261.21(a)(4).	NA	DEACT	DEACT
D002	NA	Acid subcategory based on 261.22(a)(1).	NA	DEACT	DEACT
D002	NA	Alkaline subcategory based on 261.22(a)(1).	NA	DEACT	DEACT
D002	NA	Other corrosives based on 261.22(a)(2).	NA	DEACT	DEACT
D003		Reactive Sulfides based on 261.23(a)(5).	NA	DEACT but not including dilution as a substitute for adequate treatment.	DEACT but not including dilution as a substitute for adequate treatment.

D003	NA	Explosives based on 261.23(a)(6),(7), and (8).	NA	DEACT	DEACT
D003	NA	Water reactives based on 261.23(a)(2), (3), and (4).	NA	NA	DEACT
D003	NA	Other reactives based on 261.23(a)(1).	NA	DEACT	DEACT
D006	NA	Cadmium containing batteries.	7440-43-9	NA	RTHRM
D008	NA	Lead acid batteries (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80.).	7439-92-1	NA	RLEAD
D009	Table CCWE in 268.41 and Table CCW in Section 2	Mercury: (High Mercury Subcategory-greater than or equal to 260 mg/kg total Mercury-contains mercury and organics (and are not incinerator residues)).	7439-97-6	NA	IMERC; or RMERC
D009	Table CCWE in 268.41 and Table CCW in Section 2	Mercury: (High Mercury Subcategory-greater than or equal to 260 mg/kg total Mercury-inorganics (including incinerator residues and residues from RMERC)).	7439-97-6	NA	RMERC
D012	Table CCW in Section 2	Endrin.	72-20-8	BIODG; or INCIN	NA
D013	Table CCW in Section 2	Lindane.	58-89-9	CARBN; or INCIN	NA
D014	Table CCW in Section 2	Methoxychlor.	72-43-5	WETOX; or INCIN	NA
D015	Table CCW in Section 2	Toxaphene.	8001-35-1	BIODG; or INCIN	NA
D016	Table CCW in Section 2	2,4-D.	94-75-7	CHOXD; BIODG; or INCIN	NA
D017	Table CCW in Section 2	2,4,5-TP.	93-72-1	CHOXD; or INCIN	NA
F005	Table CCWE in 268.41 and Table CCW in Section 2	2-Nitropropane.	79-46-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

F005	Table CCWE in 268.41 and Table CCW in Section 2	2-Ethoxyethanol.	110-80-5	BIODG; or INCIN	INCIN
F024	Table CCWE in 268.41 and Table CCW in Section 2		NA	INCIN	INCIN
K025	NA	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	NA	LLEXT fb SSTRP fb CARBN; or INCIN	INCIN
K026	NA	Stripping still tails from the production of methyl ethyl pyridines.	NA	INCIN	INCIN
K027	NA	Centrifuge and distillation residues from toluene diisocyanate production.	NA	CARBN; or INCIN	FSUBS; or INCIN
K039	NA	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	NA	CARBN; or INCIN	FSUBS; or INCIN
K044	NA	Wastewater treatment sludges from the manufacturing and processing of explosives.	NA	DEACT	DEACT
K045	NA	Spent carbon from the treatment of wastewater containing explosives.	NA	DEACT	DEACT
K047	NA	Pink/red water from TNT operations.	NA	DEACT	DEACT
K069	Table CCWE in 268.41 and Table CCW in Section 2	Emission control dust/sludge from secondary lead smelting: Noncalcium Sulfate Subcategory.	NA	NA	RLEAD
K106	Table CCWE in 268.41 and Table CCW in Section 2	Wastewater treatment sludge from the mercury cell process in chlorine production: (High Mercury Subcategory-greater than or equal to 260 mg/kg total mercury).	NA	NA	RMERC
*K107		Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN	INCIN.
*K108		Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN	INCIN.
*K109		Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN	INCIN.

*K110		Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN	INCIN.
*K112		Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN	INCIN.
K113	NA	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	CARBN; or INCIN	FSUBS; or INCIN
K114	NA	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	CARBN; or INCIN	FSUBS; or INCIN
K115	NA	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotolueme.	NA	CARBN; or INCIN	FSUBS; or INCIN
K116	NA	Organic condensate from the solvent recovery colunm in the production of toluene diisocyanate via phosgenation of toluenediamine.	NA	CARBN; or INCIN	FSUBS; or INCIN
*K123		Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN.
*K124		Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN.
*K125		Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN.
*K126		Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylene bisdithiocarbamic acid and its salts	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN.
P001	NA	Warfarin (>0.3%).	81-81-2	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
P002	NA	1-Acetyl-2-thiourea.	591-08-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P003	Table CCW in Section 2	Acrolein.	107-02-8	NA	FSUBS; or INCIN
P005	NA	Allyl alcohol.	107-18-6	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN

P006	NA	Aluminum phosphide.	20859-73-8	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
P007	NA	5-Aminoethyl 3-isoxazolol.	2763-96-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P008	NA	4-Aminopyridine.	504-24-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P009	NA	Ammonium picrate.	131-74-8	CHOXD; CHRED, CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN
P014	NA	Thiophenol (Benzene thiol).	108-98-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P015	NA	Beryllium dust.	7440-41-7	RMETL; or RTHRM	RMETL; or RTHRM
P016	NA	Bis(chloromethyl) ether.	542-88-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P017	NA	Bromoacetone.	598-31-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P018	NA	Brucine.	357-57-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P022	Table CCW in Section 2	Carbon disulfide.	75-15-0	NA	INCIN
P023	NA	Chloroacetaldehyde.	107-20-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P026	NA	1-(o-Chlorophenyl) thiourea.	5344-82-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P027	NA	3-Chloropropionitrile.	542-76-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P028	NA	Benzyl chloride.	100-44-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P031	NA	Cyanogen.	460-19-5	CHOXD; WETOX or INCIN	CHOXD; WETOX; or INCIN
P033	NA	Cyanogen chloride.	506-77-4	CHOXD; WETOX or INCIN	CHOXD; WETOX; or INCIN
P034	NA	2-Cyclohexyl-4,6-dinitrophenol.	131-89-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P040	NA	O,O-Diethyl O-pyrazinyl phosphorothioate.	297-97-2	CARBN; or INCIN	FSUBS; or INCIN
P041	NA	Diethyl-p-nitrophenyl phosphate.	311-45-5	CARBN; or INCIN	FSUBS; or INCIN

P042	NA	Epinephrine.	51-43-4	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P043	NA	Diisopropyl fluorophosphate (DFP).	55-91-4	CARBN; or INCIN	FSUBS; or INCIN
P044	NA	Dimethoate.	60-51-5	CARBN; or INCIN	FSUBS or INCIN
P045	NA	Thiofanox.	39196-18-4	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P046	NA	alpha,alpha-Dimethyl- phenethylamine.	122-09-8	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P047	NA	4,6-Dinitro-o-cresol salts.	534-52-1	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P049	NA	2,4-Dithiobiuret.	541-53-7	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P054	NA	Aziridine.	151-56-4	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P056	Table CCW in Section 2	Fluorine.	7782-41-4	NA	ADAS fb NEUTR
P057	NA	Fluoroacetamide.	640-19-7	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P058	NA	Fluoroacetic acid, sodium salt.	62-74-8	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P062	NA	Hexaethyltetraphosphate.	757-58-4	CARBN; or INCIN	FSUBS; or INCIN
P064	NA	Isocyanic acid, ethyl ester.	624-83-9	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P065	Table CCWE in 268.41 and Table CCW in Section 2	Mercury fulminate: (High Mercury Subcategory-greater than or equal to 260 mg/kg total Mercury-either incinerator residues or residues from RMERC).	628-86-4	NA	RMERC
P065	Table CCWE in 268.41 and Table CCW in Section 2	Mercury fulminate: (All Nonwastewasters that are not incinerator residues or are not residues from RMERC; regardless of Mercury Content).	628-86-4	NA	IMERC
P066	NA	Methomyl.	16752-77-5	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P067	NA	2-Methylaziridine.	75-55-8	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P068	NA	Methyl hydrazine.	60-34-4	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN

P069	NA	Methyllactonitrile.	75-86-5	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P070	NA	Aldicarb.	116-06-3	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P072	NA	1-Naphthyl-2-thiourea.	86-88-4	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P075	NA	Nicotine and salts.	[1]54-11-5	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P076	NA	Nitric oxide.	10102-43-9	ADGAS	ADGAS
P078	NA	Nitrogen dioxide.	10102-44-0	ADGAS	ADGAS
P081	NA	Nitroglycerin.	55-63-0	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN
P082	Table CCW in Section 2	N-Nitrosodimethylamine.	62-75-9	NA	INCIN
P084	NA	N-Nitrosomethylvinylamine.	4549-40-0	(WETOX or CHOX-D) fb CARBN; OR INCIN	INCIN
P085	NA	Octamethylpyrophosphoramide.	152-16-9	CARBN; or INCIN	FSUBS; or INCIN
P087	NA	Osmium tetroxide.	20816-12-0	RMETL; or RTHRM	RMETL; or RTHRM
P088	NA	Endothall.	145-73-3	(WETOX or CHOX-D) fb CARBN; or INCIN	FSUBS; or INCIN
P092	Table CCWE in 268.41 and Table CCW in Section 2	Phenyl mercury acetate: (High Mercury Subcategory-greater than or equal to 260 mg/kg total Mercury-either incinerator residues or residues from RMERC).	62-38-4	NA	RMERC
P092	Table CCWE in 268.41 and Table CCW in Section 2	Phenyl mercury acetate: (All nonwastewaters that are not incinerator residues and are not residues from RMERC; regardless of Mercury Content).	62-38-4	NA	IMERC; or RMERC
P093	NA	N-Phenylthiouea.	103-85-5	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P095	NA	Phosgene.	75-44-5	(WETOX or CHOX-D) fb CARBN; or INCIN	INCIN
P096	NA	Phosphine.	7803-51-2	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
P102	NA	Propargyl alcohol.	107-19-7	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN

P105	NA	Sodium azide.	26628-22-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS, CHOXD; CHRED; or INCIN
P108	NA	Strychnine and salts.	[1]57-24-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P109	NA	Tetraethyldithiopyrophosphate.	3689-24-5	CARBN; or INCIN	FSUBS; or INCIN
P112	NA	Tetranitromethane.	509-14-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS, CHOXD; CHRED; or INCIN
P113	Table CCW in Section 2	Thallic oxide.	1314-32-5	NA	RTHRM; or STABL
P115	Table CCW in Section 2	Thallium (1) sulfate.	7446-18-6	NA	RTHRM; or STABL
P116	NA	Thiosemicarbazide.	79-19-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P118	NA	Thrichloromethanethiol.	75-70-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P119	Table CCW in Section 2	Ammonium vanadate.	7803-55-6	NA	STABL
P120	Table CCW in Section 2	Vanadium pentoxide.	1314-62-1	NA	STABL
P122	NA	Zinc Phosphide (>10%).	1314-84-7	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
U001	NA	Acetaldehyde.	75-07-0	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U003	Table CCW in Section 2	Acetonitrile.	75-05-8	NA	INCIN
U006	NA	Acetyl Chloride.	75-36-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U007	NA	Acrylamide.	79-06-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U008	NA	Acrylic acid.	79-10-7	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U010	NA	Mitomycin C.	50-07-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U011	NA	Amitrole.	61-82-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

U014	NA	Auramine.	492-80-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U015	NA	Azaserine.	115-02-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U016	NA	Benz(c)acridine.	225-51-4	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U017	NA	Benzal chloride.	98-87-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U020	NA	Benzenesulfonyl chloride.	98-09-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U021	NA	Benzidine.	92-87-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U023	NA	Benzotrichloride.	98-07-7	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN
U026	NA	Chlornaphazin.	494-03-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U033	NA	Carbonyl fluoride.	353-50-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U034	NA	Trichloroacetaldehyde (Chloral).	75-87-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U035	NA	Chlorambucil.	305-03-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U038	Table CCW in Section 2	Chlorobenzilate.	510-15-6	NA	INCIN
U041	NA	1-Chloro-2,3-epoxypropane (Epichlorohydrin).	106-89-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U042	Table CCW in Section 2	2-Chloroethyl vinyl ether.	110-75-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U046	NA	Chloromethyl methyl ether.	107-30-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U049	NA	4-Chloro-o-toluidine hydrochloride.	3165-93-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U053	NA	Crotonaldehyde.	4170-30-3	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U055	NA	Cumene.	98-82-8	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN

U056	NA	Cyclohexane.	110-82-7	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U057	Table CCW in Section 2	Cyclohexanone.	108-94-1	NA	FSUBS; or INCIN
U058	NA	Cyclophosphamide.	50-18-0	CARBN; or INCIN	FSUBS; or INCIN
U059	NA	Daunomycin.	20830-81-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U062	NA	Diallate.	2303-16-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U064	NA	1,2,7,8-Dibenzopyrene.	189-55-9	(WETOX or CHOXD) fb CARBN or INCIN	FSUBS; or INCIN
U073	NA	3,3'-Dichlorobenzidine.	91-94-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U074	NA	cis-1,4-Dichloro-2-butylene trans-1,4-Dichloro-2-butylene.	1476-11-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U085	NA	1,2:3,4-Diepoxybutane.	1464-53-5	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U086	NA	N,N-Diethylhydrazine.	1615--80-1	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN
U087	NA	0,0-Diethyl S-methyldithiophosphate.	3288-58-2	CARBN; or INCIN	FSUBS; or INCIN
U089	NA	Diethyl stilbestrol.	56-53-1	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U090	NA	Dihydrosafrole.	94-58-6	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U091	NA	3,3'-Dimethoxybenzidine.	119-90-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U092	NA	Dimethylamine.	124-40-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U093	Table CCW in Section 2	p-Dimethylaminoazobenzene.	621-90-9	NA	INCIN
U094	NA	7,12-Dimethyl benz(a)anthracene.	57-97-6	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U095	NA	3,3'-Dimethylbenzidine.	119-93-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U096	NA	a,a-Dimethyl benzyl hydroperoxide.	80-15-9	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN

U097	NA	Dimethylcarbomyl chloride.	79-44-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U098	NA	1,1-Dimethylhydrazine.	57-14-7	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN
U099	NA	1,2-Dimethylhydrazine.	540-73-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN
U103	NA	Dimethyl sulfate.	77-78-1	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN
U109	NA	1,2-Diphenylhydrazine.	122-66-7	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN
U110	NA	Dipropylamine.	142-84-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U113	NA	Ethyl acrylate.	140-88-5	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U114	NA	Ethylene bis-dithiocarbamic acid.	111-54-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U115	NA	Ethylene oxide.	75-21-8	(WETOX or CHOXD) fb CARBN; or INCIN	CHOXD; or INCIN
U116	NA	Ethylene thiourea.	96-45-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U119	NA	Ethyl methane sulfonate.	62-50-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U122	NA	Formaldehyde.	50-00-0	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U123	NA	Formic acid.	64-18-6	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U124	NA	Furan.	110-00-9	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U125	NA	Furfural.	98-01-1	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U126	NA	Glycidaldehyde.	765-34-4	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U132	NA	Hexachlorophenene.	70-30-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U133	NA	Hydrazine.	302-01-2	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN

U134	Table CCW in Section 2	Hydrogen Flouride.	7664-39-3	NA	ADGAS fb NEUTR; or NEUTR
U135	NA	Hydrogen Sulfide.	7783-06-4	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
U143	NA	Lasiocarpine.	303-34-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U147	NA	Maleic anhydride.	108-31-6	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U148	NA	Maleic hydrazide.	123-33-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U149	NA	Malononitrile.	109-77-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U150	NA	Melphalan.	148-82-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U151	Table CCWE in 268.41 and Table CCW in Section 2	Mercury: (High Mercury Subcategory-greater than or equal to 260 mg/kg total Mercury).	7439-97-6	NA	RMERC
U153	NA	Methane thiol.	74-93-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U154	Table CCW in Section 2	Methanol.	67-56-1	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U156	NA	Methyl chorocarbonate.	79-22-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U160	NA	Methyl ethyl ketone peroxide.	1338-23-4	CHOXD; CHRED; CARBN; BIODG; or INCIN	FSUBS; CHOXD; CHRED; or INCIN
U163	NA	N-Methyl N'-nitro N-Nitrosoguanidine.	70-25-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U164	NA	Methylthiouracil.	56-04-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U166	NA	1,4-Naphthoquinone.	130-15-4	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U167	NA	1-Naphthylamine.	134-32-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U168	Table CCW in Section 2	2-Naphthlyamine.	91-59-8	NA	INCIN

U171	NA	2-Nitropropane.	79-46-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U173	NA	N-Nitroso-di-n-ethanolamine.	1116-54-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U176	NA	N-Nitroso-N-ethylurea.	759-73-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U177	NA	N-Nitroso-N-methylurea.	684-93-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U178	NA	N-Nitroso-N-methylurethane.	615-53-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U182	NA	Paraldehyde.	123-63-7	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U184	NA	Pentachloroethane.	76-01-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U186	NA	1,3-Pentadiene.	504-60-9	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U189	NA	Phosphorus sulfide.	1314-80-3	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
U191	NA	2-Picoline.	109-06-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U193	NA	1,3-Propane sultone.	1120-71-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U194	NA	n-Propylamine.	107-10-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U197	NA	p-Benzoquinone.	106-51-4	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U200	NA	Reserpine.	50-55-5	(WETOX or CHOXD) fb CARBN orINCIN	INCIN
U201	NA	Resorcinol.	108-46-3	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U202	NA	Saccharin and salts.	[1]81-07-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U206	NA	Streptozatocin.	18883-66-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U213	NA	Tetrahydrofuran.	109-99-9	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN

U214	Table CCW in Section 2	Thallium (I) acetate.	563-68-8	NA	RTHRM; or STABL
U215	Table CCW in Section 2	Thallium (I) carbonate.	6533-73-9	NA	RTHRM; or STABL
U216	Table CCW in Section 2	Thallium (I) chloride.	7791-12-0	NA	RTHRM; or STABL
U217	Table CCW in Section 2	Thallium (I) nitrate.	10102-45-1	NA	RTHRM; or STABL
U218	NA	Thioacetamide.	62-55-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U219	NA	Thiourea.	62-56-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U221	NA	Toluenediamine.	25376-45-8	CARBN; or INCIN	FSUBS; or INCIN
U222	NA	o-Toluidine hydrochloride.	636-21-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U223	NA	Toluene diisocyanate.	26471-62-5	CARBN; or INCIN	FSUBS; or INCIN
U234	NA	sym-Trinitrobenzene.	99-35-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U236	NA	Trypan Blue.	72-57-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U237	NA	Uracil mustard.	66-75-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U238	NA	Ethyl carbamate.	51-79-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U240	NA	2,4-Dichlorophenoxyacetic (salts and esters).	'94-75-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U244	NA	Thiram.	137-26-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U246	NA	Cyanogen bromide.	506-68-3	CHOXD; WETOX; or INCIN	CHOXD; WETOX; or INCIN
U248	NA	Warfarin (.3% or less).	81-81-2	(WETOX or CHOXD) fb CARBN; or INCIN	FSUBS; or INCIN
U249	NA	Zinc Phosphide (<10%).	1314-84-7	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN

*U328		o-toluidine	95-53-4	INCIN; or CHOXD fb, (BIODG or CARBN); or BIODG fb CARBN	INCIN; or Thermal Destruction.
*U353		p-toluidine	106-49-0	INCIN; or CHOXD fb, (BIODG or CARBN); or BIODG fb CARBN	INCIN; or Thermal Destruction.
*U359		2-ethoxy-ethanol	110-80-5	INCIN; or CHOXD fb, (BIODG or CARBN); or BIODG fb CARBN	INCIN; or FSUBS.

FOOTNOTE: [1]CAS Number given for parent compound only.
FOOTNOTE: [2]This waste code exists in gaseous form and is not categorized as wastewater or nonwastewater forms.
Note: NA means Not Applicable.

268.42 Table 3.-Technology-Based Standards for Specific Radioactive Hazardous Mixed Waste

Waste code	Waste descriptions and/or treatment category	CAS No.	Technology Code	
			Wastewaters	Nonwastewaters
D002	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT
D004	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT
D005	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT
D006	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT
D007	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT
D008	Radioactive lead solids subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding, and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organolead materials that can be incinerated and stabilized as ash).	7439-92-1	NA	MACRO
D008	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT

D009	Elemental mercury contaminated with radioactive materials	7439-97-6	NA	AMLGM
D009	Hydraulic oil contaminated with mercury; radioactive materials subcategory	7439-97-6	NA	IMERC
D009	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT
D010	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT
D011	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT
U151	Mercury: Elemental mercury contaminated with radioactive materials	7439-97-6	NA	AMLGM

Note: NA means Not Applicable.

(2) Any person may submit an application to the cabinet demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achievable by methods specified in subsections (1), (3), and (4) of this section. The applicant shall submit information demonstrating that his treatment method is in compliance with federal, state and local requirements and is protective of human health and the environment. On the basis of such information and any other available information, the cabinet may approve the use of the alternative treatment method if it [he] finds that the alternative treatment method provides a measure of performance equivalent to that achieved by methods specified in subsections (1), (3), and (4) of this section. Any approval shall be stated in writing and may contain such provisions and conditions as the cabinet deems appropriate. The person to whom such approval is issued shall comply with all limitations contained in such a determination. [~~No decision of the cabinet relating to applications demonstrating an alternative treatment method shall supersede the authority of the Environmental Protection Agency under 40 CFR 268.42(b) (1989).~~]

(3) As an alternative to the otherwise applicable treatment standards in this administrative regulation, lab packs are eligible for land disposal provided the following requirements are met:

(a) The lab packs comply with the applicable provisions of Section 11 of 401 KAR 34:230 and Section 9 of 401 KAR 35:230;

(b) All hazardous wastes contained in such lab packs are specified in Section 10(2)(a) and (b) of 401 KAR 37:010;

(c) The lab packs are incinerated in accordance with the requirements of 401 KAR 34:240 or 401 KAR 35:240; and

(d) Any incinerator residues from lab packs containing D004, D005, D006, D007, D008, D010, D011 are treated in compliance with the applicable treatment standards specified for such wastes in this regulation.

(4) Radioactive hazardous mixed wastes with treatment standards specified in Table 3 of this section are not subject to any treatment standards specified in Section 2 or 5 of this regulation, or Table 2 of this section. Radioactive hazardous mixed wastes not subject to treatment standards in Table 3 of this section remain subject to all applicable treatment standards specified in this section or Section 6 of this administrative regulation, and Table 3 of this section.

Section 4. [~~5.~~] Variance From a Treatment Standard. (1) Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may petition the cabinet for a variance from the treatment standard. The petitioner shall demonstrate that because the physical or chemical properties of the waste differs significantly from wastes analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods.

(2) Each petition shall be submitted in accordance with the procedures in Section 1 of 401 KAR 31:060.

(3) Each petition shall include the following statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(4) After receiving a petition for variance from a treatment standard, the cabinet may request any additional information or samples which [he] may be required to evaluate the petition. Additional copies of the complete petition may be requested as needed to send to affected states and the EPA [~~Environmental Protection Agency~~].

(5) The cabinet shall make a tentative decision to grant or deny the petition for a variance. If the tentative decision is to deny, the cabinet shall notify the petitioner. The cabinet shall give public notice stating the intent to deny the petition for variance. The public notice shall allow at least forty-five (45) days for public comment. If the tentative decision is to grant the petition, the cabinet shall propose an amendment to the regulations and provide an opportunity for public comment pursuant to KRS Chapter 13A. The final decision on a variance from a treatment standard shall be promulgated in a Kentucky administrative regulation.

(6) A generator, treatment facility, or disposal facility that is managing a waste covered by a variance from the treatment standards shall comply with the waste analysis requirements for restricted wastes found under Section 7 of 401 KAR 37:010.

(7) During the petition review process, the applicant is required to comply with all restrictions on land disposal under this chapter once the effective date for the waste has been reached.

(8) Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste generated under conditions specific to only one (1) site cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may apply to the cabinet for a site-spe-

cific variance from a treatment standard. The applicant for a site-specific variance must demonstrate that because the physical or chemical properties of the waste differs significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods.

(9) Each application for a site-specific variance from a treatment standard must include the information in §260.20(b)(1)-(4);

(10) After receiving an application for a site-specific variance from a treatment standard, the cabinet may request any additional information or samples which may be required to evaluate the application.

(11) A generator, treatment facility, or disposal facility that is managing a waste covered by a site-specific variance from a treatment standard must comply with the waste analysis requirements for restricted wastes found under §268.7.

(12) During the application review process, the applicant for a site-specific variance must comply with all restrictions on land disposal under this part once the effective date for the waste has been reached.

~~[(8) All decisions of the cabinet relating to petitions for variances from a treatment standard shall not supersede the authority of the Environmental Protection Agency under 40 CFR 268.44 (1989).]~~

Section 5. ~~[6.]~~ Treatment Standards Expressed as Waste Concentrations. Table CCW identifies the restricted wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the waste or treatment residual (not an extract of such waste or residual) for the allowable land disposal of such waste or residual. Compliance with these concentrations is required based upon grab samples unless otherwise noted in the following Table CCW. ~~[40 CFR 268.43 (1991) entitled "Treatment Standards Expressed as Waste Concentrations" contains "Table CCW Constituent Concentrations in Waste", is hereby incorporated by reference. This federal regulation is available for copying and inspection at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601. The business hours of the division are from 8 a.m. to 4:30 p.m. Monday through Friday.]~~

Table CCW. Constituent Concentrations in Wastes

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
D003 (Reactive Cyanides Subcategory based on 261.23(a)(5)).	NA	NA	Cyanides (Total)	57-12-5	(4)		590	(3)
			Cyanides (Amenable)	57-12-5	0.86		30	
D004	NA	Table CCWE in 268.41	Arsenic	7440-38-2	5.0		NA	
D005	NA	Table CCWE in 268.41	Barium	7440-39-3	100		NA	
D006	NA	Table CCWE in 268.41	Cadmium	7440-43-9	1.0		NA	
D007	NA	Table CCWE in 268.41	Chromium (Total)	7440-47-32	5.0		NA	
D008	NA	Table CCWE in 268.41	Lead	7439-92-1	5.0		NA	
D009	NA	Table CCWE in 268.41	Mercury	7439-97-6	0.20		NA	
D010	NA	Table CCWE in 268.41	Selenium	7782-49-2	1.0		NA	
D011	NA	Table CCWE in 268.41	Silver	7440-22-4	5.0		NA	
D012	NA	Table 2 in 268.42	Endrin	720-20-8	NA		0.13	(1)

D013	NA	Table 2 in 268.42	Lindane	58-89-9	NA		0.066	(1)
D014	NA	Table 2 in 268.42	Methoxychlor	72-43-5	NA		0.18	(1)
D015	NA	Table 2 in 268.42	Toxaphene	8001-35-1	NA		1.3	(1)
D016	NA	Table 2 in 268.42	2,4-D	94-75-7	NA		10.0	(1)
D017	NA	Table 2 in 268.42	2,4,5-TP (Silvex)	93-76-5	NA		7.9	(1)
*F001-F005 spent solvents	NA		Acetone	67-64-1	0.28		160	
			Benzene	71-43-2	0.070		3.7	(1)
			n-Butyl alcohol	71-36-3	5.6		2.6	
			Carbon tetrachloride	56-23-5	0.057		5.6	
			Chlorobenzene	108-90-7	0.057		5.7	
			Cresol (m- and p-isomers)		0.77		3.2	
			o-cresol		0.11		5.6	
			o-Dichlorobenzene	95-50-1	0.088		6.2	
			Ethyl acetate	141-7-6	0.34		33	
			Ethyl benzene	100-41-4	0.057		6.0	
			Ethyl ether	60-29-7	0.12		160	
			Isobutyl alcohol	78-83-1	5.6		170	
			Methylene chloride	75-9-2	0.089		33	
			Methyl ethyl ketone	78-93-3	0.28		36	
			Methyl isobutyl ketone	108-10-1	0.14		33	
			Nitrobenzene	98-95-3	0.068		14	
			Pyridine	110-86-1	0.014		16	
			Tetrachloroethylene	127-18-4	0.056		5.6	
			Toluene	108-88-3	0.08		28	
			1,1,1-Trichloroethane	71-55-6	0.054		5.6	
			1,1,2-Trichloroethane	79-00-5	0.030		7.6	(1)
			Trichloroethylene	79-01-6	0.054		5.6	
			1,1,2-Trichloro-1,2,2-trifluoromethane	76-13-1	0.057		28	
			Trichloromono-fluoro-methane	75-69-4	0.02		33	
			Xylenes (total)		0.32		28	
F001-F005 spent solvents (Pharmaceutical Industry-Wastewater Subcategory).	NA	NA	Methylene chloride	75-09-2	0.44		NA	

F006	NA	Table CCWE in 268.41	Cyanides (Total)	57-12-5	1.2		590
			Cyanides (Amenable)	57-12-5	0.86		30
			Cadmium	7440-43-9	1.6		NA
			Chromium	7440-47-32	0.32		NA
			Lead	7439-92-1	0.040		NA
			Nickel	7440-02-0	0.44		NA
F007	NA	Table CCWE in 268.41	Cyanides (Total)	57-12-5	1.9		590
			Cyanides (Amenable)	57-12-5	0.1		30
			Chromium (Total)	7440-47-32	0.32		NA
			Lead	7439-92-1	0.04		NA
			Nickel	7440-02-0	0.44		NA
F008	NA	Table CCWE in 268.41	Cyanides (Total)	57-12-5	1.9		590
			Cyanides (Amenable)	57-12-5	0.1		30
			Chromium	7440-47-32	0.32		NA
			Lead	7439-92-1	0.04		NA
			Nickel	7440-02-0	0.44		NA
F009	NA	Table CCWE in 268.41	Cyanides (Total)	57-12-5	1.9		590
			Cyanides (Amenable)	57-12-5	0.1		30
			Chromium	7440-47-32	0.32		NA
			Lead	7439-92-1	0.04		NA
			Nickel	7440-02-0	0.44		NA
F010	NA	NA	Cyanides (Total)	57-12-5	1.9		1.5
			Cyanides (Amenable)	57-12-5	0.1		NA
F011	NA	Table CCWE in 268.41	Cyanides (Total)	57-12-5	1.9		110
			Cyanides (Amenable)	57-12-5	0.1		9.1
			Chromium (Total)	7440-47-32	0.32		NA
			Lead	7439-92-1	0.04		NA
			Nickel	7440-02-0	0.44		NA
F012	NA	Table CCWE in 268.41	Cyanides (Total)	57-12-5	1.9		110
			Cyanides (Amenable)	57-12-5	0.1		9.1
			Chromium (Total)	7440-47-32	0.32		NA
			Lead	7439-92-1	0.04		NA
			Nickel	7440-02-0	0.44		NA

F019	NA	Table CCWE in 268.41	Cyanides (Total)	57-12-5	1.2		590	(3)
			Cyanides (Amenable)	57-12-5	0.86		30	(3)
			Chromium (Total)	7440-47-32	0.32		NA	
F024	NA	Table CCWE in 268.41 and Table 2 in 268.42 (Note: F024 organic standards must be treated via incineration (INCIN))	2-Chloro-1,3-butadiene	126-99-8	0.28	(1)	0.28	(1)
			3-Chloropropene	107-05-	0.28	(1)	0.28	(1)
			1,1-Dichloroethane	75-34-3	0.014	(1)	0.014	(1)
			1,2-Dichloroethane	107-06-2	0.014	(1)	0.014	(1)
			1,2-Dichloropropane	78-87-5	0.014	(1)	0.014	(1)
			cis-1,3-Dichloropropene	10061-01-5	0.014	(1)	0.014	(1)
			trans-1,3-Dichloropropene	10061-02-6	0.014	(1)	0.014	(1)
			Bis(2-ethylhexyl)phthalate	117-81-7	0.036	(1)	1.8	(1)
			Hexachloroethane	67-72-1	0.036	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.35		NA	
			Nickel	7440-02-0	0.47		NA	
F025 (Light Ends Subcategory).	NA	NA	Chloroform	67-66-3	0.046	(2)	6.2	(1)
			1,2-Dichloroethane	107-06-2	0.21	(2)	6.2	(1)
			1,1-Dichloroethylene	75-35-4	0.025	(2)	6.2	(1)
			Methylene chloride	75-9-2	0.089	(2)	31	(1)
			Carbon tetrachloride	56-23-5	0.057	(2)	6.2	(1)
			1,1,2-Trichloroethane	79-00-5	0.054	(2)	6.2	(1)
			Trichloroethylene	79-01-6	0.054	(2)	5.6	(1)
			Vinyl chloride	75-01-4	0.27	(2)	33	(1)
F025 (Spent Filters or Aids and Desicants Subcategory).	NA	NA	Chloroform	67-66-3	0.046	(2)	6.2	(1)
			Methylene chloride	75-9-2	0.089	(2)	31	(1)
			Carbon tetrachloride	56-23-5	0.057	(2)	6.2	(1)
			1,1,2-Trichloroethane	79-00-5	0.054	(2)	6.2	(1)
			Trichloroethylene	79-01-6	0.054	(2)	5.6	(1)
			Vinyl chloride	75-01-4	0.27	(2)	33	(1)

			Hexachlorobenzene	118-74-1	0.055	(2)	37	(1)
			Hexachlorobutadiene	87-68-3	0.055	(2)	28	(1)
			Hexachloroethane	67-72-1	0.055	(2)	30	(1)
*F037	NA	Table CCWE in 268.41	Acenaphthene	208-96-8	0.059	(2)	NA	
			Anthracene	120-12-7	0.059	(2)	28	(1)
			Benzene	71-43-2	0.14	(2)	14	(1)
			Benzo(a)anthracene	50-32-8	0.059	(2)	20	(1)
			Benzo(a)pyrene	117-81-7	0.061	(2)	12	(1)
			Bis(2-ethylhexyl) phthalate	75-15-0	0.28	(2)	7.3	(1)
			Chrysene	218-01-9	0.059	(2)	15	(1)
			Di-n-butyl phthalate	105-67-9	0.057	(2)	3.6	(1)
			Ethylbenzene	100-41-4	0.057	(2)	14	(1)
			Fluorene	86-73-7	0.059	(2)	NA	
			Naphthalene	91-20-3	0.059	(2)	42	(1)
			Phenanthrene	85-01-8	0.059	(2)	34	(1)
			Phenol	108-95-2	0.039	(2)	3.6	(1)
			Pyrene	129-00-0	0.067	(2)	36	(1)
			Toluene	108-88-3	0.08	(2)	14	(1)
			Xylene(s)		0.32	(2)	22	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
*F038	NA	Table CCWE in 268.41	Benzene	71-43-2	0.14	(2)	14	(1)
			Benzo(a)pyrene	50-32-8	0.061	(2)	12	(1)
			Bis(2-ethylhexyl) phthalate	117-81-7	0.28	(2)	7.3	(1)
			Chrysene	218-01-9	0.059	(2)	15	(1)
			Di-n-butyl phthalate	84-74-2	0.057	(2)	3.6	(1)
			Ethylbenzene	100-41-4	0.057	(2)	14	(1)
			Fluorene	86-73-7	0.059	(2)	NA	
			Naphthalene	91-20-3	0.059	(2)	42	(1)
			Phenanthrene	85-01-8	0.059	(2)	34	(1)
			Phenol	108-95-2	0.039	(2)	3.6	(1)
			Pyrene	129-00-0	0.067	(2)	36	(1)
			Toluene	108-88-3	0.080	(2)	14	(1)
			Xylene(s)		0.32	(2)	22	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	

F039	NA	Table CCWE in 268.41	Acetone	67-64-1	0.28	(2)	160	(')
			Acenaphthalene	208-96-8	0.059	(2)	3.4	(')
			Acenaphthene	83-32-9	0.059	(2)	4.0	(')
			Acetonitrile	75-05-8	0.17	(2)	NA	
			Acetophenone	96-86-2	0.010	(2)	9.7	
			2-Acetylaminofluorene	53-96-3	0.059	(2)	140	(')
			Acrolein	107-02-8	0.29	(2)	NA	
			Acrylonitrile	107-13-1	0.24	(2)	84	(')
			Aldrin	309-00-2	0.021	(2)	0.066	(')
			4-Aminobiphenyl	92-67-1	0.13	(2)	NA	
			Aniline	62-53-3	0.81	(2)	14	(')
			Anthracene	120-12-7	0.059	(2)	4.0	(')
			Aramite	140-57-8	0.36	(2)	NA	
			Aroclor 1016	12674-11-2	0.013	(2)	0.92	(')
			Aroclor 1221	11104-28-2	0.014	(2)	0.92	(')
			Aroclor 1232	11141-16-5	0.013	(2)	0.92	(')
			Aroclor 1242	53469-21-9	0.017	(2)	0.92	(')
			Aroclor 1248	12672-29-6	0.013	(2)	0.92	(')
			Aroclor 1254	11097-69-1	0.014	(2)	1.8	(')
			Aroclor 1260	11096-82-5	0.014	(2)	1.8	(')
			alpha-BHC	319-84-6	0.00014	(2)	0.066	(')
			beta-BHC	319-85-7	0.00014	(2)	0.066	(')
			delta-BHC	319-86-8	0.023	(2)	0.066	(')
			gamma-BHC	58-89-9	0.0017	(2)	0.066	(')
			Benzene	71-43-2	0.14	(2)	36	(')
			Benz(a)anthracene	56-55-3	0.059	(2)	8.2	(')
			Benzo(b)fluoranthene	205-99-2	0.055	(2)	3.4	(')
			Benzo(k)fluoranthene	207-08-9	0.059	(2)	3.4	(')
			Benzo(g,h,i)perylene	191-24-2	0.0055	(2)	1.5	(')
			Benzo(a)pyrene	50-32-8	0.061	(2)	8.2	(')
			Bromodichloromethane	75-27-4	0.35	(2)	15	(')
			Bromoform (Tribromomethane)	75-25-2	0.63	(2)	15	(')
			Bromomethane (methyl bromide)	74-83-9	0.11	(2)	15	(')
			4-Bromophenyl phenyl ether	101-55-3	0.055	(2)	15	(')
			n-Butyl alcohol	71-36-3	5.6	(2)	2.6	(')
			Butyl benzyl phthalate	85-68-7	0.017	(2)	7.9	(')
			2-sec-Butyl-4,6-dinitrophenol	88-85-7	0.066	(2)	2.5	(')
			Carbon tetrachloride	56-23-5	0.057	(2)	5.6	(')

Carbon disulfide	75-15-0	0.014	(2)	NA	
Chlordane	57-74-9	0.0033	(2)	0.13	(1)
p-Chloroaniline	106-47-8	0.46	(2)	16	(1)
Chlorobenzene	108-90-7	0.057	(2)	5.7	(1)
Chlorobenzilate	510-15-6	0.10	(2)	NA	
2-Chloro-1,3-butadiene	126-99-8	0.057	(2)	NA	
Chlorodibromo-methane	124-48-1	0.057	(2)	15	(1)
Chloroethane	75-00-3	0.27	(2)	6.0	(1)
bis(2-Chloroethoxy) methane	111-91-1	0.036	(2)	7.2	(1)
bis(2-Chloroethyl) ether	111-44-4	0.033	(2)	7.2	(1)
Chloroform	67-66-3	0.046	(2)	5.6	(1)
bis(2-Chloroisopropyl) ether	39638-32-9	0.055	(2)	7.2	(1)
p-Chloro-m-cresol	59-50-7	0.018	(2)	14	(1)
Chloromethane (Methyl chloride)	74-87-3	0.19	(2)	33	(1)
2-Chloronaphthalene	91-8-7	0.055	(2)	5.6	(1)
2-Chlorophenol	95-57-8	0.044	(2)	5.7	(1)
3-Chloropropylene	107-05-1	0.036	(2)	28	(1)
Chrysene	218-01-9	0.059	(2)	8.2	(1)
o-Cresol	95-48-7	0.11	(2)	5.6	(1)
Cresol (m- and p-isomers)		0.77	(2)	3.2	(1)
Cyclohexanone	108-94-1	0.36	(2)	NA	
1,2-Dibromo-3-chloro-propane	96-12-8	0.11	(2)	15	(1)
1,2-Dibromoethane (Ethylene dibromide)	106-93-4	0.028	(2)	15	(1)
Dibromomethane	74-95-3	0.11	(2)	15	(1)
2,4-Dichlorophenoxy-acetic acid (2, 4-D)	94-75-7	0.72	(2)	10	(1)
o,p'-DDD	53-19-0	0.023	(2)	0.087	(1)
p,p'-DDD	72-54-8	0.023	(2)	0.087	(1)
o,p'-DDE	3424-82-6	0.031	(2)	0.087	(1)
p,p'-DDE	72-55-9	0.031	(2)	0.087	(1)
o,p'-DDT	789-02-6	0.0039	(2)	0.087	(1)
p,p'-DDT	50-29-3	0.0039	(2)	0.087	(1)
Dibenz(a,h)anthracene	53-70-3	0.055	(2)	8.2	(1)
Dibenzo(a,e)pyrene	192-65-4	0.061	(2)	NA	
m-Dichlorobenzene	541-73-1	0.036	(2)	6.2	(1)
o-Dichlorobenzene	95-50-1	0.088	(2)	6.2	(1)
p-Dichlorobenzene	106-46-7	0.090	(2)	6.2	(1)

Dichlorodifluoro-methane	75-71-8	0.23	(2)	7.2	(1)
1,1-Dichloroethane	75-34-3	0.059	(2)	7.2	(1)
1,2-Dichloroethane	107-06-2	0.21	(2)	7.2	(1)
1,1-Dichloroethylene	75-35-4	0.025	(2)	33	(1)
trans-1,2-Dichloroethyl-ene		0.054	(2)	33	(1)
2,4-Dichlorophenol	120-83-2	0.044	(2)	14	(1)
2,6-Dichlorophenol	87-65-0	0.044	(2)	14	(1)
1,2-Dichloropropane	78-87-5	0.85	(2)	18	(1)
cis-1,3-Dichloropro-pene	10061-01-5	0.036	(2)	18	(1)
trans-1,3-Dichloropro-pene	10061-02-6	0.036	(2)	18	(1)
Dieldrin	60-57-1	0.017	(2)	0.13	(1)
Diethyl phthalate	84-66-2	0.20	(2)	28	(1)
2,4-Dimethyl phenol	105-67-9	0.036	(2)	14	(1)
Dimethyl phthalate	131-11-3	0.047	(2)	28	(1)
Di-n-butyl phthalate	84-74-2	0.057	(2)	28	(1)
1,4-Dinitrobenzene	100-25-4	0.32	(2)	2.3	(1)
4,6-Dinitro-o-cresol	534-52-1	0.28	(2)	160	(1)
2,4-Dinitrophenol	51-28-5	0.12	(2)	160	(1)
2,4-Dinitrotoluene	121-14-2	0.32	(2)	140	(1)
2,6-Dinitrotoluene	606-20-2	0.55	(2)	28	(1)
Di-n-octyl phthalate	117-84-0	0.017	(2)	28	(1)
Di-n-propylnitroso-amine	621-64-7	0.40	(2)	14	(1)
Diphenylamine	122-39-4	0.52	(2)	NA	
1,2-Diphenyl hydrazine	122-66-7	0.087	(2)	NA	
Diphenyl nitrosamine	621-64-7	0.40	(2)	NA	
1, 4-Dioxane	123-91-1	0.12	(2)	170	(1)
Disulfoton	298-04-4	0.017	(2)	6.2	(1)
Endosulfan I	939-98-8	0.023	(2)	0.066	(1)
Endosulfan II	33213-6-5	0.029	(2)	0.13	(1)
Endosulfan sulfate	1031-07-8	0.029	(2)	0.13	(1)
Endrin	72-20-8	0.0028	(2)	0.13	(1)
Endrin aldehyde	7421-93-4	0.025	(2)	0.13	(1)
Ethyl acetate	141-78-6	0.34	(2)	33	(1)
Ethyl cyanide	107-12-0	0.24	(2)	360	(1)
Ethyl benzene	100-41-4	0.057	(2)	6.0	(1)
Ethyl ether	60-29-7	0.12	(2)	160	(1)
bis(2-Ethylhexyl) phthalate	117-81-7	0.28	(2)	28	(1)
Ethyl methacrylate	97-63-2	0.14	(2)	160	(1)

Ethylene oxide	75-21-8	0.12	(2)	NA	
Famphur	52-85-7	0.017	(2)	15	(1)
Fluoranthene	206-44-0	0.068	(2)	8.2	(1)
Fluorene	86-73-7	0.059	(2)	4.0	(1)
Fluorotrichloromethane	75-69-4	0.020	(2)	33	(1)
Heptachlor	76-44-8	0.0012	(2)	0.066	(1)
Heptachlor epoxide	1024-57-3	0.016	(2)	0.066	(1)
Hexachlorobenzene	118-74-1	0.055	(2)	37	(1)
Hexachlorobutadiene	87-68-3	0.055	(2)	28	(1)
Hexachlorocyclopentadiene	77-47-4	0.057	(2)	3.6	(1)
Hexachlorodibenzofurans		0.000063	(2)	0.001	(1)
Hexachlorodibenzo-p-dioxins		0.000063	(2)	0.001	(1)
Hexachloroethane	67-72-1	0.055	(2)	28	(1)
Hexachloropropene	1888-71-7	0.035	(2)	28	(1)
Indeno(1,2,3-c,d) pyrene	193-39-5	0.0055	(2)	8.2	(1)
Iodomethane	74-88-4	0.19	(2)	65	(1)
Isobutanol	78-83-1	5.6	(2)	170	(1)
Isodrin	465-73-6	0.021	(2)	0.066	(1)
Isosafrole	120-58-1	0.081	(2)	2.6	(1)
Kepone	143-50-8	0.0011	(2)	0.13	(1)
Methacrylonitrile	126-98-7	0.24	(2)	84	(1)
Methanol	67-56-1	5.6	(2)	NA	
Methapyrilene	91-80-5	0.081	(2)	1.5	(1)
Methoxychlor	72-43-5	0.25	(2)	0.18	(1)
3-Methylcholanthrene	56-49-5	0.0055	(2)	15	(1)
4,4-Methylene-bis-(2-chloroaniline)	101-14-4	0.50	(2)	35	(1)
Methylene chloride	75-09-2	0.089	(2)	33	(1)
Methyl ethyl ketone	78-93-3	0.28	(2)	36	(1)
Methyl isobutyl ketone	108-10-1	0.14	(2)	33	(1)
Methyl methacrylate	80-62-6	0.14	(2)	160	(1)
Methyl methansulfonate	66-27-3	0.018	(2)	NA	
Methyl parathion	298-00-0	0.014	(2)	4.6	(1)
Naphthalene	91-20-3	0.059	(2)	3.1	(1)
2-Naphthylamine	91-59-8	0.52	(2)	NA	
p-Nitroaniline	100-01-6	0.028	(2)	28	(1)
Nitrobenzene	98-95-3	0.068	(2)	14	(1)
5-Nitro-o-toluidine	99-55-8	0.32	(2)	28	(1)
4-Nitrophenol	100-02-7	0.12	(2)	29	(1)

N-Nitrosodiethylamine	55-18-5	0.40	(2)	28	(1)
N-Nitrosodimethylamine	62-75-9	0.40	(2)	NA	
N-Nitroso-di-n-butylamine	924-16-3	0.40	(2)	17	(1)
N-Nitrosomethylethylamine	10595-95-6	0.40	(2)	2.3	(1)
N-Nitrosomorpholine	59-89-2	0.40	(2)	2.3	(1)
N-Nitrosopiperidine	100-75-4	0.013	(2)	35	(1)
N-Nitrosopyrrolidine	930-55-2	0.013	(2)	35	(1)
Parathion	56-38-2	0.014	(2)	4.6	(1)
Pentachlorobenzene	608-93-5	0.055	(2)	37	(1)
Pentachlorodibenzofurans		0.000063	(2)	0.001	(1)
Pentachlorodibenzo-p-dioxins		0.000063	(2)	0.001	(1)
Pentachloronitrobenzene	82-68-8	0.055	(2)	4.8	(1)
Pentachlorophenol	87-86-5	0.089	(2)	7.4	(1)
Phenacetin	62-44-2	0.081	(2)	16	(1)
Phenanthrene	85-01-8	0.059	(2)	3.1	(1)
Phenol	108-95-2	0.039	(2)	6.2	(1)
Phorate	298-02-2	0.021	(2)	4.6	(1)
Phthalic anhydride	85-44-9	0.069	(2)	NA	
Pronamide	23950-58-5	0.093	(2)	1.5	(1)
Pyrene	129-00-0	0.067	(2)	8.2	(1)
Pyridine	110-86-1	0.014	(2)	16	(1)
Safrole	94-59-7	0.081	(2)	22	(1)
Silvex (2,4,5-TP)	93-72-1	0.72	(2)	7.9	(1)
2,4,5-T	93-76-5	0.72	(2)	7.9	(1)
1,2,4,5,-Tetrachlorobenzene	95-94-3	0.055	(2)	19	(1)
Tetrachlorodibenzofurans		0.000063	(2)	0.001	(1)
Tetrachlorodibenzo-p-dioxins		0.000063	(2)	0.001	(1)
1,1,1,2-Tetrachloroethane	630-20-6	0.057	(2)	42	(1)
1,1,2,2-Tetrachloroethane	79-34-6	0.057	(2)	42	(1)
Tetrachloroethylene	127-18-4	0.056	(2)	5.6	(1)
2,3,4,6-Tetrachlorophenol	58-90-2	0.030	(2)	37	(1)
Toluene	108-88-3	0.080	(2)	28	(1)
Toxaphene	8001-35-1	0.0095	(2)	1.3	(1)
1,2,4-Trichlorobenzene	120-82-1	0.055	(2)	19	(1)

			1,1,1-Trichloroethane	71-55-6	0.054	(2)	5.6	(1)
			1,1,2-Trichloroethane	79-00-5	0.054	(2)	5.6	(1)
			Trichloroethylene	79-01-6	0.054	(2)	5.6	(1)
			2,4,5-Trichlorophenol	95-95-4	0.18	(2)	37	(1)
			2,4,6-Trichlorophenol	88-06-2	0.035	(2)	37	(1)
			1,2,3-Trichloropropane	96-18-4	0.85	(2)	28	(1)
			1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	(2)	28	(1)
			Tris(2,3-dibromopropyl) phosphate	126-72-7	0.11	(2)	NA	
			Vinyl chloride	75-01-4	0.27	(2)	33	(1)
			Xylene(s)		0.32	(2)	28	(1)
			Cyanides (Total)	57-12-5	1.2	(2)	1.8	(1)
			Fluoride	16964-48-8	35	(2)	NA	
			Sulfide	8496-25-8	14	(2)	NA	
			Antimony	7440-36-0	1.9	(2)	NA	
			Arsenic	7440-38-2	1.4	(2)	NA	
			Barium	7440-39-3	1.2	(2)	NA	
			Beryllium	7440-41-7	0.82	(2)	NA	
			Cadmium	7440-43-9	0.20	(2)	NA	
			Chromium (Total)	7440-47-32	0.37	(2)	NA	
			Copper	7440-50-8	1.3	(2)	NA	
			Lead	7439-92-1	0.28	(2)	NA	
			Mercury	7439-97-6	0.15	(2)	NA	
			Nickel	7440-02-0	0.55	(2)	NA	
			Selenium	7782-49-2	0.82	(2)	NA	
			Silver	7440-22-4	0.29	(2)	NA	
			Thallium	7440-28-0	1.4	(2)	NA	
			Vanadium	7440-62-2	0.042	(2)	NA	
			Zinc	7440-66-6	1.0	(2)	NA	
K001	NA	Table CCWE in 268.41	Naphthalene	91-20-3	0.031	(1)	1.5	(1)
			Pentachlorophenol	87-86-5	0.18	(1)	7.4	(1)
			Phenanthrene	85-01-8	0.031	(1)	1.5	(1)
			Pyrene	129-00-0	0.028	(1)	1.5	(1)
			Toluene	108-88-3	0.028	(1)	28	(1)
			Xylenes (Total)		0.032	(1)	33	(1)
			Lead	7439-92-1	0.037		NA	
K002	NA	Table CCWE in 268.41	Chromium (Total)	7440-47-32	0.9	(2)	NA	
			Lead	7439-92-1	3.4	(2)	NA	

K003	NA	Table CCWE in 268.41	Chromium (Total)	7440-47-32	0.9	(2)	NA		
			Lead	7439-92-1	3.4	(2)	NA		
K004	NA	Table CCWE in 268.41	Chromium (Total)	7440-47-32	0.9	(2)	NA	@	
			Lead	7439-92-1	3.4	(2)	NA		
K005	NA	Table CCWE in 268.41	Chromium (Total)	7440-47-32	0.9	(2)	NA		
			Lead	7439-92-1	3.4	(2)	NA		
			Cyanides (Total)	57-12-5	0.74	(2)	(4)		
K006	NA	Table CCWE in 268.41	Chromium (Total)	7440-47-32	0.9	3.4	(2)	NA	
			Lead	7439-92-1			(2)	NA	
K007	NA	Table CCWE in 268.41	Chromium (Total)	7440-47-32	0.9	(2)	NA		
			Lead	7439-92-1	3.4	(2)	NA		
			Cyanides (Total)	57-12-5	0.74	(2)	(4)		
K008	NA	Table CCWE in 268.41	Chromium (Total)	7440-47-32	0.9	(2)	NA		
			Lead	7439-92-1	3.4	(2)	NA		
K009	NA	NA	Chloroform	67-66-3	0.1		6.0	(')	
K010	NA	NA	Chloroform	67-66-3	0.1		6.0	(')	
K011	NA	NA	Acetonitrile	75-05-8	38		1.8	(')	
			Acrylonitrile	107-13-1	0.06		1.4	(')	
			Acrylamide	79-06-1	19		23	(')	
			Benzene	71-43-2	0.02		0.03	(')	
			Cyanide (Total)	57-12-5	21		57		
K013	NA	NA	Acetonitrile	75-05-8	38		1.8	(')	
			Acrylonitrile	107-13-1	0.06		1.4	(')	
			Acrylamide	79-06-1	19		23	(')	
			Benzene	71-43-2	0.02		0.03	(')	
			Cyanide (Total)	57-12-5	21		57		
K014	NA	NA	Acetonitrile	75-05-8	38		1.8	(')	
			Acrylonitrile	107-13-1	0.06		1.4	(')	
			Acrylamide	79-06-1	19		23	(')	
			Benzene	71-43-2	0.02		0.03	(')	
			Cyanide (Total)	57-12-5	21		57		
*K015	NA	Table CCWE in 268.41	Anthracene	120-12-7	0.059		3.4	(')	
			Benzal Chloride	98-87-3	0.28		6.2	(')	

			Sum of Benzo(b) fluoranthene and Benzo(k) fluoranthene	207-08-9	0.055		3.4	
			Phenanthrene	85-01-8	0.059		3.4	(1)
			Toluene	108-88-3	0.08		6.0	(1)
			Chromium (Total)	7440-47-32	0.32		NA	
			Nickel	7440-02-0	0.44		NA	
*K016	NA		Hexachlorobenzene	118-74-1	0.055		28	(1)
			Hexachlorobutadiene	87-68-3	0.055		5.6	(1)
			Hexachlorocyclopentadiene	77-47-4	0.057		5.6	(1)
			Hexachloroethane	67-72-1	0.055		28	(1)
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
K017	NA	NA	1,2-Dichloropropane	78-87-5	0.85	(1,2)	18	(1)
			1,2,3-Trichloropropane	96-18-4	0.85	(1,2)	28	(1)
			Bis(2-chloroethyl)ether	111-44-4	0.033	(1,2)	7.2	(1)
*K018	NA		Chloroethane	76-00-3	0.27		6.0	(1)
			Chloromethane	74-87-3	0.19		NA	
			1,1-Dichloroethane	75-34-3	0.059		6.0	(1)
			1,2-Dichloroethane	107-06-2	0.21		6.0	(1)
			Hexachlorobenzene	118-74-1	0.055		28	(1)
			Hexachlorobutadiene	87-68-3	0.055		5.6	(1)
			Pentachloroethane	76-01-7	NA		5.6	
			1,1,1-Trichloroethane	71-55-6	0.054		6.0	
			Hexachloroethane	67-72-1	0.055		28	(1)
*K019	NA		Bis(2-chloroethyl) ether	111-44-4	0.033		5.6	(1)
			Chlorobenzene	108-90-7	0.057		6.0	(1)
			Chloroform	67-66-3	0.046		6.0	(1)
			p-Dichlorobenzene	106-46-7	0.09		NA	
			1,2-Dichloroethane	107-06-2	0.21		6.0	(1)
			Fluorene	86-73-7	0.059		NA	
			Hexachloroethane	67-72-1	0.055		28	(1)
			Naphthalene	91-20-3	0.059		5.6	(1)
			Phenanthrene	85-01-8	0.059		5.6	(1)
			1,2,4,5- Tetrachlorobenzene	95-94-3	0.055		NA	
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
			1,2,4-Trichlorobenzene	120-82-1	0.055		19	(1)
			1,1,1-Trichloroethane	71-55-6	0.054		6.0	(1)
*K020	NA		1,2-Dichloroethane	106-93-4	0.21		6.0	(1)
			1,1,2,2-Tetrachloroethane	79-34-6	0.057		5.6	(1)
			Tetrachloroethene	127-18-4	0.056		6.0	(1)

K021	NA	Table CCWE in 268.41	Chloroform	67-66-3	0.046	(2)	6.2	(')
			Carbon tetrachloride	56-23-5	0.057	(2)	6.2	(')
			Antimony	7440-36-0	0.60	(2)	NA	(')
K022	NA	Table CCWE in 268.41	Toluene	108-88-3	0.080	(2)	0.034	(')
			Acetophenone	96-86-2	0.010		19	(')
			Diphenylamine	22-39-4	0.52	(2)	NA	
			Diphenylnitrosamine	86-30-6	0.40	(2)	NA	
			Sum of Diphenylamine and Diphenylnitros-amine		NA		13	(')
			Phenol	108-95-2	0.039		12	(')
			Chromium (Total)	7440-47-32	0.35		NA	
			Nickel	7440-02-0	0.47		NA	
*K023	NA		Phthalic anhydride (measured as Phthalic acid)	85-44-9	0.069		28	(')
*K024	NA		Phthalic anhydride (measured as Phthalic acid)	85-44-9	0.069		28	(')
*K028	NA	Table CCWE in 268.41	1,1-Dichloroethane trans-1,2-	75-34-3	0.059		6.0	(')
			Dichloroethane		0.054		6.0	(')
			Hexachlorobutadiene	87-68-3	0.055		5.6	(')
			Hexachloroethane	67-72-1	0.055		28	(')
			Pentachloroethane	76-01-7	NA		5.6	(')
			1,1,1,2-Tetrachloroeth-ane	630-20-6	0.057		5.6	(')
			1,1,2,2-Tetrachloroeth-ane	79-34-6	0.057		5.6	(')
			1,1,1,-Trichloroethane	71-55-6	0.054		6.0	(')
			1,1,2-Trichloroethane	79-00-5	0.054		6.0	(')
			Tetrachloroethylene	127-18-4	0.056		6.0	(')
			Cadmium	7440-43-9	6.4		NA	
			Chromium (Total)	7440-47-32	0.35		NA	
			Lead	7439-92-1	0.037		NA	
			Nickel	7440-02-0	0.47		NA	
K029	NA	NA	Chloroform	67-66-3	0.046		6.0	(')
			1,2-Dichloroethane	107-06-2	0.21		6.0	(')
			1,1-Dichloroethylene	75-35-4	0.025		6.0	(')
			1,1,1-Trichloroethane	71-55-6	0.054		6.0	(')
			Vinyl chloride	75-01-4	0.27		6.0	(')
*K030	NA		o-Dichlorobenzene	95-50-1	0.088		NA	

			p-Dichlorobenzene	106-46-7	0.09		NA	
			Hexachlorobutadiene	87-68-3	0.055		5.6	(1)
			Hexachloroethane	67-72-1	0.055		28	(1)
			Hexachloropropene	1888-71-7	NA		19	(1)
			Pentachlorobenzene	608-93-5	NA		28	(1)
			Pentachloroethane	76-01-7	NA		5.6	(1)
			1,2,4,5-Tetrachloro-benzene	95-94-3	0.055		14	(1)
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
			1,2,4-Trichlorobenzene	120-82-1	0.055		19	(1)
*K030	NA		2,4-Dichlorophenol	120-83-2	0.044		0.38	(1)
			2,6-Dichloropheno	187-65-0	0.044		0.34	(1)
			2,4,5-Trichlorophenol	95-95-4	0.18		8.2	(1)
			2,4,6-Trichlorophenol	88-06-2	0.035		7.6	(1)
			Tetrachlorophenols (Total)		NA		0.68	(1)
			Pentachlorophenol	87-86-5	0.089		1.9	(1)
			Tetrachloroethene	79-01-6	0.056		1.7	(1)
			Hexachlorodibenzo-p-dioxins		0.00006 3		0.001	(1)
			Hexachlorodibenzo-furans		0.00006 3		0.001	(1)
			Pentachlorodibenzo-p-dioxins		0.00006 3		0.001	(1)
			Pentachlorodibenzo-furans		0.00006 3		0.001	(1)
			Tetrachlorodibenzo-p-dioxins		0.00006 3		0.001	(1)
			Tetrachlorodibenzo-furans		0.00006 3		0.001	(1)
K031	NA	Table CCWE in 268.41	Arsenic	7440-38-2	0.79		NA	(1)
K032	NA	NA	Hexachloropentadiene	77-47-4	0.057	(2)	2.4	(1)
			Chlordane	57-74-9	0.0033	(2)	0.26	(1)
			Heptachlor	76-44-8	0.0012	(2)	0.066	(1)
			Heptachlor epoxide	1024-57-3	0.016	(2)	0.066	(1)
K033	NA	NA	Hexachlorocyclopenta-diene	77-47-4	0.057	(2)	2.4	(1)
K034	NA	NA	Hexachlorocyclopenta-diene	77-47-4	0.057	(2)	2.4	(1)
K035	NA	NA	Acenaphthene	83-32-9	NA		3.4	(1)
			Anthracene	120-12-7	NA		3.4	(1)
			Benz(a)anthracene	56-55-3	0.059	(2)	3.4	(1)
			Benzo(a)pyrene	50-32-8	NA		3.4	(1)
			Chrysene	218-01-9	0.059	(2)	3.4	(1)

			Dibenz(a,h)anthracene	53-70-3	NA		3.4	(1)
			Fluoranthene	206-44-0	0.068	(2)	3.4	(1)
			Fluorene	86-73-7	NA		3.4	(1)
			Indeno(1,2,3-cd)pyrene	193-39-5	NA		3.4	(1)
			Cresols (m- and p-isomers)		0.77	(2)	NA	
			Naphthalene	91-20-3	0.059	(2)	3.4	(1)
			o-cresol	95-48-7	0.11	(2)	NA	
			Phenanthrene	85-01-8	0.059	(2)	3.4	(1)
			Phenol	108-95-2	0.039		NA	
			Pyrene	129-00-0	0.067	(2)	8-2	(1)
K036	NA	NA	Disulfoton	298-04-4	0.025	(2)	0.1	(1)
K037	NA	NA	Disulfoton	298-04-4	0.025	(2)	0.1	(1)
			Toluene	108-88-3	0.080	(2)	28	(1)
K038	NA	NA	Phorate	298-02-2	0.025	(2)	0.1	(1)
K040	NA	NA	Phorate	298-02-2	0.025	(2)	0.1	(1)
K041	NA	NA	Toxaphene	8001-35-1	0.0095	(2)	2.6	(1)
K042	NA	NA	1,2,4,5-Tetrachloro-benzene	95-94-3	0.055	(2)	4.4	(1)
			o-Dichlorobenzene	95-50-1	0.088	(2)	4.4	(1)
			p-Dichlorobenzene	106-46-7	0.090	(2)	4.4	(1)
			Pentachlorobenzene	608-93-5	0.055	(2)	4.4	(1)
			1,2,4-Trichlorobenzene	120-82-1	0.055	(2)	4.4	(1)
K043	NA	NA	2,4-Dichlorophenol	120-83-2	0.049	(1)	0.38	(1)
			2,6-Dichlorophenol	87-65-0	0.013	(1)	0.34	(1)
			2,4,5-Trichlorophenol	95-95-4	0.016	(1)	8.2	(1)
			2,4,6-Trichlorophenol	88-06-2	0.039	(1)	7.6	(1)
			Tetrachlorophenols (Total)		0.018	(1)	0.68	(1)
			Pentachlorophenol	87-86-5	0.022	(1)	1.9	(1)
			Tetrachloroethene	79-01-6	0.006	(1)	1.7	(1)
			Hexachlorodibenzo-p-dioxins		0.001	(1)	0.001	(1)
			Hexachlorodibenzo-furans		0.001	(1)	0.001	(1)
			Pentachlorodibenzo-p-dioxins		0.001	(1)	0.001	(1)
			Pentachlorodibenzo-furans		0.001	(1)	0.001	(1)
			Tetrachlorodibenzo-p-dioxins		0.001	(1)	0.001	(1)
			Tetrachlorodibenzo-furans		0.001	(1)	0.001	(1)
K046	NA	Table CCWE in 268.41	Lead	7439-92-1	0.37		NA	

*K048	NA	Table CCWE in 268.41	Benzene	71-43-2	0.14	[2]	14	[1]
			Benzo(a)pyrene	50-32-8	0.061	[2]	12	[1]
			Bis(2-ethylhexyl) phthalate	117-81-7	0.28	[2]	7.3	[1]
			Chrysene	218-01-9	0.059	[2]	15	[1]
			Di-n-butyl phthalate	84-74-2	0.057	[2]	3.6	[1]
			Ethylbenzene	100-41-4	0.057	[2]	14	[1]
			Fluorene	86-73-7	0.059	[2]	NA	
			Naphthalene	91-20-3	0.059	[2]	42	[1]
			Phenanthrene	85-01-8	0.059	[2]	34	[1]
			Phenol	108-95-2	0.039	[2]	3.6	[1]
			Pyrene	129-00-0	0.067	[2]	36	[1]
			Toluene	108-88-3	0.080	[2]	14	[1]
			Xylene(s)		0.32	[2]	22	[1]
			Cyanides (Total)	57-12-5	0.028	[1]	1.8	[1]
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
*K049	NA	Table CCWE in 268.41	Anthracene	120-12-7	0.059	[2]	28	[1]
			Benzene	71-43-2	0.14	[2]	14	[1]
			Benzo(a)pyrene	117-81-7	0.061	[2]	12	[1]
			Bis(2-ethylhexyl) phthalate	75-150-0	0.28	[2]	7.3	[1]
			Carbon disulfide	75-15-0	0.014	[2]	NA	
			Chrysene	2218-01-9	0.059	[2]	15	[1]
			2,4-Dimethyl phenol	105-67-9	0.036	[2]	NA	
			Ethylbenzene	100-41-4	0.057	[2]	14	[1]
			Naphthalene	91-20-3	0.059	[2]	42	[1]
			Phenanthrene	85-01-8	0.059	[2]	34	[1]
			Phenol	108-95-2	0.039	[2]	3.6	[1]
			Pyrene	129-00-0	0.067	[2]	36	[1]
			Toluene	108-88-3	0.08	[2]	14	[1]
			Xylene(s)		0.32	[2]	22	[1]
			Cyanides (Total)	56-12-5	0.028	[1]	1.8	[1]
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
*K050	NA	Table CCWE in 268.41	Benzo(a)pyrene	50-32-8	0.061	[2]	12	[1]
			Phenol	108-95-2	0.039	[2]	3.6	[1]
			Cyanides (Total)	57-12-5	0.028	[1]	1.8	[1]
			Chromium (Total)	7440-47-32	0.2		NA	

			Lead	7439-29-1	0.037		NA	
*K051	NA	Table CCWE in 268.41	Acenaphthene	83-32-9	0.059	(2)	NA	
			Anthracene	120-12-7	0.059	(2)	28	(1)
			Benzene	71-43-2	0.14	(3)	14	(1)
			Benzo(a) anthracene	50-32-8	0.059	(2)	20	(1)
			Benzo(a)pyrene	117-81-7	0.061	(2)	12	(1)
			Bis(2-ethylhexyl) phthalate	75-15-0	0.28	(2)	7.3	(1)
			Chrysene	2218-01-9	0.059	(2)	15	(1)
			Di-n-butyl phthalate	105-67-9	0.057	(2)	3.6	(1)
			Ethylbenzene	100-41-4	0.057	(2)	14	(1)
			Fluorene	86-73-7	0.059	(2)	NA	
			Naphthalene	91-20-3	0.059	(2)	42	(1)
			Phenanthrene	85-01-8	0.059	(2)	34	(1)
			Phenol	108-95-2	0.039	(2)	3.6	(1)
			Pyrene	129-00-0	0.067	(2)	36	(1)
			Toluene	108-88-3	0.08	(2)	14	(1)
			Xylene(s)		0.32	(2)	22	(1)
			Cyandides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
			Benzene	71-43-2	0.14	(2)	14	(1)
			Benzo(a)pyrene	50-32-8	0.061	(2)	12	(1)
*K052	NA	Table CCWE in 268.41	o-Cresol	95-48-7	0.11	(2)	6.2	(1)
			p-Cresol	106-44-5	0.77	(2)	6.2	(1)
			2,4-Dimethylphenol	105-67-9	0.036	(2)	NA	
			Ethylbenzene	100-41-4	0.057	(2)	14	(1)
			Naphthalene	91-20-3	0.059	(2)	42	(1)
			Phenanthrene	85-01-8	0.059	(2)	34	(1)
			Phenol	108-95-2	0.039	(2)	3.6	(1)
			Toluene	108-88-3	0.08	(2)	14	(1)
			Xylenes		0.32	(2)	22	(1)
			Cyanides (Total)	56-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K060	NA	NA	Benzene	71-43-2	0.17	(1,2)	0.071	(1)
			Benzo(a)pyrene	50-32-8	0.035	(1,2)	3.6	(1)
			Naphthalene	91-20-3	0.028	(1,2)	3.4	(1)
			Phenol	108-95-2	0.042	(1,2)	3.4	(1)

			Cyanides (Total)	57-12-5	1.9		1.2	
K061	NA	Table CCWE in 268.41	Cadmium	7440-43-9	1.61		NA	
			Chromium (Total)	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.51		NA	
			Nickel	7440-02-0	0.44		NA	
K062	NA	Table CCWE in 268.41	Chromium (Total)	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.04		NA	
			Nickel	7440-02-0	0.44		NA	
K069	NA	Table CCWE in 268.41 and Table 2 in 268.42	Cadmium	7440-43-9	1.6		NA	
			Lead	7439-92-1	0.51		NA	
K071	NA	Table CCWE in 268.41	Mercury	7439-97-6	0.030		NA	
K073	NA	NA	Carbon tetrachloride	56-23-5	0.057	(2)	6.2	(1)
			Chloroform	67-66-3	0.046	(2)	6.2	(1)
			Hexachloroethane	67-72-1	0.055	(2)	30	(1)
			Tetrachloroethane	127-18-4	0.056	(2)	6.2	(1)
			1,1,1-Trichloroethane	71-55-6	0.054	(2)	6.2	(1)
K083	NA	Table CCWE in 268.41	Benzene	71-43-2	0.14	(2)	6.6	(1)
			Aniline	62-53-3	0.81		14	(1)
			Diphenylamine	22-39-4	0.52	(2)	NA	
			Diphenylnitrosamine	86-30-6	0.40	(2)	NA	
			Sum of Diphenylamine and Diphenylnitros-amine		NA		14	(1)
			Nitrobenzene	98-95-3	0.068	(2)	14	(1)
			Phenol	108-95-2	0.039		5.6	(1)
			Cyclohexanone	108-94-1	0.36		NA	
			Nickel	7440-02-0	0.47		NA	
K084	NA	NA	Arsenic	7440-38-2	0.79		NA	
K085	NA	NA	Benzene	71-43-2	0.14	(2)	4.4	(1)
			Chlorobenzene	108-90-7	0.057	(2)	4.4	(1)
			o-Dichlorobenzene	95-50-1	0.088	(2)	4.4	(1)
			m-Dichlorobenzene	541-73-1	0.036	(2)	4.4	(1)
			p-Dichlorobenzene	106-46-7	0.090	(2)	4.4	(1)
			1,2,4-Trichlorobenzene	120-82-1	0.055	(2)	4.4	(1)
			1,2,4,5-Tetrachloro-benzene	95-94-3	0.055	(2)	4.4	(1)

			Pentachlorobenzene	608-93-5	0.055	(2)	4.4	(1)
			Hexachlorobenzene	118-74-1	0.055	(2)	4.4	(1)
			Aroclor 1016	12674-11-2	0.013	(2)	0.92	(1)
			Aroclor 1221	11104-28-2	0.014	(2)	0.92	(1)
			Aroclor 1232	11141-16-5	0.013	(2)	0.92	(1)
			Aroclor 1242	53469-21-9	0.017	(2)	0.92	(1)
			Aroclor 1248	12672-29-6	0.013	(2)	0.92	(1)
			Aroclor 1254	11097-69-1	0.014	(2)	1.8	(1)
			Aroclor 1260	11096-82-5	0.014	(2)	1.8	(1)
K086	NA	Table CCWE in 268.41	Acetone	67-64-1	0.28		160	(1)
			Acetophenone	96-86-2	0.010		9.7	(1)
			Bis(2-ethylhexyl) phthalate	117-81-7	0.28	(2)	28	(1)
			n-Butyl alcohol	71-36-3	5.6		2.6	(1)
			Butylbenzylphthalate	85-68-7	0.017	(2)	7.9	(1)
			Cyclohexanone	108-94-1	0.36		NA	
			1,2-Dichlorobenzene	95-50-1	0.088		6.2	(1)
			Diethyl phthalate	84-66-2	0.20	(2)	28	(1)
			Dimethyl phthalate	131-11-3	0.047	(2)	28	(1)
			Di-n-butyl phthalate	84-74-2	0.057	(2)	28	(1)
			Di-n-octyl phthalate	117-84-0	0.017	(2)	28	(1)
			Ethyl acetate	141-78-6	0.34	(2)	33	(1)
			Ethylbenzene	100-41-4	0.057	(2)	6.0	(1)
			Methanol	67-56-1	5.6	(2)	NA	
			Methyl isobutyl ketone	108-10-1	0.14		33	(1)
			Methyl ethyl ketone	78-93-3	0.28		36	(1)
			Methylene chloride	75-09-2	0.089	(2)	33	(1)
			Naphthalene	91-20-3	0.059	(2)	3.1	(1)
			Nitrobenzene	98-95-3	0.068	(2)	14	(1)
			Toluene	108-88-3	0.080	(2)	28	(1)
			1,1,1-Trichloroethane	71-55-6	0.054	(2)	5.6	(1)
			Trichloroethylene	79-01-6	0.054	(2)	5.6	(1)
			Xylenes (Total)		0.32	(2)	28	(1)
			Cyanides (Total)	57-12-5	1.9		1.5	(1)
			Chromium (Total)	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.037		NA	
*K087	NA	Table CCWE in 268.41	Acenaphthalene	208-96-8	0.059	(3)	3.4	
			Benzene	71-43-2	0.14	(3)	0.071	(1)
			Chrysene	218-01-9	0.059	(3)	3.4	(1)

			Fluoranthene	206-44-0	0.068	(2)	3.4	(1)
			Indeno (1,2,3-cd) pyrene	193-39-5	0.0055	(2)	3.4	(1)
			Naphthalene	91-20-3	0.059	(2)	3.4	(1)
			Phenanthrene	85-01-8	0.059	(2)	3.4	(1)
			Toluene	108-88-3	0.08	(2)	0.65	(1)
			Xylenes		0.32	(2)	0.07	(1)
			Lead	7439-92-1	0.037		NA	
*K093	NA		Phthalic anhydride (measured as Phthalic acid)	85-44-9	0.069		28	(1)
*K094	NA		Phthalic anhydride (measured as Phthalic acid)	85-44-9	0.069		28	(1)
K095	NA	NA	1,1,1,2-Tetrachloroethane	630-20-6	0.057		5.6	(1)
			1,1,2,2-Tetrachloroethane	79-34-6	0.057		5.6	(1)
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
			1,1,2-Trichloroethane	79-00-5	0.054		6.0	(1)
			Trichloroethylene	79-01-6	0.054		5.6	(1)
			Hexachloroethane	67-72-1	0.055		28	(1)
			Pentachloroethane	76-01-7	0.055		5.6	(1)
K096	NA	NA	1,1,1,2-Tetrachloroethane	630-20-6	0.057		5.6	(1)
			1,1,2,2-Tetrachloroethane	79-34-6	0.057		5.6	(1)
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
			1,1,2-Trichloroethane	79-00-5	0.054		6.0	(1)
			Trichloroethene	79-01-6	0.054		5.6	(1)
			Trichloroethylene	79-01-6	0.054		5.6	(1)
			1,3-Dichlorobenzene	541-73-1	0.036		5.6	(1)
			Pentachloroethane	76-01-7	0.055		5.6	(1)
			1,2,4-Trichlorobenzene	120-82-1	0.055		19	(1)
K097	NA	NA	Hexachlorocyclopentadiene	77-47-4	0.057	(2)	2.4	(1)
			Chlordane	57-74-9	0.0033	(2)	0.26	(1)
			Heptachlor	76-44-8	0.0012	(2)	0.066	(1)
			Heptachlor epoxide	1024-57-3	0.016	(2)	0.066	(1)
K098	NA	NA	Toxaphene	8001-35-1	0.0095	(2)	2.6	(1)
K099	NA	NA	2,4-Dichlorophenoxyacetic acid	94-75-7	1.0	(1)	1.0	(1)
			Hexachlorodibenzo-p-dioxins		0.001	(1)	0.001	(1)
			Hexachlorodibenzofurans		0.001	(1)	0.001	(1)

			Pentachlorodibenzo-p-dioxins		0.001	(1)	0.001	(1)
			Pentachlorodibenzo-furans		0.001	(1)	0.001	(1)
			Tetrachlorodibenzo-p-dioxins		0.001	(1)	0.001	(1)
			Tetrachlorodibenzo-furans		0.001	(1)	0.001	(1)
K100	NA	Table CCWE in 268.41	Cadmium	7440-43-9	1.6		NA	
			Chromium (Total)	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.51		NA	
K101	NA	NA	o-Nitroaniline		0.27	(1)	14	(1)
			Arsenic	7440-38-2	0.79		NA	
			Cadmium	7440-43-9	0.24		NA	
			Lead	7439-92-1	0.17		NA	
			Mercury	7439-97-6	0.082		NA	
K102	NA	Table CCWE in 268.41	o-Nitrophenol		0.028	(1)	13	(1)
			Arsenic	7440-38-2	0.79		NA	
			Cadmium	7440-43-9	0.24		NA	
			Lead	7439-92-1	0.17		NA	
			Mercury	7439-97-6	0.082		NA	
K103	NA	NA	Aniline	62-53-3	4.5		5.6	(1)
			Benzene	71-43-2	0.15		6.0	(1)
			2,4-Dinitrophenol	51-28-5	0.61		5.6	(1)
			Nitrobenzene	98-95-3	0.073		5.6	(1)
			Phenol	108-95-2	1.4		5.6	(1)
K104	NA	NA	Aniline	62-53-3	4.5		5.6	(1)
			Benzene	71-43-2	0.15		6.0	(1)
			2,4-Dinitrophenol	51-28-5	0.61		5.6	(1)
			Nitrobenzene	98-95-3	0.073		5.6	(1)
			Phenol	108-95-2	1.4		5.6	(1)
			Cyanides (Total)	57-12-5	2.7		1.8	(1)
K105	NA	NA	Benzene	71-43-2	0.14		4.4	(1)
			Chlorobenzene	108-90-7	0.057		4.4	(1)
			o-Dichlorobenzene	95-50-1	0.088		4.4	(1)
			p-Dichlorobenzene	106-46-7	0.090		4.4	(1)
			2,4,5-Trichlorophenol	95-95-4	0.18		4.4	(1)
			2,4,6-Trichlorophenol	88-06-2	0.035		4.4	(1)
			2-Chlorophenol	95-57-8	0.044		4.4	(1)
			Phenol	108-95-2	0.039		4.4	(1)

K106	NA	Table CCWE in 268.41 and Table 2 in 268.42	Mercury	7439-97-6	0.030		NA	
*K111	NA		2,4-Dinitrotoluene	121-14-2	0.32		140	(1)
			2,6-Dinitrotoluene	606-20-2	0.55		28	(1)
K115	NA	Table CCWE in 268.41	Nickel	7440-02-0	0.47		NA	
*K117	NA		Ethylene dibromide	106-93-4	0.028		15	(1)
			Methyl bromide	74-83-9	0.11		15	(1)
			Chloroform	67-66-3	0.046		5.6	(1)
*K118	NA		Ethylene dibromide	106-93-4	0.028		15	(1)
			Methyl bromide	74-83-9	0.11		15	(1)
			Chloroform	67-66-3	0.046		5.6	(1)
*K131	NA		Methyl bromide	74-83-9	0.11		15	(1)
*K132	NA		Methyl bromide	74-83-9	0.11		15	(1)
*K136	NA		Ethylene dibromide	106-93-4	0.028		15	(1)
			Methyl bromide	74-83-9	0.11		15	(1)
			Chloroform	67-66-3	0.046		5.6	(1)
P004	Aldrin	NA	Aldrin	309-00-2	0.021	(2)	0.066	(1)
P010	Arsenic acid	Table CCWE in 268.41	Arsenic	7440-38-2	0.79		NA	
P011	Arsenic pentoxide	Table CCWE in 268.41	Arsenic	7440-38-2	0.79		NA	
P012	Arsenic trioxide	Table CCWE in 268.41	Arsenic	7440-38-2	0.79		NA	
P013	Barium cyanide	Table CCWE in 268.41	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable)	57-12-5	0.1		9.1	
P020	2-sec-Butyl-4,6- dinitro-phenol (Dinoseb)	NA	2-sec-Butyl-4,6-dinitro-phenol (Dinoseb)	88-85-7	0.066		2.5	(1)
P021	Calcium cyanide	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable)	57-12-5	0.1		9.1	
P022	Carbon disulfide	Table 2 in 268.42	Carbon disulfide	75-15-0	0.014		NA	
P024	p-Chloroaniline	NA	p-Chloroaniline	106-47-8	0.46		16	(1)
P029	Copper cyanide	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable)	57-12-5	0.1		9.1	
P030	Cyanides (soluble salts and complexes)	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable)	57-12-5	0.1		9.1	

P036	Dichlorophenylarsine	Table CCWE in 268.41	Arsenic	7440-38-2	0.79		NA	
P037	Dieldrin	NA	Dieldrin	60-57-1	0.017	(2)	0.13	(1)
P038	Diethylarsine	Table CCWE in 268.41	Arsenic	7440-38-2	0.79		NA	
P039	Disulfoton	NA	Disulfoton	298-04-4	0.017		0.1	(1)
P047	4,6-Dinitro-o-cresol	NA	4,6-Dinitro-o-cresol	534-52-1	0.28	(2)	160	(1)
P048	2,4-Dinitrophenol	NA	2,4-Dinitrophenol	51-28-5	0.12	(2)	160	(1)
P050	Endosulfan	NA	Endosulfan I	939-98-8	0.023	(2)	0.066	(1)
			Endosulfan II	33213-6-5	0.029	(2)	0.13	(1)
			Endosulfan sulfate	1031-07-8	0.029	(2)	0.13	(1)
P051	Endrin	NA	Endrin	72-20-8	0.0028	(2)	0.13	(1)
			Endrin aldehyde	7421-93-4	0.025	(2)	0.13	(1)
P056	Fluoride	Table 2 in 268.42	Fluoride	16964-48-8	35		NA	
P059	Heptachlor	NA	Heptachlor	76-44-8	0.0012	(2)	0.066	(1)
			Heptachlor epoxide	1024-57-3	0.016	(2)	0.066	(1)
P060	Isodrin	NA	Isodrin	465-73-6	0.021	(2)	0.066	(1)
P063	Hydrogen cyanide	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable)	57-12-5	0.10		9.1	
P065	Mercury fulminate	Table CCWE in 268.41 and Table 2 in 268.42	Mercury	7439-97-6	0.030		NA	
P071	Methyl parathion	NA	Methyl parathion	298-00-0	0.025		0.1	(1)
P073	Nickel carbonyl	Table CCWE in 268.41	Nickel	7440-02-0	0.44		NA	
P074	Nickel cyanide	Table CCWE in 268.41	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable)	57-12-5	0.10		9.1	
			Nickel	7440-02-0	0.44		NA	
P077	p-Nitroaniline	NA	p-Nitroaniline	100-01-6	0.028	(2)	28	(1)
P082	N-Nitrosodimethylamine	Table 2 in 268.42	N-Nitrosodimethyl-amine	62-75-9	0.40	(2)	NA	
P089	Parathion	NA	Parathion	56-38-2	0.025		0.1	(1)
P092	Phenylmercury acetate	Table CCWE in 268.41 and Table 2 in 268.42	Mercury	7439-97-6	0.030		NA	
P094	Phorate	NA	Phorate	298-02-2	0.025		0.1	(1)
P097	Famphur	NA	Famphur	52-85-7	0.025		0.1	(1)
P098	Potassium cyanide	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable)	57-12-5	0.10		9.1	

P099	Potassium silver cyanide	Table CCWE in 268.41	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable)	57-12-5	0.1		9.1	
			Silver	7440-22-4	0.29		NA	
P101	Ethyl cyanide (Propanenitrile)	NA	Ethyl cyanide (Propanenitrile)	107-12-0	0.24	(2)	360	(1)
P103	Selenourea	Table CCWE in 268.41	Selenium	7782-49-2	1.0	(2)	NA	
P104	Silver cyanide	Table CCWE in 268.41	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable)	57-12-5	0.10		9.1	
			Silver	7440-22-4	0.29		NA	
P106	Sodium cyanide	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable)	57-12-5	0.10		9.1	
P110	Tetraethyl lead	Table CCWE in 268.41 and Table 2 in 268.42	Lead	7439-92-1	0.040		NA	
P113	Thallic oxide	Table 2 in 268.42	Thallium	7440-28-0	0.14	(2)	NA	
P114	Thallium selenite	Table CCWE in 268.41	Selenium	7782-49-2	1.0		NA	
P115	Thallium(I)sulfate	Table 2 in 268.42	Thallium	7440-28-0	0.14	(2)	NA	
P119	Ammonia vandate	Table 2 in 268.42	Vanadium	7440-62-2	28	(2)	NA	
P120	Vanadium pentoxide	Table 2 in 268.42	Vanadium	7440-62-2	28	(2)	NA	
P121	Zinc cyanide	NA	Cyanides Total)	57-12-5	1.9		110	
			Cyanides (Amenable)	57-12-5	0.10		9.1	
P123	Toxaphene	NA	Toxaphene	8001-35-1	0.0095	(2)	1.3	(1)
U002	Acetone	NA	Acetone	67-64-1	0.28		160	(1)
U003	Acetonitrile	Table 2 in 268.42	Acetonitrile	75-05-8	0.17		NA	
U004	Acetophenone	NA	Acetophenone	98-86-2	0.010	(1)	9.7	(1)
U005	2-Acetylaminofluorene	NA	2-Acetylaminofluorene	53-96-3	0.059	(2)	140	(1)
U009	Acrylonitrile	NA	Acrylonitrile	107-13-1	0.24	(2)	84	(1)
U012	Aniline	NA	Aniline	62-53-3	0.81		14	(1)
U018	Benz(a)anthracene	NA	Benz(a)anthracene	56-55-3	0.059	(2)	8.2	(1)
U019	Benzene	NA	Benzene	71-43-2	0.14	(2)	36	(1)
U022	Benzo(a)pyrene	NA	Benzo(a)pyrene	50-32-8	0.061	(2)	8.2	(1)
U024	Bis(2-chloroethoxy) methane	NA	Bis(2-chloroethoxy) methane	111-91-1	0.036		7.2	(1)
U025	Bis(2-chloroethyl)ether	NA	Bis(2-chloroethyl)ether	111-44-4	0.033		7.2	(1)

U027	Bis(2-chloroisopropyl) ether	NA	Bis(2-chloroisopropyl) ether	39638-32-9	0.055	(2)	7.2	(')
*U028	Bis(2-ethylhexyl) phthalate		Bis(2-ethylhexyl) phthalate	117-81-7	0.28		28	(')
U029	Bromomethane (Methyl bromide)	NA	Bromomethane (Methyl bromide)	74-83-9	0.11	(')	15	(')
U030	4-Bromophenyl phenyl ether	NA	4-Bromophenyl phenyl ether	101-55-3	0.055	(')	15	(')
U031	n-Butyl alcohol	NA	n-Butyl alcohol	71-36-3	5.6		2.6	(')
U032	Calcium chromate	Table CCWE in 268.41	Chromium (Total)	7440-47-32	0.32		NA	
U036	Chlordane (alpha and gamma)	NA	Chlordane (alpha and gamma)	57-74-9	0.0033	(2)	0.13	(')
U037	Chlorobenzene	NA	Chlorobenzene	108-90-7	0.057	(2)	5.7	(')
U038	Chlorobenzilate	Table 2 in 268.42	Chlorobenzilate	510-15-6	0.10	(2)	NA	
U039	p-Chloro-m-cresol	NA	p-Chloro-m-cresol	59-50-7	0.018	(2)	14	(')
U043	Vinyl chloride	NA	Vinyl chloride	75-01-4	0.27	(2)	33	(')
U044	Chloroform	NA	Chloroform	67-66-3	0.046	(2)	5.6	(')
U045	Chloromethane (Methyl chloride)	NA	Chloromethane (Methyl chloride).	74-87-3	0.19	(2)	33	(')
U047	2-Chloronaphthalene	NA	2-Chloronaphthalene	91-58-7	0.055	(2)	5.6	(')
U048	2-Chlorophenol	NA	2-Chlorophenol	95-57-8	0.044	(2)	5.7	(')
U050	Chrysene	NA	Chrysene	218-01-9	0.059	(2)	8.2	(')
U051	Creosote	Table CCWE in 268.41	Naphthalene	91-20-3	0.031		1.5	(')
			Pentacholorophenol	87-86-5	0.18		7.4	(')
			Phenanthrene	85-01-8	0.031		1.5	(')
			Pyrene	129-00-0	0.028		1.5	(')
			Toluene	108-88-3	0.028		28	(')
			Xylenes (Total)		0.032		33	(')
			Lead	7439-92-1	0.037		NA	
U052	Cresols (Cresylic acid)	NA	o-Cresol	95-48-7	0.11	(2)	5.6	(')
			Cresols (m- and p-isomers)		0.77	(2)	3.2	(')
U057	Cyclohexanone	Table 2 in 268.42	Cyclohexanone	108-94-1	0.36		NA	
U060	DDD	NA	o,p'-DDD	53-19-0	0.023		0.087	(')
			p,p'-DDD	72-54-8	0.023		0.087	(')
U061	DDT	NA	o,p'-DDT	789-02-6	0.0039	(2)	0.087	(')
			p,p'-DDT	50-29-3	0.0039	(2)	0.087	(')
			o,p'-DDD	53-19-0	0.023	(2)	0.087	(')
			p,p'-DDD	72-54-8	0.023	(2)	0.087	(')
			o,p'-DDE	3424-82-6	0.031	(2)	0.087	(')
			p,p'-DDE	72-55-9	0.031	(2)	0.087	(')

U063	Dibenzo(a,h)anthracene	NA	Dibenzo(a,h)anthracene	53-70-3	0.055	(2)	8.2	(1)
U066	1,2-Dibromo-3-chloropropane	NA	1,2-Dibromo-3-chloropropane	96-12-8	0.11	(2)	15	(1)
U067	1,2-Dibromoethane (Ethylene dibromide)	NA	1,2-Dibromoethane (Ethylene dibromide)	106-93-4	0.028	(2)	15	(1)
U068	Dibromomethane	NA	Dibromomethane	74-95-3	0.11	(2)	15	(1)
*U069	Di-n-butyl phthalate		Di-n-butyl phthalate	84-74-2	0.057		28	(1)
U070	o-Dichlorobenzene	NA	o-Dichlorobenzene	95-50-1	0.088	(2)	6.2	(1)
U071	m-Dichlorobenzene	NA	m-Dichlorobenzene	541-73-1	0.036		6.2	(1)
U072	p-Dichlorobenzene	NA	p-Dichlorobenzene	104-46-7	0.090	(2)	6.2	(1)
U075	Dichlorodifluoromethane	NA	Dichlorodifluoromethane	75-71-8	0.23	(2)	7.2	(1)
U076	1,1-Dichloroethane	NA	1,1-Dichloroethane	75-34-3	0.059	(2)	7.2	(1)
U077	1,2-Dichloroethane	NA	1,2-Dichloroethane	107-06-2	0.21	(2)	7.2	(1)
U078	1,1-Dichloroethylene	NA	1,1-Dichloroethylene	75-35-4	0.025	(2)	33	(1)
U079	1,2-Dichloroethylene	NA	trans-1,2-Dichloroethylene	156-60-5	0.054	(2)	33	(1)
U080	Methylene chloride	NA	Methylene chloride	75-09-2	0.089	(2)	33	(1)
U081	2,4-Dichlorophenol	NA	2,4-Dichlorophenol	120-83-2	0.044	(2)	14	(1)
U082	2,6-Dichlorophenol	NA	2,6-Dichlorophenol	87-65-0	0.044	(2)	14	(1)
U083	1,2-Dichloropropane	NA	1,2-Dichloropropane	78-87-5	0.85	(2)	18	(1)
U084	1,3-Dichloropropene	NA	cis-1,3-Dichloropropylene	10061-01-5	0.036	(2)	18	(1)
			trans-1,3-Dichloropropylene	10061-02-6	0.036	(2)	18	(1)
*U088	Diethyl phthalate		Diethyl phthalate	84-66-2	0.2		28	(1)
U093	p-Dimethylaminoazobenzene	Table 2 in 268.42	p-Dimethylaminoazobenzene	60-11-7	0.13	(2)	NA	
U101	2,4-Dimethylphenol	NA	2,4-Dimethylphenol	105-67-9	0.036	(2)	14	(1)
*U102	Dimethyl phthalate		Dimethyl phthalate	131-11-3	0.047		28	(1)
U105	2,4-Dinitrotoluene	NA	2,4-Dinitrotoluene	121-14-2	0.32	(2)	140	(1)
U106	2,6-Dinitrotoluene	NA	2,6-Dinitrotoluene	606-20-2	0.55	(2)	28	(1)
*U107	Di-n-octyl phthalate		Di-n-octyl phthalate	117-84-0	0.017		28	(1)
U108	1,4-Dioxane	NA	1,4-Dioxane	123-91-1	0.12	(2)	170	(1)
U111	Di-n-propylnitrosoamine	NA	Di-n-propylnitrosoamine	621-64-7	0.40	(2)	14	(1)
U112	Ethyl acetate	NA	Ethyl acetate	141-78-6	0.34	(2)	33	(1)
U117	Ethyl ether	NA	Ethyl ether	60-29-7	0.12	(2)	160	(1)
U118	Ethyl methacrylate	NA	Ethyl methacrylate	97-63-2	0.14	(2)	160	(1)
U120	Fluoranthene	NA	Fluoranthene	206-44-0	0.068	(2)	8.2	(1)
U121	Trichloromonofluoromethane	NA	Trichloromonofluoromethane	75-69-4	0.020	(2)	33	(1)
U127	Hexachlorobenzene	NA	Hexachlorobenzene	118-74-1	0.055	(2)	37	(1)
U128	Hexachlorobutadiene	NA	Hexachlorobutadiene	87-68-3	0.055	(2)	28	(1)

U129	Lindane	NA	alpha-BHC	319-84-6	0.00014	(2)	0.66	(1)
			beta-BHC	319-85-7	0.00014	(2)	0.66	(1)
			Delta-BHC	319-86-8	0.023	(2)	0.66	(1)
			gamma-BHC (Lindane)	58-89-9	0.0017	(2)	0.66	(1)
U130	Hexachlorocyclopenta-diene	NA	Hexachlorocyclopenta-diene	77-47-7	0.057	(2)	3.6	(1)
U131	Hexachloroethane	NA	Hexachloroethane	67-72-1	0.055	(2)	28	(1)
U134	Hydrogen fluoride	Table 2 in 268.42	Fluoride	16964-48-8	35		NA	
U136	Cacodylic acid	Table CCWE in 268.41	Arsenic	7440-38-2	0.79		NA	
U137	Indeno(1,2,3-c,d)pyrene	NA	Indeno(1,2,3-c,d)py-rene	193-39-5	0.0055	(2)	8.2	(1)
U138	Iodomethane	NA	Iodomethane	74-88-4	0.19	(2)	65	(1)
U140	Isobutyl alcohol	NA	Isobutyl alcohol	78-83-1	5.6		170	(1)
U141	Isosafrole	NA	Isosafrole	120-58-1	0.081		2.6	(1)
U142	Kepone	NA	Kepone	143-50-8	0.0011		0.13	(1)
U144	Lead acetate	Table CCWE in 268.41	Lead	7439-92-1	0.040		NA	
U145	Lead phosphate	Table CCWE in 268.41	Lead	7439-92-1	0.040		NA	
U146	Lead subacetate	Table CCWE in 268.41	Lead	7439-92-1	0.040		NA	
U151	Mercury	Table CCWE in 268.41 and Table 2 in 268.42	Mercury	7439-97-6	0.030		NA	
U152	Methacrylonitrile	NA	Methacrylonitrile	126-98-7	0.24	(2)	84	(1)
U154	Methanol	See also Table 2 in 268.42	Methanol	67-56-1	5.6		NA	
U155	Methapyrilene	NA	Methapyrilene	91-80-5	0.081		1.5	(1)
U157	3-Methylcholanthrene	NA	3-Methylcholanthrene	56-49-5	0.0055	(2)	15	(1)
U158	4,4'-Methylenebis(2-chlor-oaniline)	NA	4,4'-Methylenebis(2-chloroaniline)	101-14-4	0.50	(2)	35	(1)
U159	Methyl ethyl ketone	NA	Methyl ethyl ketone	78-93-3	0.28		36	(1)
U161	Methyl isobutyl ketone	NA	Methyl isobutyl ketone	108-10-1	0.14		33	(1)
U162	Methyl methacrylate	NA	Methyl methacrylate	80-62-6	0.14		160	(1)
U165	Naphthalene	NA	Naphthalene	91-20-3	0.059	(2)	3.1	(1)
U168	2-Naphthylamine	Table 2 in 268.42	2-Naphthylamine	91-59-8	0.52	(2)	NA	
U169	Nitrobenzene	NA	Nitrobenzene	98-95-3	0.068	(2)	14	(1)
U170	4-Nitrophenol	NA	4-Nitrophenol	100-02-7	0.12	(2)	29	(1)
U172	N-Nitrosodi-n-butylamine	NA	N-Nitrosodi-n-butyl-amine	924-16-3	0.40	(2)	17	(1)

U174	N-Nitrosodiethylamine	NA	N-Nitrosodiethylamine	55-18-5	0.40	(2)	28	(1)
U179	N-Nitrosopiperidine	NA	N-Nitrosopiperidine	100-75-4	0.013	(2)	35	(1)
U180	N-Nitrosopyrrolidine	NA	N-Nitrosopyrrolidine	930-55-2	0.013	(2)	35	(1)
U181	5-Nitro-o-toluidine	NA	5-Nitro-o-toluidine	99-55-8	0.32	(2)	28	(1)
U183	Pentachlorobenzene	NA	Pentachlorobenzene	608-93-5	0.055	(2)	37	(1)
U185	Pentachloronitrobenzene	NA	Pentachloronitrobenzene	82-68-8	0.055	(2)	4.8	(1)
U187	Phenacetin	NA	Phenacetin	62-44-2	0.081		16	(1)
U188	Phenol	NA	Phenol	108-95-2	0.039		6.2	(1)
*U190	Phthalic anhydride (measured as Phthalic acid)		Phthalic anhydride (measured as Phthalic acid)	85-44-9	0.069		28	(1)
U192	Pronamide	NA	Pronamide	23950-58-5	0.093		1.5	(1)
U196	Pyridine	NA	Pyridine	110-86-1	0.014	(2)	16	(1)
U203	Safrole	NA	Safrole	94-59-7	0.081		22	(1)
U204	Selenium dioxide	Table CCWE in 268.41	Selenium	7782-49-2	1.0		NA	
U205	Selenium sulfide	Table CCWE in 268.41	Selenium	7782-49-2	1.0		NA	
U207	1,2,4,5-Tetrachlorobenzene	NA	1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	(2)	19	(1)
U208	1,1,1,2-Tetrachloroethane	NA	1,1,1,2-Tetrachloroethane	630-20-6	0.057		42	(1)
U209	1,1,2,2-Tetrachloroethane	NA	1,1,2,2-Tetrachloroethane	79-34-5	0.057	(2)	42	(1)
U210	Tetrachloroethylene	NA	Tetrachloroethylene	127-18-4	0.056	(2)	5.6	(1)
U211	Carbon tetrachloride	NA	Carbon tetrachloride	56-23-5	0.057	(2)	5.6	(1)
U214	Thallium(I)acetate	Table 2 in 268.42	Thallium	7440-28-0	0.14	(2)	NA	
U215	Thallium(I) carbonate	Table 2 in 268.42	Thallium	7440-28-0	0.14	(2)	NA	
U216	Thallium(I)chloride	Table 2 in 268.42	Thallium	7440-28-0	0.14	(2)	NA	
U217	Thallium(I)nitrate	Table 2 in 268.42	Thallium	7440-28-0	0.14	(2)	NA	
U220	Toluene	NA	Toluene	108-88-3	0.080	(2)	28	(1)
U225	Tribromomethane (Bromoform)	NA	Tribromomethane (Bromoform)	75-25-2	0.63	(2)	15	(1)
U226	1,1,1-Trichloroethane	NA	1,1,1-Trichloroethane	71-55-6	0.054	(2)	5.6	(1)
U227	1,1,2-Trichloroethane	NA	1,1,2-Trichloroethane	79-00-5	0.054	(2)	5.6	(1)
U228	Trichloroethylene	NA	Trichloroethylene	79-01-6	0.054	(2)	5.6	(1)
U235	tris-(2,3-Dibromopropyl) phosphate	NA	tris-(2,3-Dibromopropyl) phosphate	126-72-7	0.025		0.10	(1)
U239	Xylenes	NA	Xylenes		0.32	(2)	28	(1)
U240	2,4-Dichlorophenoxyacetic acid	NA	2,4-Dichlorophenoxyacetic acid	94-75-7	0.72		10	(1)
U243	Hexachloropropene	NA	Hexachloropropene	1888-71-7	0.035	(2)	28	

U247	Methoxychlor	NA	Methoxychlor	72-43-5	0.25	(2)	0.18	(1)

FOOTNOTE: [1]Treatment standards for this organic constituent were established based upon incineration in units operated in accordance with the technical requirements of 40 CFR 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may certify compliance with these treatment standards according to provisions in 40 CFR Section 268.7.

FOOTNOTE: [2]Based on analysis of composite samples.

FOOTNOTE: [3]As analyzed using SW-846 Method 9010 or 9012; sample size 10 gram; distillation time: one hour and fifteen minutes.

FOOTNOTE: [4]Reseved.

Note: NA means Not Applicable.

No land disposal for:

K005 Nonwastewaters generated by the process described in the waste listing description, and disposed after June 8, 1989, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K007 Nonwastewaters generated by the process described in the waste listing description, and disposed after June 8, 1989, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K021 Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K025 Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K036 Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K044 (Based on Reactivity)

K045 (Based on Reactivity)

K047 (Based on Reactivity)

K060 Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

K061 Nonwastewaters - High Zinc Subcategory (greater than or equal to fifteen (15) percent total zinc) (Based on Recycling): effective 8/8/90

K069 Noncalcium Sulfate Subcategory - Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on Recycling)

K100 Nonwastewater forms of those wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes (Based on No Generation)

(b) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

(c) Notwithstanding the prohibitions specified in paragraph (a) of this subsection, treatment and disposal facilities may demonstrate (and certify pursuant to §268.7(b)(5)) compliance with the treatment standards for organic constituents specified by a footnote in Table CCW in this section, provided the following conditions are satisfied:

1. The treatment standards for the organic constituents were established based on incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or part 265, subpart O, or based on combustion in fuel substitution units operating in accordance with applicable technical requirements;

2. The treatment or disposal facility has used the methods referenced in subparagraph 1 of this paragraph to treat the organic constituents; and

(3) The treatment or disposal facility has been unable to detect the organic constituents despite using its best good-faith efforts as defined by applicable agency guidance or standards. Until such guidance or standards are developed, the treatment or disposal facility may demonstrate such good-faith efforts by achieving detection limits for the regulated organic constituents that do not exceed an order of magnitude of the treatment standards specified in this section.

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 proposed regulation affects persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this regulation. The provisions in this proposed regulation were promulgated by the authority of the federal Resource Conservation and Recovery Act and are imposed on the states regardless of state regulation. Kentucky facilities are already subject to compliance with this regulation whether or not the state adopts

these federal requirements. This 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: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no additional requirements imposed as a result of promulgating the state regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state regulation.

(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 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 regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This 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 regulation is taken from 40 CFR 268 Subpart D. However, there is no federal mandate to promulgate this regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal goverment. This regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS 224.

2. State compliance standards: This proposed regulation complies with KRS Chapter 13A and 224.46-520.

3. Minimum or uniform standards contained in the federal mandate: This proposed regulation conforms to the language in 40 CFR 268 Subpart D.

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 37:050. Prohibitions on storage.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520, 224.46-530

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-505, 224.46-520, and 224.46-530 and to establish [~~KRS 224.46-520 requires that the cabinet may prohibit the land disposal of any hazardous wastes. KRS 224.46-520 requires that the cabinet allow land disposal of hazardous waste when the disposal methods have been determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous. This chapter establishes land disposal restrictions and treatment standards for hazardous wastes. This regulation establishes~~] prohibitions on storage of restricted wastes.

Section 1. [~~Applicability. The requirements in this regulation apply to owners and operators of hazardous waste treatment, storage, and disposal facilities as well as hazardous waste generators and transporters.~~

~~Section 2.~~] Prohibitions on Storage of Restricted Waste. (1) Except as [~~otherwise~~] provided in this section, the storage of hazardous wastes restricted from land disposal under 401 KAR 37:030 or KRS 224.46-520 is prohibited, unless the following conditions are met:

(a) A generator stores such wastes in tanks or containers on site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in section 5 of 401 KAR 32:030. A generator who is in existence on the effective date of this administrative regulation and who [~~shall~~] stores hazardous wastes for longer than ninety (90) days due to the administrative regulations under this chapter becomes an owner or operator of a storage facility and shall obtain a hazardous waste site or facility permit. Such a facility may qualify for interim status upon compliance with the administrative regulations governing interim status under Section 1 of 401 KAR 38:020.

(b) An owner or operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks or containers solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:

1. Each container is clearly labeled with the words "Hazardous Waste," marked to identify its contents and the date each period of accumulation begins;

2. Each tank is clearly labeled with the words "Hazardous Waste," marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator shall comply with the operating record requirements specified in Section 4 of 401 KAR 34:050 or Section 4 of 401 KAR 35:050.

(c) A transporter stores manifested shipments of such wastes at a transfer facility for ten (10) days or less.

(2) An owner or operator of a treatment, storage or disposal facility may store such wastes for up to one (1) year unless the cabinet can demonstrate that such storage was not solely for the purpose of accumulation of such quantities of hazardous waste as are

necessary to facilitate proper recovery, treatment, or disposal.

(3) An owner or operator of a treatment, storage or disposal facility may store such wastes beyond one (1) year, however, the owner or operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(4) If a generator's waste is exempt from a prohibition on the type of land disposal utilized for the waste (for example, because of an approved case-by-case extension under Section 5 of 401 KAR 37:010, an approved Section 6 of 401 KAR 37:010 petition, or a national capacity variance under 401 KAR 37:030), the prohibition in subsection (1) of this section does not apply during the period of such exemption.

~~[(4) The prohibition in subsection (1) of this section does not apply to the wastes which are the subject of an approved petition under Section 6 of 401 KAR 37:010, a nationwide variance contained in 401 KAR 37:030, an approved case-by-case extension under Section 5 of 401 KAR 37:010, or a valid certification under 401 KAR 37:010, Section 8.]~~

(5) The prohibition in subsection (1) of this section does not apply to hazardous wastes that meet the treatment standards specified in 401 KAR 37:040 or the treatment standards specified under the variance in Section 4 ~~[5]~~ of 401 KAR 37:040 or, where treatment standards have not been specified, is in compliance with the applicable prohibitions specified in Section 3 [4] of 401 KAR 37:030 or KRS 224.46-520.

(6) Liquid hazardous waste containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to fifty (50) ppm shall be stored at a facility that meets the requirements of 40 CFR 761.65(b) (1989) and shall be removed from storage and treated or disposed as required by this chapter within one (1) year of the date when such wastes are first placed into storage. The provisions of subsection (3) of this section do not apply to such PCB wastes prohibited under Section 3 [4] of 401 KAR 37:030.

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 persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment storage, and disposal facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. The proposed amendment deletes the "Applicability" in Section 1 which is duplicated from 401 KAR 37:010 and makes other corrections to wording. The provisions in this proposed administrative regulation were promulgated by the authority of the federal Resource Conservation and Recovery Act and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to compliance with this administrative regulation whether or not the state adopts these federal requirements. 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: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 268.50. However, there is no federal mandate to promulgate this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. 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. 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 268.50.

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 38:010. General provisions for permitting.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99[~~, 36 CFR 800, 50 CFR 402, 16 USC 661 et seq., 1273 et seq., 470 et seq., 1531 et seq.~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530[~~, 16 USC 661 et seq., 1273 et seq., 470 et seq., 1531 et seq.~~]

NECESSITY AND FUNCTION: To implement provisions of KRS [~~224.40-305 and~~] 224.46-520 and 224.46-530 to establish general provisions for hazardous waste permitting. [~~require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the Natural Resources and Environmental Protection Cabinet. The permit regulations of this chapter establish provisions for the hazardous waste permit program under KRS Chapter 224. The regulations of this chapter cover the basic permitting requirements, including application requirements, standard permit conditions, and monitoring and reporting. The regulations of this chapter are part of a regulatory scheme implementing the hazardous waste provisions of KRS Chapter 224. Additional requirements are in different chapters of the Kentucky Administrative Regulations.~~]

Section 1. Scope of the Permit Requirements. (1) The hazardous waste permit program has separate additional administrative regulations that contain technical requirements. These separate administrative regulations are used by permit issuing authorities to determine what requirements shall be placed in permits if they are issued. These separate administrative regulations are located in 401 KAR 30:020 and Chapters 34 and 35.

(2) [~~This section sets forth the specific requirements for the hazardous waste site or facility permitting program.~~] KRS 224.46-520 requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in 401 KAR Chapter 31. The terms "treatment [~~facility~~]", "storage [~~facility~~]", [~~and~~] "disposal [~~facility~~]" and "hazardous waste" are defined in 401 KAR 30:010. Owners and operators of hazardous waste management units shall have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to Section 6 of 401 KAR 35:070) after January 26, 1983, shall have postclosure permits, unless they demonstrate closure by removal as provided under paragraphs (e) and (f) of this subsection. If a postclosure permit is required, the permit shall address applicable 401 KAR Chapter 34 groundwater monitoring, unsaturated zone monitoring, corrective action and postclosure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a postclosure permit under this section.

(a) Specific inclusions. Owners or operators of certain facilities require hazardous waste site or facility permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste site or facility permits are required for:

1. Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste (see Section 5 of 401 KAR 38:060). However, the owner or operator with a UIC permit issued by the cabinet under an approved or promulgated UIC program, or by EPA, shall [~~will~~] be deemed to have a permit for the injection well itself if they comply with the requirements of Section 1(2) of 401 KAR 38:060 (permit by rule for injection wells).

2. Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit or KPDES permit when the cabinet program is approved by EPA. However, [~~the~~] owners or operators of a publicly owned treatment works receiving hazardous waste shall [~~will~~] be deemed to have a permit for that waste if they comply with the applicable requirements of Section 1(3) of 401 KAR 38:060 (permit by rule for POTW's).

3. Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment, or storage facilities associated with an ocean disposal operation. However, [~~the~~] owners or operators shall [~~will~~] be deemed to have a permit for ocean disposal for the barge or vessel itself if they comply with the requirements of Section 1(1) of 401 KAR 38:060 (permit by rule for ocean disposal barges and vessels).

(b) Specific exclusions. The following persons are among those who are not required to obtain a hazardous waste site or facility permit:

1. Generators who accumulate hazardous waste on-site for less than the time periods provided in Section 5 or 6 of 401 KAR 32:030 or in accordance with the standards in Section 5(6) of 401 KAR 31:010.

2. Farmers who dispose of hazardous waste pesticides from their own use as provided in Section 10 of 401 KAR 32:050.

3. Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from administrative regulations under this chapter by Section 4 of 401 KAR 31:010 except as provided in 401 KAR 38:060.

4. Owners or operators of totally enclosed treatment facilities as defined in 401 KAR 30:010.

5. Owners or operators of elementary neutralization units or of waste water treatment units as defined in 401 KAR 30:010 except as provided in Section 1(4) and (5) of 401 KAR 38:060.

6. Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of Section 1 of 401 KAR 32:030, at a transfer facility for a period of ten (10) days or less.

7. Persons adding absorbent material to waste in a container (as defined in Section 1 of 401 KAR 30:010) and persons adding waste to absorbent material in a container provided that these actions occur at the time waste is first placed in the container; and Section 8(2) of 401 KAR 34:020, and Sections 2 and 3 of 401 KAR 34:180 are complied with.

(c) Further exclusions.

1. A person is not required to obtain a hazardous waste permit for treatment or containment activities taken during immediate response to any of the following situations:

a. A discharge of a hazardous waste;

b. An imminent and substantial threat of a discharge of hazardous waste;

c. A discharge of a material which, when discharged, becomes a hazardous waste.

2. Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

(d) Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(e) Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under 401 KAR Chapter 35 standards shall obtain a postclosure permit unless they can demonstrate to the cabinet that the closure met the standards for closure by removal or decontamination in Section 6 of 401 KAR 34:200, Section 8(5) of 401 KAR 34:220, or Section 8 of 401 KAR 34:210, respectively. The demonstration may be made in the following ways:

1. If the owner or operator has submitted a Part B application for a postclosure permit, the owner or operator may request a determination based on information contained in the application that 401 KAR Chapter 34 closure by removal standards were met. If the cabinet believes that 401 KAR Chapter 34 standards were met, it shall notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in paragraph (f) of this subsection.

2. If the owner or operator has not submitted a Part B application for a postclosure permit, the owner or operator may petition the cabinet for a determination that a postclosure permit is not required because the closure met the applicable 401 KAR Chapter 34 closure standards.

a. The petition shall include data demonstrating that closure by removal or [~~of~~] decontamination standards were met, or it shall demonstrate that the unit closed under [~~state~~] requirements that met or exceeded the applicable 401 KAR Chapter 34 closure-by-removal standard.

b. The cabinet shall approve or deny the petition according to the procedures outlined in paragraph (f) of this subsection.

(f) Procedures for closure equivalency determination.

1. If a facility owner or operator seeks an equivalency demonstration under paragraph (e) of this subsection, the cabinet shall provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within thirty (30) days from the date of the notice. The cabinet shall also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one (1) or more issues concerning the equivalence of the 401 KAR Chapter 35 closure to a 401 KAR Chapter 34 closure. The cabinet shall give public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two (2) notices may be combined.)

2. The cabinet shall determine whether the 401 KAR Chapter 35 closure met 401 KAR Chapter 34 closure by removal or decontamination requirements within ninety (90) days of its receipt of the petition. If the cabinet finds that the closure did not meet the applicable 401 KAR Chapter 34 standards, it shall provide the owner or operator with a written statement of the reasons why the closure failed to meet 401 KAR Chapter 34 standards. The owner or operator may submit additional information in support of an equivalency demonstration within thirty (30) days after receiving such written statement. The cabinet shall review any additional information submitted and make a final determination within sixty (60) days.

3. If the cabinet determines that the facility did not close in accordance with 401 KAR Chapter 34 closure by removal standards, the facility is subject to postclosure permitting requirements.

Section 2. Considerations of Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable federal laws. These laws may include:

(1) 16 USC 1273-1287 (The Wild and Scenic Rivers Act), Section 7 of the Act prohibits the assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(2) 16 USC 470 (The National Historic Preservation Act of 1966, as amended), Section 106 of the Act and implementing regulations (36 CFR Part 800) (1989) require the adoption measures before issuing a license, when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(3) 16 USC 1531 (The Endangered Species Act, as amended), Section 7 of the Act and implementing regulations (50 CFR Part 402) (1989) require that in consultation with the Secretary of the Interior or Commerce, any action authorized is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(4) 16 USC 661 et seq., (The Fish and Wildlife Coordination Act of 1958, as amended) requires that, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion or other control or modification of any body of water, the permitting agency shall consult with the appropriate state agency exercising jurisdiction over wildlife resources to conserve those resources.

Section 3. Effect of a Permit. (1) Compliance with a hazardous waste permit during its term constitutes compliance with KRS Chapter 224 for purposes of enforcement except for those requirements not included in the permit which:

(a) Become effective by statute;

(b) [~~or which~~] Are promulgated under 401 KAR Chapter 37 restricting the placement of hazardous wastes in or on the land; or

(c) Are promulgated under 401 KAR Chapter 34 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, COA programs, monitoring, action leakage rates and response action plans, and shall be implemented through the procedures of this chapter. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in 401 KAR 38:040 and in 401 KAR Chapter 40, or the permit may be modified upon the request of the permittee as set forth in 401 KAR 38:040.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local laws or administrative regulations.

Section 4. Prohibition of Use of Unpermitted Facility. (1) Restrictions. No person shall deliver hazardous waste to a facility for treatment, storage, or disposal unless the owner or operator has:

(a) Registered with the cabinet as an existing hazardous waste facility in operation on or before November 19, 1980; or

(b) Qualified for interim status in accordance with Section 1(1) of 401 KAR 38:020; or

(c) Been granted a hazardous waste site or facility permit by the

cabinet.

(2) Permit required. No person shall engage in the storage, treatment, or disposal of hazardous waste without first obtaining construction or operation permits from the cabinet as specified in KRS 224.46-520(1).

(3) Issuance of a federal permit to own or operate a hazardous waste site or facility shall [~~will~~] not relieve the owner or operator of the responsibility to comply with the requirements of this chapter.

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 apply for a hazardous waste permit.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed amendment adds references to the proposed changes to 401 KAR Chapter 34 and makes other minor corrections. 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: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 270 Subpart A. However, there is no federal mandate to promulgate this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. 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. 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 270 Subpart A.

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 38:020. Interim status provisions.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish [~~KRS 224.40-305 and 224.46-520 require~~

~~any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. This regulation establishes~~] permitting standards for interim status facilities.

Section 1. Qualifying for Interim Status. (1) Any person who owns or operates an "existing hazardous waste management facility" or a hazardous waste site or facility in existence on the effective date of statutory or regulatory amendments under [~~the Resource Conservation and Recovery Act (~~]RCRA[~~)~~] that render the facility subject to the requirements to have a RCRA permit shall have interim status and shall be treated as having been issued a permit to the extent he [~~or she~~] has:

(a) Complied with the requirements of KRS 224.46-520 pertaining to notification of an existing hazardous waste activity; and

(b) Complied with the requirements of 401 KAR 38:070 governing submission of Part A applications.

(2) When the cabinet determines on examination or reexamination of a Part A application (or its equivalent, Registration of Intent to Apply for a Permit) that it fails to meet the standards of these administrative regulations, it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to interim status. The owner or operator shall then be subject to enforcement procedures for operating without a permit.

(3) Subsection (1) of this section shall not apply to any facility which has been previously denied a permit or if authority to operate the facility under 401 KAR Chapters 30 to [~~through~~] 39 and KRS Chapter 224 has been previously terminated.

Section 2. Operation During Interim Status. (1) During the interim status period the facility, except as provided in Section 3 of this [~~the~~] administrative regulation, shall not:

(a) Treat, store or dispose of hazardous waste not specified in Part A of the permit application (or its equivalent, Registration of Intent to Apply for a Permit);

(b) Employ processes not specified in Part A of the permit application (or its equivalent, Registration of Intent to Apply for a Permit); or

(c) Exceed the design capacities specified in Part A of the permit application (or its equivalent, Registration of Intent to Apply for a Permit).

(2) During interim status, owners or operators shall comply with the interim status standards in 401 KAR Chapter 35.

Section 3. Changes During Interim Status. (1) Except as provided in subsection (2) of this section, the owner or operator of an interim status facility may make the following changes at the facility:

(a) Treatment, storage, or disposal of new hazardous wastes not previously identified in Part A of the permit application (and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification) if the owner or operator submits a revised Part A permit application prior to the treatment, storage, or disposal;

(b) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A permit application prior to a change (along with a justification explaining the need for the change) and the cabinet approves the changes because:

1. There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities; or

2. The change is necessary to comply with a federal, state, or local requirement.

(c) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A permit application prior to such change (along with a justification explaining the need for the change) and the cabinet approves the change because:

1. The change is necessary to prevent a threat to human health and the environment because of an emergency situation; or

2. The change is necessary to comply with a federal, state, or local requirement.

(d) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised Part A permit application no later than ninety (90) days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of 401 KAR 35:080 to [~~through~~] 35:130 [~~(Financial Requirements)~~] until the new owner or operator has demonstrated to the cabinet that he is complying with the requirements of that chapter. The new owner or operator shall demonstrate compliance with 401 KAR 35:080 to [~~through~~] 35:130 requirements within six (6) months of the date of the change in ownership or operational control of the facility. Upon demonstration to the cabinet by the new owner or operator of compliance with 401 KAR 35:080 to [~~through~~] 35:130, the cabinet shall notify the old owner or operator in writing that he no longer needs to comply with 401 KAR 35:080 through 35:130 as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility.

(e) Changes made in accordance with an interim status corrective action order issued by EPA under section 3008(h) of RCRA or other federal authority, by the cabinet, or by a court in a judicial action brought by EPA or by the cabinet. Changes under this subsection are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(f) Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised Part A permit application on or before the date on which the unit becomes subject to the new requirements.

(2) Except as specifically allowed under this subsection, changes listed under subsection (1) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty (50) percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(a) Changes made solely for the purposes of complying with the requirements of Section 4 of 401 KAR 35:190[~~, Section 4,~~] for tanks and ancillary equipment.

(b) If necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of the replacement [~~of~~] surface impoundments that satisfy the standards of Section 3004(o) of RCRA.

(c) Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of this [~~the~~] administrative regulation establishing the new listing or identification.

(d) Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

(e) Changes necessary to comply with an interim status corrective action order issued by EPA under section 3008(h) of RCRA or other federal authority, by the cabinet, or by a court in a judicial proceeding brought by EPA or the cabinet, provided that the changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(f) Changes to treat or store, in tanks or containers, hazardous wastes subject to land disposal restrictions imposed by 401 KAR Chapter 37 or KRS Chapter 224, provided that the changes are made solely for the purpose of complying with 401 KAR Chapter 37 or KRS Chapter 224.

(g) Addition of newly regulated units under subsection (1)(f) of this

section.

Section 4. Termination of Interim Status. Interim status terminates when:

(1) Final administrative disposition of a permit application is made; or

(2) Interim status is terminated as provided in Section 4 of 401 KAR 38:040.

(3) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(a) The owner or operator submits a Part B application for a permit for the facility prior to that date; and

(b) The owner or operator certifies that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

(4) For owners or operators of each land disposal facility which is in existence on November 8, 1984 or the date applicable amendments are made to 401 KAR Chapters 30 to [~~through~~] 39 which render the facility subject to the requirements in 401 KAR Chapters 30 to [~~through~~] 39 and which is granted interim status, twelve (12) months after the date on which the facility first becomes subject to the permit requirement unless the owner or operator of the facility:

(a) Submits a Part B application for a permit for the facility before the date twelve (12) months after the date on which the facility first becomes subject to the permit requirements; and

(b) Certifies that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

(5) For owners or operators of any land disposal unit that is granted authority to operate under Section 3(1)(a), (b), and (c) of this administrative regulation, on the date twelve (12) months after the effective date of the requirement, unless the owner or operator certifies that the unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(6) For owners or operators of each incinerator facility which has achieved interim status prior to [~~on~~] November 8, 1989, interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a Part B application for a permit for an incinerator facility by November 8, 1986.

(7) For owners or operators of any facility (other than a land disposal or an incinerator facility) which has achieved interim status prior to [~~on~~] November 8, 1984 [~~1992~~], interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a Part B application for a permit for the facility by November 8, 1988.

Section 5. Deadlines for Submission of Part B of the Application. All hazardous waste sites or facilities which have submitted Part A of the application or its equivalent shall be required to submit Part B of the application within six (6) months of the cabinet's decision to require the submittal, according to Section 2(4) of 401 KAR 38:070. The cabinet may base its decision to require Part B of the application upon receiving Phase II or final authorization from the [~~US~~] EPA. However, in accordance with KRS 224.46-520(1), the cabinet may require submission of Part B of the application at any time.

PHILLIP J. SHEPHERD, Secretary
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 interim status hazardous waste sites or facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed amendment adds changes made in response to EPA comments on previous amendments to this administrative regulation and updated requirements for interim status sites or facilities. This proposed amendment is being promulgated as a result of amendments to federal regulations required by the Hazardous and Solid Waste Amendments to the Resource Conservation Act which take effect upon promulgation whether or not the state has administrative regulations in effect. 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: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 270 Subpart G. However, there is no federal mandate to promulgate this administrative regulation. Some of the changes included in this proposed amendment are already in effect for Kentucky hazardous waste sites or facilities with permits even if this administrative regulation is not adopted. Other changes are being made in response to EPA comments on the previous amendments to this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated 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 270 Subpart 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 38:040. Changes to permits; expiration of permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99[~~, 40 CFR 270.42~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520, 224.46-530[~~, 40 CFR 270.42~~]

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and 224.46-530 relative to changes and expiration of hazardous waste permits. [~~KRS 224.40-305 and 224.46-520 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes permitting standards on duration, termination, renewal and deadlines.~~]

Section 1. Transfer of Permits. (1) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under subsection (2) of this section or Section 2(2)(b) of this administrative regulation) [~~or a minor modification made (under Section 3(4) of this regulation)~~] to identify the new permittee and incorporate such other requirements as may be necessary under KRS Chapter 224 and the waste management administrative regulations.

(2) Changes in ownership or operational control of a facility may be made as a major modification with prior written approval of the cabinet in accordance with Section 2 of this administrative regulation. The new owner or operator shall submit a revised permit application no later than ninety (90) days prior to the scheduled change. Among other demonstrations, this application shall comply with KRS 224.40-330. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees shall also be submitted to the cabinet. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of 401 KAR Chapter 34 until the cabinet approves transfer to the new owner or operator. The new owner or operator shall demonstrate compliance with Section 2 of this administrative regulation and 401 KAR Chapter 34 within six (6) months of the date of the change of ownership or operational control of the facility. Upon demonstration to the cabinet by the new owner or operator of compliance with 401 KAR Chapter 34, the cabinet shall notify the old owner or operator that he no longer needs to comply with 401 KAR Chapter 34 as of the date of demonstration.

Section 2. Major Modification or Revocation and Reissuance of Permits. When the cabinet receives any information (for example, if the cabinet inspects the facility, receives information submitted by the permittee as required in the permit under Section 1 of 401 KAR 38:030, receives a request for modification or revocation and reissuance under Section 2 of 401 KAR 38:050, or conducts a review of permit file), the cabinet may determine whether [~~or not~~] one (1) or more of the causes listed in subsections (1) and (2) of this section for modification or revocation and reissuance or both exist. If cause exists, the cabinet may modify or revoke and reissue the permit accordingly, subject to the limitations of subsection (3) of this section and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term (see Section 2(4) of 401 KAR 38:050). If cause does not exist under this section or Section 3 of this administrative regulation, the cabinet shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in Section 3 of this administrative regulation for "minor modifications," the permit may be modified without a draft permit or public review. Otherwise, a draft permit shall [~~must~~] be prepared and other procedures in 401 KAR 38:050 and, if applicable, 401 KAR 38:500 followed.

(1) Causes for modification. Paragraphs (a) to [~~through~~] (d) of this subsection are causes for modification but not revocation and reissuance of permits. Paragraphs (a) to [~~through~~] (d) of this subsection may be causes for revocation and reissuance as well as modification, when the permittee requests or agrees.

(a) Alterations. There are material and substantial alterations or additions to the permitted hazardous waste site or facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(b) Information. The cabinet has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised administrative regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(c) New statutory requirements or administrative regulations. The

standards or administrative regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or administrative regulations, or by judicial decision after the permit was issued. Except as provided in paragraph (e) of this subsection, permits may be modified during their terms for this cause as follows:

1. The cabinet may modify the permit when the standards or administrative regulations on which the permit was based have been changed by statute or amended standards or administrative regulations.

2. Permittee may request modification when:

a. The permit condition to be modified was based on a promulgated [~~an effective hazardous waste management~~] administrative regulation in 401 KAR Chapters 30 to 38; and

b. The cabinet has revised, withdrawn, or modified that portion of the administrative regulation on which the permit condition was based; or

c. A permittee requests modification in accordance with Section 2 of 401 KAR 38:050 within ninety (90) days after notice of the action on which the request is based.

3. For judicial decisions, a court of competent jurisdiction has remanded and stayed cabinet promulgated administrative regulations, if the remand and stay concern that portion of the administrative regulations on which the permit condition was based or if a request is filed by the permittee in accordance with Section 2 of 401 KAR 38:050 within ninety (90) days of judicial remand.

(d) Compliance schedules. The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy (see also Section 3 of this administrative regulation on minor modifications).

(e) The cabinet may modify a permit:

1. When modification of a closure plan is required under Section 3(2) or 4(2) of 401 KAR 34:070[~~, Section 3(2) or 4(2)~~].

2. When the cabinet receives notification of expected closure under Section 4 of 401 KAR 34:070[~~, Section 4,~~] and finds that any of the following previously granted permit conditions are no longer warranted:

a. Extension of the ninety (90) or 180 day periods under Section 4 of 401 KAR 34:070[~~, Section 4~~];

b. Modification of an extended postclosure care period under Section 7 of 401 KAR 34:070[~~, Section 7~~];

c. Continuation of security requirements under Section 7(2) of 401 KAR 34:070[~~, Section 7(2)~~]; or

d. Permission to disturb the integrity of the containment system under Section 7(3) of 401 KAR 34:070[~~, Section 7(3)~~].

3. When the permittee has filed a request under Section 4 of 401 KAR 34:120[~~, Section 4~~] for a variance to the level of financial responsibility or when the cabinet demonstrates under Section 5 of 401 KAR 34:120[~~, Section 5~~] that an upward adjustment of the level of financial responsibility is required.

4. When the corrective action program specified in the permit under Section 11 of 401 KAR 34:060 has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable period of time.

5. To include a detection monitoring program meeting the requirements of Section 9 of 401 KAR 34:060, when the owner or operator has been conducting a compliance monitoring program under Section 10 of 401 KAR 34:060 or a corrective action program under Section 11 of 401 KAR 34:060 and the compliance period ends before the end of the postclosure care period for the unit.

6. When a permit requires a compliance monitoring program under Section 10 of 401 KAR 34:060, but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard.

7. To include the conditions applicable to units at a facility that were not previously included in the site or facility's permit.

8. When a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

9. To include conditions applicable in new or amended standards or administrative regulations.

10. When modification is necessary to protect the public health or the environment.

11. To include conditions applicable as the result of a hearing or enforcement action as specified in 401 KAR Chapter 40.

(f) Not withstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the cabinet under Section 5(4) of this administrative regulation, the cabinet shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in 401 KAR Chapters 30 to [~~through~~] 39.

(2) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) Cause exists for termination under Section 4 of this administrative regulation and the cabinet determines that modification or revocation and reissuance is appropriate.

(b) The cabinet has received notification (as required in the permit in Section 1(12)(c) of 401 KAR 38:030) of a proposed transfer of the permit.

(c) Cause exists for termination under Section 2(1)(e) and (f) of this administrative regulation, and the cabinet determines that modification or revocation and reissuance is appropriate.

(3) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

(4) Major modifications that include changes in ownership and operational control of a facility may be made if the new owner or operator submits a revised permit application no later than ninety (90) days prior to the scheduled change. A change in ownership or operational control includes a transfer of twenty-five (25) or more percent interest in the corporation, joint venture, partnership, proprietorship, or entity designated to own or operate the hazardous waste site or facility. When a transfer of ownership or operational control of a site or facility occurs, the old owner or operator shall comply with the requirements of 401 KAR 34:080 to [~~through~~] 401 KAR 34:176 (financial requirements), until the new owner or operator has demonstrated to the cabinet that he is complying with the requirements in 401 KAR 34:080 to [~~through~~] 401 KAR 34:176. The new owner or operator shall demonstrate compliance with the requirements in 401 KAR 34:080 to [~~through~~] 401 KAR 34:176 within six (6) months of the date of the change in the ownership or operational control of the site or facility. Upon demonstration to the cabinet by the new owner or operator of compliance with the requirements in 401 KAR 34:080 to [~~through~~] 401 KAR 37:176, the cabinet shall notify the old owner or operator in writing that he no longer needs to comply with the requirements in 401 KAR 34:080 to [~~through~~] 401 KAR 34:176 as of the date of demonstration. Past performance as specified in Section 2(20) of 401 KAR 38:090[~~, Section 2(20)~~] shall be considered. The provisions set forth in Section 3 of this administrative regulation as amended on March 10, 1988, shall apply to requests for modification received by the cabinet prior to November 14, 1990, and including all additional information and documentation submitted subsequent to November 14, 1990, as requested by the cabinet.

Section 3. Minor Modifications of Permits. Upon consent of the permittee, the cabinet may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 401 KAR 38:050. Any permit modification not processed as a minor modification under this section shall be made for cause and with a 401 KAR 38:050 draft

permit, public notice as required in Section 2 of this administrative regulation and, if applicable, compliance with 401 KAR 38:500 shall be demonstrated.

(1) The permittee shall put into effect minor modifications listed in subsection (3) of this section under the following conditions:

(a) The permittee shall inform the cabinet concerning the modification by certified mail or other means that establish proof of delivery within seven (7) calendar days after the change is put into effect. This notice shall [~~must~~] specify the changes being made to permit conditions or supporting documents referenced by the permit, and shall [~~must~~] explain why they are necessary. Along with the notice, the permittee shall [~~must~~] provide a completed notification of minor modifications to hazardous waste permits not requiring prior approval of the cabinet, as incorporated by reference in subsection (2) of this section. The permittee shall [~~should~~] also provide the applicable information from Parts A and B of the Kentucky Hazardous Waste Permit Application as it relates to the specific type of facility.

(b) The permittee shall send a notice of the modification to all persons on the facility mailing list and the appropriate units of local government. This notification shall be made within ninety (90) calendar days after the cabinet approves the request.

(c) Any person may request that the cabinet review, and the cabinet may, for cause, reject[,] any minor modification. The cabinet shall inform the permittee by certified mail that a minor modification has been rejected, explaining the reasons for the rejection. If a minor modification has been rejected, the permittee shall comply with the original permit conditions.

(d) Minor modifications listed in subsection (3) of this section requiring "Prior Approval" shall be made only with the prior written approval of the cabinet.

(e) For a minor modification, the permittee may elect to follow the procedures for major modifications instead of the minor modifications procedures. The permittee shall inform the cabinet of this decision in the notice required in Section 2 of this administrative regulation.

(2) Form DEP 7092 entitled "Notification of Minor Modifications to Hazardous Waste Permits Not Requiring Prior Approval of the Cabinet" is hereby incorporated by reference. This application is available at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between [~~. The business hours of the division are from~~] 8 a.m. and [~~to~~] 4:30 p.m., eastern time, Monday through Friday, except on state holidays.

(3) The following shall be used to determine whether prior approval is required for a minor modification:

[~~APPENDIX I TO 40 CFR 270.42~~]
CLASSIFICATION OF PERMIT MODIFICATION (1 OF 6)

TYPE OF MINOR MODIFICATION	PRIOR APPROVAL	NOTIFICATION
(a) General Permit Provisions:		
1. Administrative and informative changes.		X
2. Correction of typographical errors.		X
3. Equipment replacement or upgrading with functionally equivalent components (e.g. pipes, valves, pumps, conveyors, controls).		X
4. Changes to provide for more frequent monitoring, reporting, sampling, or maintenance activities by the permittee.		X
5. Changes in interim compliance dates.	X	
(b) General Facility Standards:		
1. Changes to waste sampling or analysis methods to conform with agency guidelines or administrative regulations.		X
2. Changes associated with F039 (multisource leachate) sampling or analysis methods.		X
3. Changes to analytical quality assurance or the quality control plan to conform with agency administrative regulations.		X
4. [~~3.~~] Changes in the training plan, except to decrease the amount of training or type of training.		X
5. [~~4.~~] Changes in names, address or phone number of coordinators or other persons or agencies identified in the contingency plan.		X
6. Changes that the COA officer certifies in the operating record shall provide equivalent or better certainty that the unit components meet the design standards.		X
7. Other COA changes.		X
(c) Groundwater Protection:		
1. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.		X
2. Changes in groundwater sampling or analysis procedures or monitoring schedule.		X
3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred.		X
(d) Closure:		
1. Changes to the closure plan in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility.		X
2. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period.		X
3. Changes in the expected year of final closure, where other permit conditions are not changed.		X
4. Changes in procedures for decontamination of facility equipment or structures.		X
5. Changes in approved closure plan resulting from unexpected events occuring during partial or final closure, unless otherwise specified in this section.		X
6. Extension of the closure period to allow a landfill, surface impoundment or land treat-		X

	ment unit to receive non-hazardous wastes after final receipt of hazardous wastes under Section 4(4) and (5) of 401 KAR 34:070.		
(e)	Postclosure:		
1.	Changes in name, address, or phone number of contact in post-closure plan.	X	
2.	Changes to the expected year of final closure, where other permit conditions are not changed.	X	
(f)	Containers:		
1.	Addition of a roof to a container unit without alteration of the containment system.		X
(g)	Tanks:		
1.	Addition of a new tank that will operate for up to ninety (90) days using any of the following physical or chemical treatment technologies: neutralization, dewaterizing, phase separation, or component separation.	X	
2.	Replacement of a tank with a tank that meets the same design standards and has a capacity within +/- ten (10) percent of the replaced tank provided:	X	
a.	The capacity difference is no more than 1500 gallons.		
b.	The facility's permitted tank capacity is not increased.		
c.	The replacement tank meets the same conditions in the permit.		
(h)	Surface Impoundments:		
1.	Modifications of unconstructed units to comply with 401 KAR 34:200.	X	
2.	Changes in response action plan.	X	
a.	Increase in action leakage rate.	X	
b.	Changes in specific response reducing its frequency or effectiveness.	X	
c.	Other changes.		
3.	Other changes.	X	
(i)	[~~(h)~~] Enclosed Waste Piles:		
1.	Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit.	X	
(j)	Landfills and Unenclosed Waste Piles:		
1.	Modifications of unconstructed units to comply with 401 KAR 34:210.	X	
2.	Changes in response action plan.	X	
a.	Increase in action leakage rate.	X	
b.	Change in a specific response reducing its frequency or effectiveness.	X	
c.	Other changes in response action plan.		
3.	Other changes.	X	
(k)	[~~(i)~~] Land Treatment:		
1.	Modification of a land treatment unit management practice to decrease rate of waste application.		X
2.	Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met.	X	
3.	Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration conducted have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration. In addition, the land treatment waste application rate cannot exceed previously established waste application rates.	X	
(l)	[~~(j)~~] Incinerators - Shakedown and Trial Burn:		
1.	Authorization of up to an additional 720 hours of waste incineration during the shakedown period for determining operational readiness after construction.	X	
2.	Minor changes in the operating requirements set in the permit for conducting a trial burn.	X	
3.	Minor changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn.	X	

Section 4. Termination of Permits. (1) The cabinet may terminate a permit during its term or deny a permit renewal application for the following causes:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(d) A violation of any requirement of KRS Chapter 224 or the respective administrative regulations promulgated pursuant thereto (including 401 KAR 40:040).

(2) The cabinet shall follow the applicable procedures in this administrative regulation and in 401 KAR 38:050 and 401 KAR Chapter 40 in terminating any permit under this section.

Section 5. Duration of Permit. (1) Term of permit. Hazardous waste site or facility permits shall be effective for a fixed term not to exceed ten (10) years. (See also Section 5 of 401 KAR 38:060[~~, Interim permits for UIC wells~~].)

(2) Modification of term of permit. Except as provided in Section 6 of this administrative regulation, the term of a permit shall not be extended by modification beyond the maximum duration specified in

subsection (1) of this section.

(3) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsection (1) of this section.

(4) Each permit for a land disposal facility shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in Section 2 of this administrative regulation.

(5) A permit for the nerve agents specified in KRS 224.50-130 shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in Section 2 of this administrative regulation.

Section 6. Continuation of Expiring Permits. (1) The conditions of an expired permit continue in force until the effective date of a new permit if:

(a) The permittee has submitted a timely application under 401 KAR 38:090 and 401 KAR 38:100 and the applicable requirements in 401 KAR 38:150 to [~~through~~] 401 KAR 38:210 and which is a complete (under Section 1(3) of 401 KAR 38:070) application for a new permit, paid the appropriate fees due (under 401 KAR Chapter 39); and

(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resources constraints).

(2) Effect. Permits continued under this section remain fully effective and enforceable.

(3) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the cabinet may choose to do any or all of the following:

(a) Initiate enforcement action based upon the permit which has been continued;

(b) Issue a notice of intent to deny the new permit under Section 3 of 401 KAR 38:050. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(c) Issue a new permit under 401 KAR 38:050 with appropriate conditions; or

(d) Take other actions authorized by 401 KAR Chapters 30 to [~~through~~] 40.

(4) State continuation. As provided in 40 CFR 270.51(d), an EPA issued permit shall not continue in force beyond its expiration date under federal law if at that time the cabinet is the RCRA permitting authority.

PHILLIP J. SHEPHERD, Secretary
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 apply for a hazardous waste permit.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed amendment adds requirements for modifications to permits and is being promulgated as a result of amendments to federal regulations required by the Hazardous and Solid Waste Amendments to the Resource Conservation Act which take effect upon promulgation whether or not the state has administrative regulations in effect. 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: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 270 Subpart D. However, there is no federal mandate to promulgate this administrative regulation. The subject of this proposed amendment is already in effect for Kentucky hazardous waste sites or facilities with permits even if this administrative regulation is not adopted. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. 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. 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 270 Subpart D.

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 38:050. Public information procedures.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.40-305, 224.46-520

NECESSITY AND FUNCTION: KRS 224.40-305 and 224.46-520 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities and [~~. This regulation~~] establishes standards on public information procedures and confidentiality.

Section 1. Application for a Permit. (1)(a) Any person who requires a hazardous waste site or facility permit under KRS Chapter 224 shall complete, sign, and submit to the cabinet an application for each permit required under Section 1 of 401 KAR 38:010. Applications are not required for hazardous waste site or facility permits by rule (Section 1 of 401 KAR 38:060) or underground injections authorized by rule. However, for all facilities, including underground injection wells, which meet the definition of a disposal facility (see 401 KAR 30:010), compliance with the requirements of 401 KAR 38:500 (Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility Siting Board), if applicable, shall be demonstrated to the cabinet prior to construction or operation under a permit by rule.

(b) The cabinet shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit (see Sections 1 through 6 of 401 KAR 38:070, 401 KAR 38:080 and the applicable requirements in 401 KAR 38:150 through 38:210). Applications shall be processed in accordance with 401 KAR 38:025.

(c) Permit applications shall comply with the signature and certification requirements of Section 7 of 401 KAR 38:070.

(2) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. When the application is for an existing hazardous waste site or facility, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet may notify the applicant that the application is complete upon receiving this information. Any application, complete or incomplete, may be denied based on the considerations set forth in KRS 224.46-520.

(3) If an applicant fails or refuses to correct deficiencies in the application or if the applicant fails or refuses to submit additional information, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision.

(4) If the cabinet decides that a site visit is necessary for any reason in conjunction with the processing of an application, a representative of the cabinet shall notify the applicant and a date shall be scheduled.

(5) The effective date of an application is the date on which the cabinet notifies the applicant that the application is complete as provided in subsection (2) of this section.

(6) For each application, the cabinet shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the cabinet intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing; and

(d) Issue a final permit.

Section 2. Modification, Revocation and Reissuance, or Termination of Permits. (1) A permit for a hazardous waste site or facility may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the cabinet's initiative. However, a permit may only be modified, revoked and reissued, or terminated for the reasons specified in Sections 2 and 4 of 401 KAR 38:040 and following the procedures of 401 KAR Chapter 40. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the cabinet decides the request is not justified, the cabinet shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(3)(a) If the cabinet tentatively decides to modify or revoke and reissue a permit under Section 2 of 401 KAR 38:040, the cabinet shall prepare a draft permit under Section 3 of this administrative regulation incorporating the proposed changes. The cabinet may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the cabinet shall require the submission of a new application.

(b) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(c) "Minor modifications" as defined in Section 3 of 401 KAR 38:040 are not subject to the requirements of this section.

(4) If the cabinet tentatively decides to terminate a permit under Section 4 of 401 KAR 38:040, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Section 3 of this administrative regulation.

(5) All draft permits (including notices of intent to terminate) prepared under Sections 3 through 5 of this administrative regulation shall be based on the administrative record as defined in Section 6 of this administrative regulation.

Section 3. Draft Permits. (1) Once an application is complete, the cabinet shall tentatively decide whether to prepare a draft permit or to deny the application. In making this determination the cabinet shall consider the requirements specified in the waste management administrative regulations and in KRS 224.46-520.

(2) If the cabinet tentatively decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this subsection (see subsection (4)). If the cabinet's final decision is that the tentative decision to deny the permit application was incorrect, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.

(3) If the cabinet decides to prepare a draft permit, the draft permit shall contain the following information:

(a) All conditions under Sections 1 and 3 of 401 KAR 38:030;

(b) All compliance schedules under Section 4 of 401 KAR 38:030;

(c) All monitoring requirements under Section 2 of 401 KAR 38:030; and

(d) Standards for treatment, storage or disposal, and other permit conditions under Section 1 of 401 KAR 38:030.

(4) All draft permits prepared by the cabinet under this section shall be accompanied by a statement of basis (see Section 4 of this administrative regulation) or fact sheet (see Section 5 of this administrative regulation) and shall be based on the administrative record (see Section 6 of this administrative regulation) and publicly noticed (see Section 7 of this administrative regulation), and shall be made available for public comment (see Section 8 of this administrative regulation). The cabinet shall give notice of the opportunity for a public hearing as required by KRS 224.40-310 (see Section 9 of this administrative regulation), issue a final decision and respond to comments (see Section 11 of this administrative regulation). An appeal may be taken under KRS 224.10-420. [~~Draft permits shall be accompanied by a fact sheet if required under Section 5 of this regulation.~~]

Section 4. Statement of Basis. The cabinet shall prepare a statement of basis for every draft permit for which a fact sheet under Section 5 of this administrative regulation is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

Section 5. Fact Sheet. (1) A fact sheet shall be prepared for every draft permit for a hazardous waste site or facility which includes an incinerator, a surface impoundment, disposal facility ([~~i.e.,~~] landfill, land treatment facility, injection well, for example [~~etc.~~]), or a research, development, and demonstration facility, and for every draft permit which the cabinet finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The cabinet shall send this fact sheet to the applicant and, on request, to any other person.

(2) The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by Section 6 of this administrative regulation;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 7 of this administrative regulation and the address where comments shall be received;

2. Procedures for requesting a hearing and the nature of that hearing; and

3. Any other procedures by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

Section 6. Administrative Record for Draft Permits. (1) The provisions of a draft permit prepared by the cabinet under Section 3 of this administrative regulation shall be based on the administrative record defined in this section.

(2) For preparing a draft permit under Section 3 of this administrative regulation, the record shall consist of:

(a) The application, if required, and any supporting data furnished by the applicant;

(b) The draft permit or notice of intent to deny the application or to terminate the permit;

(c) The statement of basis (see Section 4 of this administrative regulation) or fact sheet (see Section 5 of this administrative regulation);

(d) All documents cited in the statement of basis or the fact sheet; and

(e) Other documents contained in the supporting file for the draft permit.

(3) Material readily available at the cabinet's office or published material that is generally available, and that is included in the administrative record under this subsection and subsection (2) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

(4) This section applies to all draft permits when public notice was given after the effective date of these administrative regulations.

Section 7. Public Notice of Permit Application and Public Comment Period. (1) Scope.

(a) The cabinet shall give public notice under KRS 224.40-310(4) and (5) that the following actions have occurred:

1. A permit application has been tentatively denied under Section 3(2) of this administrative regulation;

2. A draft permit has been prepared under Section 3(3) of this administrative regulation;

3. A hearing has been scheduled under Section 9 of this administrative regulation; and

4. An appeal has been granted under 401 KAR 40:030.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Section 2(2) of this administrative regulation. Written notice of that denial shall be given to the requester and to the permittee.

(c) Public notices may describe more than one (1) permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under subsection (1) of this section shall allow at least forty-five (45) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.)

(3) Methods. Public notice of activities described in subsection (1)(a) of this section shall be given by the following methods:

(a) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subparagraph may waive his or her rights to receive notice for any classes and categories of permits):

1. The applicant;

2. Any other agency which the cabinet knows has issued or is required to issue an environmental permit for the same facility or activity (including United States Environmental Protection Agency);

3. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any other affected states;

4. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. (The cabinet may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to such a request.)

5. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

6. To each state agency having any authority under state law with respect to the construction or operation of such facility.

(b) Publication of a notice in a daily or weekly major local newspaper of general circulation as required by KRS 224.40-310(2), (4), and (5) and broadcast over any commercial radio stations which have general coverage in the locality where the proposed site is located.

(c) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices. All public notices issued under this chapter shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

3. A brief description of the business conducted at the facility or activity described in the permit application;

4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application;

5. A brief description of the comment procedures required by Sections 8 and 9 of this administrative regulation and the time and place of any hearing that shall be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

6. The location of the administrative record required by Section 6 of this administrative regulation, the times at which the record shall be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record;

7. The statement contained in KRS 224.40-310(5)(e); and

8. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in subsection (4)(a) of this section, the public notice of a hearing under Section 9 of this administrative regulation shall contain the following information:

1. Reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(5) In addition to the general public notice described in subsection (4)(a) of this section, all persons identified in subsection (3)(a) of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any). The cabinet shall charge for duplication cost and postage.

Section 8. Public Comments and Requests for Public Hearings. During the public comment period provided under Section 7 of this administrative regulation, any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section 11 of this administrative regulation.

Section 9. Public Hearings. (1)(a) The cabinet shall hold a public hearing on the basis of requests, when a significant degree of public interest in a draft permit(s) is found.

(b) The cabinet at its discretion may also hold a public hearing whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

(c) 1. The cabinet shall hold a public hearing whenever written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under Section 7(2)(a) of this administrative regulation is received.

2. Whenever possible the cabinet shall schedule a hearing under this section at a location convenient to the population center nearest to the proposed facility provided the hearing location is in the same county as required by KRS 224.40-310.

(d) Public notice of the hearing shall be given as specified in Section 7 of this administrative regulation.

(2) Whenever a public hearing shall be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section 7 of this administrative regulation shall automatically be extended to the close of any public hearing under this administrative regulation. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to any person upon payment of the actual cost of reproducing the original.

Section 10. Reopening of the Public Comment Period. (1) If any data, information or arguments submitted during the public comment period (including information or arguments that any condition of the draft permit or permit denial is inappropriate) appear to raise substantial new questions concerning a permit, the cabinet may take one (1) or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under

Section 3 of this administrative regulation;

(b) Prepare a revised statement of basis under Section 4 of this administrative regulation and reopen the comment period under this section; or

(c) Reopen or extend the comment period under Section 7 of this administrative regulation to give interested persons an opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 7 of this administrative regulation shall define the scope of the reopening.

(3) The cabinet may also, in the circumstances described above, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in subsection (1) of this section.

(4) Public notice of any of the above actions shall be issued under Section 7 of this administrative regulation.

Section 11. Response to Comments. (1) At the time that any final permit decision is issued, the cabinet shall issue a response to comments when a final permit is issued. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) For cabinet issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision. If new points are raised or new material supplied during the public comment period, the cabinet may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) In the case of a hazardous waste disposal site or facility, no permit shall be approved or issued by the cabinet prior to the approvals specified in KRS 224.40-310(5) and (6). 401 KAR 38:500 details the procedures that the applicant shall use in obtaining local government approval for incinerators or land disposal facilities or for a regional integrated waste treatment and disposal demonstration facility, the approval of the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board.

Section 12. Issuance and Effective Date of Permit. (1) After the close of the public comment period under Section 7 of this administrative regulation on a draft permit, the cabinet shall issue a final permit decision (or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under Section 11 of 401 KAR 38:070). For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision shall become effective on the date issued by the cabinet.

Section 13. Past Performance Considered in Review. Past performance of the owner or operator shall be considered in the review and in the determination of any requirement for specialized conditions.

PHILLIP J. SHEPHERD, Secretary
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: The proposed amendment will not provide direct or indirect costs or savings to those affected. It is merely a clarification of existing language.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment will not provide direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this administrative regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(a) The proposed amendment provides a clarification designating the authority to deny permits for the active life of the facility while a permit decision with respect to the postclosure period remains open.

Alternatives: 1. Less stringent: The Cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program.

2. More stringent: The proposed amendments are identical to federal regulations which adequately protect human health and the environment.

3. Present proposal: The present proposal adopts federal regulations at 40 CFR 124.15(a) as published in the Federal Register on March 7, 1989.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There is no statute, administrative regulation or government policy in conflict.

(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 owners and operators of hazardous waste treatment, storage, and disposal facilities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The proposed amendment is identical to federal regulations published in the Federal Register on March 7, 1989, at 40 CFR 124.15(a).

2. State compliance standards: The proposed amendment provides a clarification designating the authority to deny permits for the active life of the facility while a permit decision with respect to the postclosure period remains open.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate provides a clarification designating the authority to deny permits for the active life of the facility while a permit decision with respect to the postclosure period remains open.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The proposed amendment does not impose stricter requirements than the federal mandate. There is no need to justify imposition of stricter standards.

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

401 KAR 38:060. Special types of permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.40-305 and 224.46-520 and to establish [~~require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes~~] standards for special types of permits.

Section 1. Permit by Rule. Notwithstanding any other provision of this chapter the following shall be deemed to have a permit by rule if the conditions listed are met:

(1) Ocean disposal barges or vessels. The owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal, if the owner or operator:

(a) Has a permit for ocean disposal issued by the [~~U.S.~~] EPA;

(b) Complies with the conditions of that permit; and

(c) Complies with the following hazardous waste administrative regulations:

1. Section 2 of 401 KAR 34:020, Identification Number;
2. Section 2 of 401 KAR 34:050, Use of Manifest System;
3. Section 3 of 401 KAR 34:050, Manifest Discrepancies;
4. Section 4(1) and (2)(a) of 401 KAR 34:050, Operating Record;
5. Section 6(1) and (2)(a) of 401 KAR 34:050, Annual Report; and
6. Section 7 of 401 KAR 34:050, Unmanifested Waste Report.

(2) Injection wells. The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(a) Has a permit for underground injection issued by the U.S. EPA under 40 CFR Part 144 or 145;

(b) Complies with the conditions of that permit and the requirements of 40 CFR 144.14 (wells managing hazardous waste);

(c) For UIC permits issued after November 8, 1984:

1. Complies with Section 12 of 401 KAR 34:060; and
2. Where the UIC well is the only unit at a facility which requires a hazardous waste site or facility permit, complies with Section 3 of 401 KAR 38:100.

(d) Complies with the requirements of 401 KAR 38:500, if applicable.

(3) Publicly owned treatment works (POTW). The owner or operator of a POTW which accepts hazardous waste for treatment, if the owner
or operator:

(a) Has an NPDES permit or a KPDES permit issued under the authorized program;

(b) Complies with the conditions of that permit; and

(c) Complies with the following administrative regulations:

1. Section 2 of 401 KAR 34:020, Identification Number;
2. Section 2 of 401 KAR 34:050, Use of Manifest System;
3. Section 3 of 401 KAR 34:050, Manifest Discrepancies;
4. Section 4(1) and (2)(a) of 401 KAR 34:050, Operating Record;
5. Section 6 of 401 KAR 34:050, Annual Report;
6. Section 7 of 401 KAR 34:050, Unmanifested Waste Report; and
7. For NPDES or KPDES permits issued after November 8, 1984, Section 12 of 401 KAR 34:060, Corrective action.

(d) If the waste meets all federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

(4) Elementary neutralization units. The owner or operator of an elementary neutralization unit which accepts hazardous waste for treatment, if the owner or operator complies with the national pretreatment standards (see Section 9 of 401 KAR 5:055).

(5) Wastewater treatment units. The owner or operator of a wastewater treatment unit which accepts hazardous waste for treatment, if the owner or operator:

(a) Has a NPDES permit or a KPDES permit; and

(b) Complies with the conditions of the permit.

Section 2. Emergency Permits. (1) Notwithstanding any other provision of this chapter, in the event the cabinet finds an imminent and substantial endangerment to human health or the environment, the cabinet may issue an emergency permit to allow temporary treatment, storage, or disposal of hazardous waste for a nonpermitted facility, thus, granting the nonpermitted facility an effective temporary hazardous waste site or facility permit. An emergency permit shall be granted when the cabinet has issued an emergency order to discontinue, abate or alleviate pursuant to KRS 224.10-410, if applicable. However, an emergency permit may be issued whenever an imminent and substantial endangerment to human health and the environment exists, but the circumstances of the situation render an order for discontinuance, abatement or alleviation inappropriate.

(2) This emergency permit:

(a) May be oral or written. If oral, it shall be followed in five (5) days by a written emergency permit.

(b) Shall not exceed ninety (90) days in duration.

(c) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal.

(d) May be terminated by the cabinet at any time without process if the cabinet determines that termination is appropriate to protect human health and the environment.

(e) Shall be accompanied by a public notice published under Section 7(2) of 401 KAR 38:050 including:

1. Name and address of the office granting the emergency authorization;

2. Name and location of the permitted hazardous waste site or facility;

3. A brief description of the wastes involved;

4. A brief description of the action authorized and reasons for authorizing it; and

5. Duration of the emergency permit.

(f) Shall incorporate to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter, and 401 KAR Chapter 34 and 401 KAR 30:030.

(g) Shall specify that all remaining hazardous waste and residues are removed at the end of the term of the emergency permit to a properly permitted hazardous waste site or facility in order to be exempted from the financial requirements of Section 1 of 401 KAR 34:080.

(h) Shall specify that failure to comply with the conditions of the emergency permit shall cause the cabinet to sue for the recovery of the cost of proper closure (see Section 2 of 401 KAR 34:070 for closure performance standards and KRS Chapter 224 for the appropriate fines and penalties).

Section 3. Hazardous Waste Incinerator Permits. (1) For the purposes of determining operational readiness following completion of physical construction, the cabinet shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions shall be effective for the minimum time required to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The cabinet may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to Section 3 of 401 KAR 38:040 (minor modifications of permits).

(a) Applicants shall submit a statement, with Part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of Section 4 of 401 KAR 34:240 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in Section 6 of 401 KAR 34:240.

(b) The cabinet shall review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Section 4 of 401 KAR 34:240 based on engineering judgment.

(2) For the purposes of determining feasibility of compliance with the performance standards of Section 4 of 401 KAR 34:240 and of determining adequate operating conditions under Section 6 of 401 KAR 34:240, the cabinet shall establish conditions in the permit to a new hazardous waste incinerator to be effective during the trial burn.

(a) Applicants shall propose a trial burn plan, prepared in accordance with paragraph (b) of this subsection, with Part B of the permit application.

(b) The trial burn plan shall include the following information:

1. An analysis of each waste or mixture of wastes to be burned which includes:

a. Heat value of the waste in the form and composition in which it shall be burned.

b. Viscosity (if applicable) or description of physical form of the waste.

c. An identification of any hazardous organic constituents listed in 401 KAR 31:170, which are present in waste to be burned, except that the applicant need not analyze for constituents listed in 401 KAR 31:170, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" [~~(incorporated by reference in Section 3 of 401 KAR 30:010)~~], or other equivalent analytical techniques.

d. An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in the "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" [~~(incorporated by reference in Section 3 of 401 KAR 30:010)~~], or other equivalent analytical methods.

2. A detailed engineering description of the incinerator for which the trial burn permit is sought including:

a. Manufacturer's name and model number of incinerator (if available);

b. Type of incinerator;

c. Linear dimensions of the incinerator unit including the cross sectional area of the combustion chamber;

d. Description of the auxiliary fuel system (type/feed);

e. Capacity of prime mover;

f. Description of automatic waste feed cutoff system(s);

g. Stack gas monitoring and pollution control equipment;

h. Nozzle and burner design;

i. Construction materials; and

j. Location and description of temperature, pressure, and flow indicating and control devices.

3. A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

4. A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the cabinet's decision under paragraph (e) of this subsection.

5. A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that shall be varied to affect the destruction and removal efficiency of the incinerator.

6. A description of, and planned operating conditions for, any emission control equipment which shall be used.

7. Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

8. Such other information as the cabinet reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this subsection and the criteria in paragraph (e) of this subsection.

(c) The cabinet, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this subsection.

(d) Based on the waste analysis data in the trial burn plan, the cabinet shall specify as trial Principal Organic Hazardous Constituents (trial POHC's), those constituents for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHC's shall be specified by the cabinet based on the estimate of

the difficulty of incineration of the constituents identified in the waste analysis, the concentration or mass in the waste feed, and, for wastes listed in 401 KAR 31:040, the hazardous waste constituent or constituents identified in 401 KAR 31:160 as the basis for listing.

(e) The cabinet shall approve a trial burn plan if it finds that:

1. The trial burn is likely to determine whether the incinerator performance standards required by Section 4 of 401 KAR 34:240 can be met;

2. The trial burn itself shall not present an imminent hazard to human health or the environment;

3. The trial burn shall help the cabinet to determine operating requirements to be specified under Section 6 of 401 KAR 34:240; and

4. The information sought in paragraph (e)1 and 2 of this subsection cannot reasonably be developed through other means.

(f) During each approved trial burn (or as soon after the burn as is practicable), the applicant shall make the following determinations:

1. A quantitative analysis of the trial POHC's in the waste feed to the incinerator;

2. A quantitative analysis of the exhaust gas to determine the concentration and mass emissions of the trial POHC's, oxygen (O_2), and hydrogen chloride (HCl);

3. A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHC's;

4. A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Section 4(1) of 401 KAR 34:240;

5. If the HCl emission rate exceeds one and eight tenths (1.8) kilograms of HCl per hour (four (4) pounds per hour), a computation of HCl removal efficiency in accordance with Section 4(2) of 401 KAR 34:240;

6. A computation of particulate emissions, in accordance with Section 4(3) of 401 KAR 34:240;

7. An identification of sources of fugitive emissions and their means of control;

8. A measurement of average, maximum, and minimum temperatures, and combustion gas velocity;

9. A continuous measurement of carbon monoxide (CO) in the exhaust gas; and

10. Such other information as the cabinet may specify as necessary to ensure that the trial burn shall determine compliance with the performance standard in Section 4 of 401 KAR 34:240 and to establish the operating conditions required in Section 6 of 401 KAR 34:240 to meet that performance standard.

(g) The applicant shall submit to the cabinet a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in paragraph (f) of this subsection. This submission shall be made within ninety (90) days of the completion of the trial burn, or later if approved by the cabinet.

(h) All data collected during any trial burn shall be submitted to the cabinet following the completion of the trial burn. The results of the trial burn shall be included with Part B of the permit application as specified in Sections 9 and 10 of 401 KAR 38:070 and this administrative regulation, if a permit application is submitted.

(i) All submissions required by this subsection shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under Section 7 of 401 KAR 38:070.

(j) Based on the results of the trial burn, the cabinet shall set the operating requirements in the final permit according to Section 6 of 401 KAR 34:240. The permit modification shall proceed as a minor modification according to Section 3 of 401 KAR 38:040.

(3) For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the cabinet may establish permit conditions, including but not limited to allowable waste feeds and operating conditions, sufficient to meet the requirements of Section 6 of 401 KAR 34:240, in the permit to a new hazardous waste incinerator. These permit conditions shall be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the cabinet.

(a) Applicants shall submit a statement, with Part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of Section 4 of 401 KAR 34:240, during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in Section 6 of 401 KAR 34:240.

(b) The cabinet shall review this statement and any other relevant information submitted with Part B of the permit application and specify those requirements for this period most likely to meet the performance standards of Section 4 of 401 KAR 34:240, based on engineering judgment.

(4) For the purposes of determining feasibility of compliance with the performance standards of Section 4 of 401 KAR 34:240 and of determining adequate operating conditions under Section 6 of 401 KAR 34:240, the applicant for a permit for an existing hazardous waste incinerator shall prepare and submit a trial burn plan and perform a trial burn in accordance with 401 KAR 38:190, Section 2, and subsections (2)(b) to [~~through~~] (i) of this section or, instead, submit other information as specified in Section 2(3) of 401 KAR 38:190. Applicants submitting information under Section 2(1) of 401 KAR 38:190 are exempt from compliance with Sections 4 and 6 of 401 KAR 34:240 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in subsection (2)(f) of this administrative regulation, with Part B of the permit application. If completion of this process conflicts with the date set for the submission of the Part B application, the applicant shall contact the cabinet to establish a later date for submission of the Part B application or the trial burn results. Trial burn results shall be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with Part B of the permit application, the cabinet shall specify a time period prior to permit issuance in which the trial burn shall be conducted and the results submitted.

(5) In accordance with Section 3 [~~4~~] of 401 KAR 34:080, prior to issuance of a trial burn permit, the applicant shall establish financial assurance sixty (60) days before the date on which hazardous waste is first received for treatment or storage. The amount of financial assurance established for closure shall be in accordance with the closure plan prepared pursuant to 401 KAR 34:070 and 34:240.

Section 4. Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses. (1) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of Section 3 of 401 KAR 34:220, the cabinet may issue a treatment demonstration permit. The permit shall contain only those requirements necessary to meet the standards in Section 3(3) of 401 KAR 34:220. The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two (2) phase facility permit covering the field tests, or laboratory analyses, and design, construction, operation and maintenance of the land treatment unit.

(a) The cabinet may issue a two (2) phase facility permit if it is found that, based on information submitted in Part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(b) If the cabinet finds that not enough information exists upon which it can establish permit conditions to attempt to provide for compliance with all of the requirements of 401 KAR 34:220, the cabinet shall issue a treatment demonstration permit covering only the field test or laboratory analyses.

(2) If the cabinet finds that a phased permit may be issued, it shall establish, as requirements in the first phase of the facility permit, conditions for conducting the field test or laboratory analyses. These permit conditions shall include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, postdemonstration cleanup activities, and any other conditions which the cabinet finds may be necessary under Section 3(3) of 401 KAR 34:220. The cabinet shall include conditions in the second phase of the facility permit to attempt to meet all of 401 KAR 34:220 requirements pertaining to unit design, construction, operation, and maintenance. The cabinet shall establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application.

(a) The first phase of the permit shall be effective as specified by the cabinet in the permit.

(b) The second phase of the permit shall be effective as provided in subsection (4) of this section.

(3) When the owner or operator who has been issued a two (2) phase permit has completed the treatment demonstration, he shall submit to the cabinet a certification, signed by a person authorized to sign a permit application or report under Section 7 of 401 KAR 38:070, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in the first phase of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within ninety (90) days of completion of those tests or analyses unless the cabinet approves a later date.

(4) If the cabinet determines that the results of the field tests or laboratory analyses meet the requirements of Section 3 of 401 KAR 34:220, it shall modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with 401 KAR 34:220, based upon the results of the field tests or laboratory analyses.

(a) This permit modification may proceed as a minor modification under Section 3 of 401 KAR 38:040, provided any such change is minor, or otherwise shall proceed as a modification under Section 2(1)(b) of 401 KAR 38:040.

(b) If no modifications of the second phase of the permit are necessary, or if only minor modifications are necessary and have been made, the cabinet shall give notice of the final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of final decision on the second phase of the permit. The second phase of the permit then shall become effective as specified by the cabinet in Section 12 of 401 KAR 38:050.

(c) If modifications under Section 2(1)(b) of 401 KAR 38:040 are necessary, the second phase of the permit shall become effective only after those modifications have been made.

(5) No permits shall be issued under this section unless the owner or operator has established adequate financial responsibility as specified in 401 KAR 34:080 to [~~through~~] 34:176.

Section 5. Interim Permits for UIC Wells. The cabinet may issue a permit under this section to any Class I UIC well (defined in 40 CFR 144.7) injecting hazardous wastes within the state, if no UIC program has been approved by the [~~U.S.~~] EPA for Kentucky. Any such permit shall apply and insure compliance with all applicable requirements of 401 KAR Chapter 34 and 401 KAR 38:500 and shall be for a term not to exceed two (2) years. No such permit shall be issued after approval or promulgation of a UIC program in Kentucky. Any permit under this section shall contain a condition providing that it shall terminate upon final action by the cabinet under a UIC program to issue or deny a UIC permit for the facility.

Section 6. Research, Development, and Demonstration Permits.

(1) The cabinet may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 401 KAR Chapters 34 or 36. Any such permit shall include such terms and conditions as shall assure protection of human health and the environment. Such permits:

(a) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one (1) year unless renewed as provided in subsection (4) of this section; and

(b) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the cabinet deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and

(c) Shall include such requirements as the cabinet deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action), and such requirements as the cabinet deems necessary regarding testing and providing of information to the cabinet with respect to the operation of the facility.

(2) For the purpose of expediting review and issuance of permits under this section, the cabinet may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in 401 KAR Chapter 38 except that there may be no modification or waiver of provisions in KRS Chapter 224 regarding financial responsibility (including insurance) or of procedures regarding public participation.

(3) The cabinet may order an immediate termination of all operations at the facility at any time it is determined that termination is necessary to protect human health and the environment.

(4) Any permit issued under this section may be renewed not more than three (3) times. Each such renewal shall be for a period of not more than one (1) year.

Section 7. Permits for Boilers and Industrial Furnaces Burning Hazardous Waste. (1) General. Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of Section 4 of 401 KAR 36:020) are subject to subsections (2) to (6) of this section. Boilers and industrial furnaces operating under the interim status standards of Section 4 of 401 KAR 36:020 are subject to subsection (7) of this section.

(2) Permit operating periods for new boilers and industrial furnaces. A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

(a) Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time when burning hazardous waste, the cabinet shall establish in the pretrial burn period of the permit conditions, including but not limited to, allowable hazardous waste feed rates and operating conditions. The cabinet may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to Section 3 of 401 KAR 38:040.

1. Applicants shall submit a statement, with part B of the permit application, that suggests the conditions necessary to operate in compliance with the standards of Sections 5 to 8 of 401 KAR 36:020 during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in Section 3(5) of 401 KAR 36:020.

2. The cabinet shall review this statement and any other relevant

information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Sections 5 to 8 of 401 KAR 36:020 based on his engineering judgment.

(b) Trial burn period. For the duration of the trial burn, the cabinet shall establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of Sections 5 to 8 of 401 KAR 36:020 and determining adequate operating conditions under Section 3(5) of 401 KAR 36:020. Applicants shall propose a trial burn plan, prepared under subsection (3) of this section, to be submitted with part B of the permit application.

(c) Posttrial burn period.

1. 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 to reflect the trial burn results, the cabinet shall establish the operating requirements most likely to ensure compliance with the performance standards of Sections 5 to 8 of 401 KAR 36:020 based on his engineering judgment.

2. Applicants shall submit a statement, with part B of the application, that identifies the conditions necessary to operate during this period in compliance with the performance standards of Sections 5 to 8 of 401 KAR 36:020. This statement shall include, at a minimum, restrictions on the operating requirements provided by Section 3(5) of 401 KAR 36:020.

3. The cabinet shall review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of Sections 5 to 8 of 401 KAR 36:020 based on his engineering judgment.

(d) Final permit period. For the final period of operation, the cabinet shall develop operating requirements in conformance with Section 3(5) of 401 KAR 36:020 that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of Sections 5 to 8 of 401 KAR 36:020. Based on the trial burn results, the cabinet shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to Section 3 of 401 KAR 38:040.

(3) Requirements for trial burn plans. The trial burn plan shall include the following information. The cabinet, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this subsection:

(a) An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feedstocks, as fired, that includes:

1. Heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash;

2. Viscosity or description of the physical form of the feed stream;

(b) An analysis of each hazardous waste, as fired, including:

1. An identification of any hazardous organic constituents listed in 401 KAR 31:170, that are present in the feed stream, except that the applicant need not analyze for constituents listed in 401 KAR 31:170, that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis shall be identified and the basis for this exclusion explained. The analysis shall be conducted in accordance with analytical techniques specified in test methods for evaluating solid waste, physical/chemical methods, or their equivalent.

2. An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by the analytical methods specified in test methods for evaluating solid waste, physical/chemical methods, or other equivalent.

3. A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.

(c) A detailed engineering description of the boiler or industrial furnace, including:

1. Manufacturer's name and model number of the boiler or industrial furnace;

2. Type of boiler or industrial furnace;

3. Maximum design capacity in appropriate units;

4. Description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;

5. Capacity of hazardous waste feed system;

6. Description of automatic hazardous waste feed cutoff system(s);

7. Description of any pollution control system; and

8. Description of stack gas monitoring and any pollution control monitoring systems.

(d) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(e) A detailed test schedule for each hazardous waste for which the trial burn is planned, including date(s), duration, quantity of hazardous waste to be burned, and other factors relevant to the cabinet's decision under subsection (2)(b) of this section.

(f) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in Sections 5 to 8 of 401 KAR 36:020.

(g) A description of, and planned operating conditions for, any emission control equipment that will be used.

(h) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.

(i) Such other information as the cabinet reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this subparagraph and the criteria in subsection (2)(b) of this section.

(4) Trial burn procedures.

(a) A trial burn shall be conducted to demonstrate conformance with the standards of Sections 5 to 8 of 401 KAR 36.020 under an approved trial burn plan.

(b) The cabinet shall approve a trial burn plan if it finds that:

1. The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of Sections 5 to 8 of 401 KAR 36:020;

2. The trial burn itself will not present an imminent hazard to human health and the environment;

3. The trial burn will help the cabinet to determine operating requirements to be specified under Section 3(5) of 401 KAR 36:020; and

4. The information sought in the trial burn cannot reasonably be developed through other means.

(c) The applicant shall submit to the cabinet a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in subsection (3) of this section. This submission shall be made within ninety (90) days of completion of the trial burn, or later if approved by the cabinet.

(d) All data collected during any trial burn shall be submitted to the cabinet following completion of the trial burn.

(e) All submissions required by this subsection shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under Section 7 of 401 KAR 38:070.

(5) Special procedures for destruction and removal efficiency (DRE) trial burns. When a destruction and removal efficiency (DRE)

trial burn is required under Section 5(1) of 401 KAR 36:020, the cabinet shall specify (based on the hazardous waste analysis data and other information in the trial burn plan) as trial principal organic hazardous constituents (POHCs) those compounds for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs shall be specified by the cabinet based on information including its estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in 401 KAR 31:040, the hazardous waste organic constituent(s) identified in 401 KAR 31:160 as the basis for listing.

(6) Determinations based on trial burn. During each approved trial burn (or as soon after the burn as is practicable), the applicant shall make the following determinations:

(a) A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams (hazardous waste, other fuels, and industrial furnace feedstocks);

(b) When a DRE trial burn is required under Section 5(1) of 401 KAR 36:020:

1. A quantitative analysis of the trial POHCs in the hazardous waste feed;

2. A quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs; and

3. A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Section 5(1) of 401 KAR 36:020.

(c) When a trial burn for chlorinated dioxins and furans is required under Section 5(5) of 401 KAR 36:020, a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard.

(d) When a trial burn for particulate matter, metals, or HCl/Cl_2 is required under Sections 6, 7(3) or (4), 8(2)(b) or (3) of 401 KAR 36:020, a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine (Cl_2), and computations showing conformance with the applicable emission performance standards;

(e) When a trial burn for DRE, metals, or HCl/Cl_2 is required under Sections 5(1), 7(3) or (4), or 8(2)(b) or (3) of 401 KAR 36:020, a quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial POHCs, metals, and chlorine/chloride;

(f) An identification of sources of fugitive emissions and their means of control;

(g) A continuous measurement of carbon monoxide (CO), oxygen, and where required, hydrocarbons (HC), in the stack gas; and

(h) Such other information as the cabinet may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in Sections 5 to 8 of 401 KAR 36:020 and to establish the operating conditions required by Section 3(5) of 401 KAR 36:020 as necessary to meet those performance standards.

(7) Interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of Sections 5 to 8 of 401 KAR 36:020 and of determining adequate operating conditions under Section 4 of 36:020, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of Section 4 of 401 KAR 36:020 shall either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in Section 1(f) of 401 KAR 38:260. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application shall complete the trial burn and submit the results specified in subsection (6) of this section with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant shall contact the cabinet to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn shall be conducted and the results submitted within a time period prior to permit issuance to be specified by the cabinet.

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 provisions of this administrative regulation were promulgated by the U.S. Environmental Protection Agency on February 21, 1991 (with subsequent amendments). The EPA regulations, codified at 40 CFR 270.60, were promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) to Resource Conservation and Recovery Act (RCRA). Pursuant to HSWA, the February 21, 1991 regulations were self-implementing, meaning they took effect in all states, including Kentucky, even though the states had not adopted them through their own regulation promulgation process. Proposed 401 KAR 38:060 mirrors 40 CFR 270.60. Adoption of this administrative regulation will bring Kentucky's regulatory program for hazardous waste burned in boilers and industrial furnaces into alignment with the federal regulatory program so as not to subject such facilities to two sets of conflicting standards. Since this administrative regulation mirrors 40 CFR 270.60 which is already in effect in Kentucky, this administrative regulation will not affect any entities.

(a) Direct and indirect costs or savings to those affected: Because the provisions of this administrative regulation are already in effect in Kentucky, facilities will not incur additional costs or savings as a result of this administrative regulation.

1. First year: See above.
2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Because the provisions of this administrative regulation are already in effect in Kentucky facilities will not incur additional reporting or paperwork requirements as a result of this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Kentucky is already implementing the provisions of this administrative regulation on behalf of U.S. EPA. Adoption of this administrative regulation will not result in additional costs or savings.

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Because Kentucky is already implementing the provisions of this administrative regulation on behalf of U.S. EPA, adoption of this administrative regulation will not alter reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, to gain consistency with the federal hazardous waste program there were no alternatives to the promulgation of this administrative regulation considered.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no conflicting, overlapping, or duplicative statutes, administrative regulations, or policies.

(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 270.60. However, there is no federal mandate to promulgate this administrative regulation. Some of the changes included in this proposed administrative regulation are already in effect for Kentucky hazardous waste sites or facilities with permits even if this administrative regulation is not adopted. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated 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 270.60

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 38:090. General contents of Part B application.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.99
STATUTORY AUTHORITY: KRS 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 [~~KRS 224.40-305 and 224.46-520 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes~~] the general contents of the Part B application.

Section 1. Contents of Part B Application. Part B of the permit application consists of the general information requirements of this administrative regulation and the specific informational requirements in 401 KAR 38:100 to [~~through~~] 38:210 applicable to the facility. The Part B information requirements presented in this administrative regulation and 401 KAR 38:100 to [~~through~~] 401 KAR 38:210 reflect the information requirements necessary for the cabinet to determine compliance with 401 KAR Chapter 34 standards. If owners and operators of hazardous waste sites or facilities can demonstrate that the information prescribed in Part B cannot be provided to the extent required, the cabinet may make allowance for submission of such information on a case-by-case basis. Information required in Part B shall be submitted to the cabinet and signed in accordance with requirements in Section 7 of 401 KAR 38:070. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by an [~~professional~~] engineer [~~registered in Kentucky~~].

Section 2. General Information Requirements. The following information is required for all hazardous waste sites or facilities, except as Section 1 of 401 KAR 34:010 provides otherwise:

(1) A general description of the facility.

(2) Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with 401 KAR Chapter 34.

(3) A copy of the waste analysis plan required by Section 4(2) of 401 KAR 34:020 and, if applicable, Section 4(3) of 401 KAR 34:020.

(4) A description of the security procedures and equipment required by Section 5 of 401 KAR 34:020, or a justification demonstrating the reasons for requesting a variance of this requirement.

(5) A copy of the general inspection schedule required by Section 6(2) of 401 KAR 34:020. Include, where applicable, as part of the inspection schedule, specific requirements in Section 5 of 401 KAR 34:180, Sections 4(9) and 6 of 401 KAR 34:190[~~, Section 6 of 401 KAR 34:190~~], Section 4 of 401 KAR 34:200, Section 5 of 401 KAR 34:210, Section 4 of 401 KAR 34:220, Section 4 of 401 KAR 34:230, [~~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.

(6) A justification of any request for a variance of the preparedness and prevention requirements of 401 KAR 34:030.

(7) A copy of the contingency plan required by 401 KAR 34:030; include, where applicable, as part of the contingency plan, specific requirements in 401 KAR 34:190, 34:200 and 34:210.

(8) A description of procedures, structures, or equipment used at the facility to:

(a) Prevent hazards in unloading operations (for example, ramps, special fork lifts);

(b) Prevent run-off from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

(c) Prevent contamination of water supplies;

(d) Mitigate effects of equipment failure and power outages; [~~and~~]

(e) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and

(f) Prevent releases to atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive or incompatible wastes as required to demonstrate compliance with Section 8 of 401 KAR 34:020 including documentation demonstrating compliance with Section 8(3) of 401 KAR 34:020.

(10) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes, if appropriate; describe access road surfacing and load bearing capacity; show traffic control signals).

(11) Facility location information:

(a) In order to determine the applicability of the seismic standard, Section 9(1) of 401 KAR 34:020, the owner or operator of a new facility shall identify the political jurisdiction ([~~e.g.,~~] county, township, or election district) in which the facility is proposed to be located.

(b) If the facility is proposed to be located in an area listed in 401 KAR 34:340 the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided shall be of such quality to be acceptable to geologists experienced in identifying and evaluation seismic activity. The information submitted shall show that either:

1. No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have had displacement in Holocene time) within 3,000 feet of a facility are present, based on data from:

a. Published geologic studies;

b. Aerial reconnaissance of the area within a five (5) mile radius from the facility;

c. An analysis of aerial photographs covering a 3,000 foot radius of the facility; and

d. If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility; or

2. If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass within 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste shall be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility, data shall be obtained from a subsurface exploration (trenching) of the area within a distance no less than 200 feet from portions of the facility where treatment, storage or disposal of hazardous waste shall be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste shall be conducted. Such investigation shall document with supporting maps and other analyses the location of any faults found.

(c) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year flood plain, floodway or seasonal high water tables in accordance with Section 9(2) of 401 KAR 34:020. This identification shall indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where a FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors ([~~e.g.,~~] wave action for example) which shall be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood. Note: Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they shall normally be determinative of whether a facility is located within or outside of the 100-year flood plain. However, where the FIA map excludes an area (usually areas of the flood plain less than 200 feet in width), these areas shall be considered and a determination made as to whether they are in the 100-year flood plain. Where FIA maps are not available for a proposed facility location, the owner or operator shall use equivalent mapping techniques to determine whether the facility is within the 100-year flood plain, and if so located, what the 100-year flood elevation would be.

(d) Owners and operators of facilities located in the 100-year flood plain shall provide the following information:

1. Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100-year flood;

2. Structural or other engineering studies showing the design of operational units (for example, [~~e.g.,~~] tanks, incinerators) and flood prevention devices (for example, [~~e.g.,~~] floodwalls, dikes) at the facility and how these shall prevent washout and inundation of the waste;

3. If applicable, and in lieu of subparagraphs 1 and 2 of this paragraph a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

a. Timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility;

b. A description of the location(s) to which the waste shall be moved and demonstration that those facilities shall be eligible to receive hazardous waste in accordance with the administrative regulations under 401 KAR Chapters 34 to [~~through~~] 38;

c. The planned procedures, equipment, and personnel to be used and the means to ensure that such resources shall be available in time for use; and

d. The potential for accidental discharges of the waste during movement.

(e) Existing facilities NOT in compliance with Section 9(2) of 401 KAR 34:020 shall provide a plan showing how the facility shall be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the hazardous waste site or facility in a safe manner as required to demonstrate compliance with Section 7 of 401 KAR 34:020. A brief description of how training shall be designed to meet actual job tasks in accordance with requirements in Section 7(1)(c) of 401 KAR 34:020.

(13) A copy of the closure plan and, where applicable, the postclosure plan required by Sections 3 and 9 of 401 KAR 34:070, and Section 8 of 401 KAR 34:190. Include, where applicable, as part of the plans, specific 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 and 4 of 401 KAR 34:250.

(14) For hazardous waste disposal units that have been closed, documentation that notices required under Section 10 of 401 KAR 34:070 have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with Section 1 of 401 KAR 34:090 and a copy of the documentation required to demonstrate financial assurance under Sections 2 to [~~through~~] 12 of 401 KAR 34:090. For a new facility, a copy of the required documentation may be submitted sixty (60) days prior to the initial receipt of hazardous wastes, if that is later

than the submission of the Part B.

(16) Where applicable, the most recent postclosure cost estimate for the facility prepared in accordance with Section 1 of 401 KAR 34:100 plus a copy of the documentation required to demonstrate financial assurance under Sections 2 to [~~through~~] 12 of 401 KAR 34:100. For a new facility, a copy of the required documentation may be submitted sixty (60) days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of 401 KAR 34:120. For a new facility, documentation showing the amount of insurance meeting the specification of Section 1 of 401 KAR 34:120 and if applicable, Section 2 of 401 KAR 34:120 that the owner or operator plans to have in effect before initial receipt of hazardous waste for the treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in 401 KAR 34:120.

(18) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters (approximately one (1) inch) equal to not more than 61.0 meters (approximately 200 feet). Contours shall be shown on the map. The contour interval shall be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (approximately five (5) feet), if relief is greater than 6.1 meters (approximately twenty (20) feet), or an interval of 0.6 meters (approximately two (2) feet), if relief is less than 6.1 meters (approximately twenty (20) feet). Owners and operators of hazardous waste sites or facilities located in mountainous areas shall use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

(a) Map scale and date;

(b) 100 year flood plain area and, if applicable, floodway and areas of seasonal high water table;

(c) Surface waters including intermittent streams;

(d) Surrounding land uses (residential, commercial, agricultural, recreational);

(e) A wind rose (that is, [~~i.e.,~~] prevailing wind-spread and direction);

(f) Orientation of the map (north arrow);

(g) Legal boundaries of the hazardous waste site or facility;

(h) Access control (fences, gates);

(i) Injection and withdrawal wells both on-site and off-site;

(j) Buildings; treatment, storage, or disposal operations; or other structures (recreation areas, run-off control systems, groundwater monitoring systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, and fire control facilities for example [~~, etc.~~]);

(k) Barriers for drainage or flood control; and

(l) Location of operational units within the hazardous waste site or facility where hazardous waste is (or shall be) treated, stored, or disposed (including equipment cleanup areas).

(19) In addition to information required by the cabinet pursuant to this section, all applicants for construction permits shall submit to the cabinet a plan in accordance with KRS 224.46-520(1). The plan shall address each of the following issues specifically, shall document the applicant's decisions with respect to the proposal, shall make reasonable justification for actions taken and demonstrate that the proposed facility can be integrated into the surroundings in an environmentally compatible manner, including but not limited to insuring that hydrologic, seismologic, geologic and soil considerations have been adequately addressed in the application and operational plan. The plan shall include:

(a) An evaluation of alternatives including other site locations and treatment, storage and disposal approaches (see KRS 224.46-520(1)(a));

(b) An evaluation of the public health, safety and environmental aspects on the affected community (see KRS 224.46-520(1)(b));

(c) An evaluation of the social and economic impacts of the proposal on the affected community (see KRS 224.46-520(1)(b));

(d) An evaluation of mitigation procedures to alleviate problems identified in paragraphs (a), (b), and (c) of this subsection (see KRS 224.46-520(1)(d)); and

(e) An evaluation of the relationship of the proposal to local planning and existing development (see KRS 224.46-520(1)(e)).

(f) In the case of hazardous waste landfills or other sites or facilities for the land disposal of hazardous waste the provisions of paragraphs (c) and (e) of this subsection shall be determined by the local unit of government pursuant to KRS 224.40-310(5); in the case of a regional integrated waste treatment and disposal demonstration facility the provisions of paragraphs (c) and (e) of this subsection shall be determined by the siting board established pursuant to KRS 224.46-820.

(20) A showing of the past compliance record for both the applicant and any other individual or entity designated to own or operate the hazardous waste site or facility (as required by KRS 224.46-520(1) as follows:

(a) Organizational structure:

1. If the applicant is a proprietorship, a detailed listing of:

a. The proprietors and their respective interests, whether ownership or otherwise.

b. Any partnership (general or limited), joint venture, or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest (whether ownership or otherwise).

2. If the applicant is a partnership, either general or limited, a detailed listing of:

a. Each of the partners and their respective interests, whether ownership or otherwise.

b. Any corporation, joint venture, partnership (general or limited), or proprietorship in which any of the constituent partners of the applicant holds as much as or more than twenty-five (25) percent interest (whether ownership or otherwise);

c. Any corporation, joint venture, proprietorship, or partnership (general or limited) which holds as much as or more than a twenty-five (25) percent interest (whether ownership or otherwise) in any of the nonindividual constituent partners comprising the applicant.

3. If the applicant is a corporation, a detailed listing of:

a. The officers, directors, and major stockholders;

b. Any corporation of which the applicant is either a subsidiary or which holds as much as or more than a twenty-five (25) percent interest (either in stock or assets) in the applicant;

c. Any corporations which are either subsidiaries of the applicant or in which the applicant holds as much as or more than a twenty-five (25) percent interest (either in stock or assets);

d. Any proprietorship, partnership (general or limited), or joint venture in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise.

4. If the applicant is a joint venture, a detailed listing of:

a. All other joint venturers, and the respective interests (whether ownership or otherwise) of each;

b. Any proprietorship, partnership (general or limited), joint venture or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest (whether ownership or otherwise).

(b) For the purposes of paragraph (c) of this subsection, the listing of violations of laws, rules or administrative regulations shall include the following areas:

1. Solid or hazardous waste management;

2. Air pollution;

3. Water;

4. OSHA with respect to hazardous materials or hazardous substances; and

5. Transportation with respect to hazardous materials or hazardous substances.

(c) For each and every individual or other entity listed in paragraph (a) of this subsection, a detailed listing of all violations of federal or state laws, rules or administrative regulations concerning the areas listed in paragraph (b) of this subsection (whether either judicial or administrative proceedings are pending or completed) that have resulted or could result in either criminal convictions or civil or administrative fines as much as or more than $1,000.

(d) For each and every individual or other entity listed in paragraph (a) of this subsection, a current financial statement prepared by a certified public accountant.

(e) Hazardous waste sites or facilities which have been regulated under interim status shall be exempt from the requirements of this subsection unless the cabinet specifies otherwise in writing.

(21) An evaluation of subsurface geologic formations and surface topography for solution or karst features. The owner or operator shall demonstrate compliance with either paragraph (a) or (b) of this subsection.

(a) If the owner or operator demonstrates to the satisfaction of the cabinet that the facility is not underlain by soluble limestone, he is exempt from all of the requirements of this subsection.

(b) If the owner or operator does not make the demonstration of paragraph (a) of this subsection, the owner or operator shall satisfy the requirements in paragraph (c)1 or (c)2 of this subsection. In addition, the owner or operator shall demonstrate that:

1. The facility has been designed to withstand any gradual or sudden land subsidence which is characteristic of areas underlain by soluble limestone; and

2. No contamination into or through any fractures, channels or solution features shall occur.

(c) Except as provided in paragraph (a) of this subsection, the owner or operator shall comply with either subparagraph 1 or 2 of this paragraph.

1. The owner or operator shall:

a. Establish the presence and extent of all fractures, channels and solution features in the bedrock beneath the facility and describe how such features shall be sealed, filled, isolated or otherwise neutralized to prevent subsidence; and

b. Describe how such solution features shall be monitored to demonstrate compliance with the criteria of paragraph (b)1 and 2 of this subsection; or

2. The owner or operator shall design, operate and maintain a double-liner system which shall be installed beneath the facility and which includes a leak detection system that meets the criteria of paragraph (b)1 and 2 of this subsection. The design of the double-lined facility shall meet all the specifications of Section 3 of 401 KAR 34:200 (surface impoundments), Section 3 of 401 KAR 34:210 (waste piles) and Section 3 of 401 KAR 34:230 (landfills), as applicable.

(22) The actual test data showing that the liner is or will be compatible with the waste, if applicable.

(23) For land disposal facilities, if a case-by-case extension has been approved under Section 5 of 401 KAR 37:010 or a petition has been approved under Section 6 of 401 KAR 37:010, a copy of the notice of approval for the extension or petition is required.

(24) The documentation on waste minimization required by Section 1(12)(h)4 of 401 KAR 38:030[~~, Section 1(12)(h)4~~].

(25) Applicants may be required to submit such information as may be necessary to enable the cabinet to carry out its duties under state laws as required in this chapter.

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 are submitting Part B applications.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed amendment adds changes made elsewhere in the administrative regulation package relating to boilers and industrial furnaces. This proposed amendment is being promulgated as a result of amendments to federal regulations required by the Hazardous and Solid Waste Amendments to the Resource Conservation Act which take effect upon promulgation whether or not the state has administrative regulations in effect. 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: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 270.14. However, there is no federal mandate to promulgate this administrative regulation. Some of the changes included in this proposed amendment are already in effect for Kentucky hazardous waste sites or facilities with permits even if this administrative regulation is not adopted. Other changes are being made in response to EPA comments on the previous amendments to this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. 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. 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 270.14.

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 38:170. Specific Part B requirements for surface impoundments.

RELATES TO: KRS 224.10, 224.40, 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 [~~KRS 224.40-305 and 224.46-250 require any person who treats, stores, recycles, or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes~~] specific Part B requirements for facilities that treat, store or dispose of hazardous waste in surface impoundments.

Section 1. Applicability. The requirements in this administrative regulation apply to all owners and operators of hazardous waste sites or facilities that treat, store or dispose or will treat, store or dispose of hazardous waste in surface impoundments.

Section 2. Additional Part B Requirements for Surface Impoundments. In addition to the information required by 401 KAR 38:080, 401 KAR 38:090, and 401 KAR 38:100, owners and operators of facilities that store, treat, or dispose or will store, treat, or dispose of hazardous waste in surface impoundments, except as otherwise provided in Section 1 of 401 KAR 34:010 and Section 1 of 401 KAR 34:200, must provide the following additional information:

(1) A list of the hazardous wastes placed or to be placed in each surface impoundment;

(2) Detailed plans and an engineering report describing how the surface impoundment is [~~or will be~~] designed and is or shall be [,] constructed, operated, and maintained to meet the requirements[,] of Section 10 of 401 KAR 3:020 and Sections 2, 3, and 10 of 401 KAR 34:200, addressing the following items: [~~. This submission must address the following items as specified in Section 2 of 401 KAR 34:200:~~]

(a) The liner system (except for an existing portion of a surface impoundment). If an exemption from the requirement for a liner is sought as provided by Section 2(2) of 401 KAR 34:200, submit detailed plans and engineering and hydrogeologic reports as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the groundwater or surface water at any future time;

(b) Detailed plans and an engineering report describing how the surface impoundment is or will be designed, constructed, operated and maintained to meet the requirements of Section 2 of 401 KAR 34:200. This submission shall address the following items as specified in Section 2 of 401 KAR 34:200:

(c) A description of how each surface impoundment, including the liner and cover systems and appurtenances for control of overtopping, will be inspected in order to meet the requirements of Section 4(1) and (2) of 401 KAR 34:200. This information shall be included in the inspection plan submitted under Section 2(5) of 401 KAR 38:090;

(d) A certification by an engineer which attests to the structural integrity of each dike, as required under Section 4(3) of 401 KAR 34:200. For new units, the owner or operator shall submit a statement by an engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications;

(e) A description of the procedure to be used for removing a surface impoundment from service, as required under Section 5(2) and (3) of 401 KAR 34:200. This information shall be included in the contingency plan submitted under Section 2(7) of 401 KAR 38:090;

(f) [~~(b)~~] Prevention of overtopping, including flow measuring devices; and

(g) [~~(c)~~] Structural integrity of dikes;

(3) A description of how each surface impoundment, including the double liner system, leak detection system, [~~liner and~~] cover system, and appurtenances for control of overtopping, including flow measuring devices, will be inspected in order to meet the requirements of Section 5(1) and (2) of 401 KAR 34:200. This information shall [~~should~~] be included in the inspection plan submitted under Section 2(5) of 401 KAR 38:090;

(4) A certification by an [~~qualified~~] engineer [~~registered in the state of Kentucky~~] which attests to the structural integrity of each dike, as required under Section 4(3) of 34:200. For new units, the owner or operator shall [~~must~~] submit a statement by an [~~qualified~~] engineer [~~registered in the state of Kentucky~~] that he will provide such a certification upon completion of construction in accordance with the plans and specifications;

(5) A description of the procedures to be used for removing a surface impoundment from service, as required under Section 5(2)

and (3) of 401 KAR 34:200. This information shall [~~should~~] be included in the contingency plan submitted under Section 2(7) of 401 KAR 38:090;

(6) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under Section 6(1)(a) of 401 KAR 34:200. For any wastes not to be removed from the unit upon closure, the owner or operator shall [~~must~~] submit detailed plans and an engineering report describing how Section 6(1)(b) and (2) of 401 KAR 34:200 and 38:500 will be complied with. This information shall [~~should~~] be included in the closure plan and, where applicable, the postclosure plan submitted under Section 2(13) of 401 KAR 38:190;

(7) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how Section 7 of 401 KAR 34:200 will be complied with;

(8) Incompatible wastes, or incompatible wastes and materials shall not be placed in a surface impoundment in accordance with Section 8 of 401 KAR 34.200.

(9) A waste management plan for EPA hazardous waste numbers F020, F021, F022, F023, F026, and F027 (chlorinated dioxins, dibenzofurans and phenols) describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of Section 9 of 401 KAR 34:200[~~, Section 9~~]. This submission shall [~~must~~] address the following items as specified in Section 9 of 401 KAR 34:200[~~, Section 9~~]:

(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.

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 apply for Part B permits for surface impoundments.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed amendment adds references to the proposed changes to 401 KAR 34:200. 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: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 270.17. However, there is no federal mandate to promulgate this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. This administrative regulation is proposed for the

purpose of maintaining the state's authority for the hazardous waste program as mandated 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 270.17.

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 38:180. Specific Part B requirements for waste piles.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS [~~224.40-305 and~~] 224.46-520 and to establish [~~require any person who treats, stores, recycles, or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes~~] specific Part B requirements for facilities that store or treat hazardous waste in waste piles.

Section 1. Applicability. The requirements in this administrative regulation apply to all owners and operators of hazardous waste sites or facilities that treat or store or will treat or store hazardous waste in waste piles.

Section 2. Additional Part B Requirements for Waste Piles. In addition to the information required by 401 KAR 38:080, 401 KAR 38:090, and 401 KAR 38:100, owners and operators of facilities that store or treat or will store or treat hazardous waste in waste piles, except as otherwise provided in Section 1 of 401 KAR 34:010 and Section 1 of 401 KAR 34:210, shall [~~must~~] provide the following additional information:

(1) A list of the hazardous wastes placed or to be placed in each waste pile;

(2) If an exemption is sought to Section 2 of 401 KAR 34:210 and 401 KAR 34:060 as provided by Section 1(3) of 401 KAR 34:210, an explanation of how the standards of Section 1(3) of 401 KAR 34:210 shall [~~will~~] be complied with or detailed plans and an engineering report describing how the requirements of 401 KAR 34:060, Section 1(2)(b) shall [~~will~~] be met;

(3) Detailed plans and an engineering report describing how the waste pile is [~~or will be~~] designed and is or shall be [~~,~~] constructed, operated, and maintained to meet the requirements of Section 10 of 401 KAR 34:020 and Sections 2 to 4 of 401 KAR 34:210, addressing the following items: [~~. This submission must address the following items as specified in Section 2 of 401 KAR 34:210.~~]

(a)1. The liner system (except for an existing portion of a waste pile) if the waste pile shall meet the requirements of Section 2(1) of 401 KAR 34:210. If an exemption from the requirement for a liner is sought, as provided by Section 2 [~~3~~](2) of 401 KAR 34:210, the owner or operator shall [~~must~~] submit detailed plans and engineering and hydrogeologic reports, as applicable, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the groundwater or surface water at any future time;

2. The double liner and leak (leachate) detection, collection, and removal system, if the waste pile is required to meet the requirements of Section 2 of 401 KAR 34:210 of this chapter. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by Section 2 of 401 KAR 34:210 of this chapter, submit the appropriate information;

3. If the leak detection system is located in a standard zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

4. The construction quality assurance (CQA) plan if required under 401 KAR 34:020;

5. Proposed action leakage rate, with rationale, if required under 401 KAR 34:210, and response action plan, if required under 401 KAR 34:210;

(b) Control of run-on;

(c) Control of run-off;

(d) Management of collection and holding units associated with run-on and run-off control systems; and

(e) Control of wind dispersal of particulate matter, where applicable;

(4) A description of how each waste pile, including the liner and appurtenances for control of run-on, and run-off, shall [~~will~~] be inspected in order to meet the requirements of Section 5(1) to (3) [~~and (2)~~] of 401 KAR 34:210. This information shall [~~should~~] be included in the inspection plan submitted under Section 2(5) of 401 KAR 38:090;

(5) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;

(6) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how requirements of Section 6 of 401 KAR 34:210 shall [~~will~~] be complied with;

(7) Incompatible wastes, or incompatible wastes and materials shall not be placed in a waste pile in accordance with Section 7 of 401 KAR 34.210;

(8) A description of how hazardous waste residues and contaminated materials shall [~~will~~] be removed from the waste pile at closure, as required under Section 8(1) of 401 KAR 34:210. For any waste not to be removed from the waste pile upon closure, the owner or operator shall [~~must~~] submit detailed plans and an engineering report describing how Section 6(1) and (2) of 401 KAR 34:230 and 38:500 shall [~~will~~] be complied with. This information shall [~~should~~] be included in the closure plan and, where applicable, the postclosure plan submitted under Section 2(13) of 401 KAR 38:090; and

(9) A waste management plan for EPA hazardous waste numbers F020, F021, F022, F023, F026, and F027 (chlorinated dioxins, dibenzofurans and phenols) describing how a waste pile that is not enclosed (as defined in 401 KAR 34:210, Section 1(3)) is or shall [~~will~~] be designed, constructed, operated, and maintained to meet the requirements of Section 9 of 401 KAR 34:210[~~, Section 9~~]. This submission shall [~~must~~] address the following items as specified in Section 9 of 401 KAR 34:210[~~, Section 9~~]:

(a) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, 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.

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 apply for Part B permits for waste piles.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed amendment adds references to the proposed changes to 401 KAR 34:200. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224.

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 requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 270.18. However, there is no federal mandate to promulgate this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated 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 270.18.

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 38:210. Specific Part B requirements for landfills.

RELATES TO: KRS 224.10, 224.40, 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 [~~KRS 224.40-305 and 224.46-520 require any person who treats, stores, recycles, or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes~~] specific Part B requirements for landfills.

Section 1. Applicability. The requirements in this administrative regulation apply to all owners and operators of hazardous waste management sites or facilities that dispose [~~or will dispose~~] of hazardous waste in landfills.

Section 2. Additional Part B Requirements for Landfills. In addition to the information required by 401 KAR 38:080, 401 KAR 38:090 and 401 KAR 38:100, owners and operators of facilities that dispose or shall [~~will~~] dispose of hazardous waste in landfills, except as otherwise provided in Section 1 of 401 KAR 34:010 and Section 1 of 401 KAR 34:230, shall [~~must~~] provide the following additional information:

(1) A list of hazardous wastes placed or to be placed in each landfill or landfill cell;

(2) Detailed plans and an engineering report describing how the landfill is [~~or will be~~] designed and is or shall be [;] constructed, operated, and maintained to comply with the requirements of Section 10 of 401 KAR 34:020 and Sections 2 to 4 of 401 KAR 34:230, addressing the following items as specified in 401 KAR 34:230: [~~. This submission must address the following items as specified in Section 2 of 401 KAR 34:230:~~]

(a)1. The liner system and leachate collection and removal system (except for an existing portion of a landfill). If an exemption from the requirements for a liner and a leachate collection and removal system is sought as provided by Section 2(2) of 401 KAR 34:230, submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that shall [~~will~~], in conjunction with location aspects, prevent the migration of any hazardous constituent into the groundwater or surface water at any future time;

2. The double liner and leak (leachate) detection, collection, and removal system, if the landfill is required to comply with Section 2 of 401 KAR 34:230. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by Section 3 of 401 KAR 34:230, submit appropriate information;

3. If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

4. The construction quality assurance (CQA) plan if required under 401 KAR 34:020;

5. Proposed action leakage rate, with rationale, if required under 401 KAR 34:230, and response action plan, if required under 401 KAR 34:230;

(b) Control of run-on;

(c) Control of run-off;

(d) Management of collection and holding facilities associated with run-on and run-off control systems; and

(e) Control of wind dispersal of particulate matter, where applicable.

(3) If an exemption from 401 KAR 34:060 is sought, as provided by Section 3(1) of 401 KAR 34:230, the owner or operator shall [~~must~~] submit detailed plans and an engineering report explaining the location of the saturated zone in relation to the landfill, the design of a double-liner system that incorporates a leak detection system between the liners, and a leachate collection and removal system above the liners;

(4) A description of how each landfill, including the liner and cover systems, shall [~~will~~] be inspected in order to meet the requirements of Section 4(1) to (3) [~~and (2)~~] of 401 KAR 34:230. This information shall [~~should~~] be included in the inspection plan submitted under Section 2(5) of 401 KAR 38:090;

(5) Detailed plans and an engineering report describing the final cover which shall [~~will~~] be applied to each landfill or landfill cell at closure in accordance with Section 6(1) of 401 KAR 34:230, and a description of how each landfill shall [~~will~~] be maintained and monitored after closure in accordance with Section 6(2) of 401 KAR 34:230. This information shall [~~should~~] be included in the closure and postclosure plans submitted under Section 2(13) of 401 KAR 38:090;

(6) If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of Section 7 of 401 KAR 34:230 shall [~~will~~] be complied with;

(7) Incompatible wastes, or incompatible wastes and materials shall not be landfilled in accordance with Section 8 of 401 KAR 34:230;

(8) If bulk or noncontainerized liquid waste or waste containing free liquids is to be landfilled, an explanation of how the requirements of Section 9 of 401 KAR 34:230 and KRS 224.46-520(2) shall [~~will~~] be complied with;

(9) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of Sections 10 and 11 of 401 KAR 34:230, as applicable, shall [~~will~~] be complied with; and

(10) A waste management plan for EPA hazardous waste numbers F020, F021, F022, F023, F026, and F027 (chlorinated dioxins, dibenzofurans and phenols) describing how a landfill is or shall [~~will~~] be designed, constructed, operated, and maintained to meet the requirements of Section 12 of 401 KAR 34:230 and KRS 224.46-520(2). This submission shall [~~must~~] address the following items as specified in Section 12 of 401 KAR 34:230 and KRS 224.46-520(2):

(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.

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 apply for Part B permits for landfills.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed amendment adds references to the proposed changes to 401 KAR 34:200. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224.

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 requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no costs or savings to the administrative body associated with the promulgation of this proposed 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 additional requirements imposed as a result of promulgating the state administrative regulation.

(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 270.21. However, there is no federal mandate to promulgate this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated 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 270.21.

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.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised October [~~July~~] 15, 1993, are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Kentucky Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.1	Occupational Exposure to Bloodborne Pathogens
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy [~~(Amended July 15, 1993)~~]
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary

13.2 Health Maintenance Services
13.3 Medical Alert System
13.4 Health Program Audits
13.5 Acquired Immune Deficiency Syndrome
13.6 Sex Offender Treatment Program
13.9 Dental Services (Amended 10/15/93)
14.2 Personal Hygiene Items
14.3 Marriage of Inmates
14-04-01 Legal Services Program
14.6 Inmate Grievance Procedures
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties
15.3 Meritorious Good Time (Amended 10/15/93)
15-05-01 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs
15.7 Inmate Account Restriction
16.1 Inmate Visits
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages
17-01-01 Inmate Personal Property
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-state Transfers
18-10-01 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
19.3 Inmate Wage Program
20.1 Educational Programs and Educational Good Time
21.1 Staffing Pattern for the First Incarceration Shock Treatment Program (FIST) (Added 10/15/93)
21.2 Phase I: Program Selection Assessment Criteria (Added 10/15/93)
21.3 Program Schedule - Phase II and Phase III (Added 10/15/93)
21.4 Platoon Size and Composition (Added 10/15/93)
21.5 Physical Conditions Program Component (Added 10/15/93)
21.6 Group and Individual Counseling (Added 10/15/93)
21.7 Drug and Alcohol Abuse Counseling and Treatment (Added 10/15/93)
21.8 Work Programs Component (Added 10/15/93)
21.9 Education and Life Management (Added 10/15/93)
21.10 Auxiliary Services (Added 10/15/93)
21.11 Offenses and Penalties (Added 10/15/93)
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease Program
25.4 Inmate Furloughs
25.6 Community Center Program
25.7 Expedient Release
25.8 Extended Furloughs
25.10 Administrative Release of Inmates
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-08-01 Use of Force
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview
27-12-04 Conditions of Regular Supervision/Request for Modification
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions
27-13-01 Drug and Alcohol Testing of Offenders
27-13-02 Alcohol Detection
27-14-01 Interstate Compact Transfers
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
27-15-01 Supervision Report; Violations, Unusual Incidents
27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01 Absconder Procedures
27-18-01 Probation and Parole Issuance of Detainer/Warrant
27-19-01 Preliminary Revocation Hearing
27-20-01 Division of Probation and Parole Controlled Intake Program
27-20-02 Prisoner Intake Notification
27-20-03 Prisoner Status Change
27-21-01 Apprehension and Transportation of Probation and Parole Violators
27-22-01 Fugitive Unit - Apprehensions
27-22-02 Fugitive Unit - Transportation of Fugitives
27-23-01 In-state Transfer
27-24-01 Closing Supervision Report
27-24-02 Reinstatement of Clients to Active Supervision
27-25-01 Application for Final Discharge from Parole
27-26-01 Assistance to Former Clients and Dischargees
27-27-01 Restoration of Civil Rights
27-28-01 Firearms/Explosives: Application for Relief from Disability
27-29-01 Parole Review Dates Modification
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the

Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01 Expedient Release Program
28-03-01 Parole Plans/Halfway Houses/Extended Fur+lough/ Sponsorship/Gradual Release
28-04-01 Furlough Verifications
28-05-01 Out-of-state Investigations.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: October 15, 1993
FILED WITH LRC: October 15, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1993 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601 or Louis Smith, Office of Adult Institutions, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner and because the regulation applies equally to all employees, inmates, parolees and visitors. Disparate treatment of any of these classes may produce complaints by that class and could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be violated as well as Sections 2 and 3 of the Kentucky Constitution which prohibit unequal or arbitrary treatment of persons.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised October [~~September~~] 15, 1993, are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09 Public Information and News Media Relations
KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-15 Cooperation and Coordination with Oldham County Court
KSR 01-00-19 Personal Service Contract Personnel
KSR 01-00-20 Consent Decree Notification to Inmates
KSR 02-00-01 Inmate Canteen
KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11 Inmate Personal Accounts
KSR 02-00-12 Institutional Funds and Issuance of Checks
KSR 04-00-02 Staff Training and Development
KSR 05-00-01 Officers' Daily Housing Security and Safety Log
KSR 05-00-02 Research Activities
KSR 05-00-03 Management Information Systems
KSR 06-00-01 Inmate Master File
KSR 06-00-02 Records Audit
KSR 06-00-03 Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02 Institutional Tower Room Regulations
KSR 07-00-04 Handling of PCB Articles and Containers
KSR 07-00-05 Proper Removal of Transformers
KSR 07-00-06 Asbestos Abatement
KSR 07-00-07 Discharge Monitoring Report (DMR)
KSR 07-00-08 Control of Hazardous Energy (Lockout or Tagout)
KSR 07-00-09 Inventory Control of Underground Storage Tanks
KSR 08-00-07 Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08 Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-10 Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04 Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05 Gate I Entrance and Exit Procedure Limited Issue
KSR 09-00-09 Contraband, Dangerous Contraband and Search Policy
KSR 09-00-21 Crime Scene Camera (Amended 10/15/93)
KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence

KSR 09-00-23	Drug Abuse Testing
KSR 09-00-25	Inmate Motor Vehicle Operator's License
KSR 09-00-26	Contraband Outside Institutional Perimeter
KSR 09-00-27	Construction Crew Entry/Exit
KSR 09-00-28	Restricted Areas
KSR 09-00-29	Transportation of Inmates
KSR 09-00-30	Parole Board
KSR 09-00-31	Forced Cell Move in Medium or Maximum Area
KSR 10-00-10	Unit D - and Unit E - Special Management Inmate Legal Access
KSR 10-00-11	Unit D - Behavior Problem Control
KSR 10-00-13	Unit D - Property Room Access
KSR 10-01-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records
KSR 10-01-02	Unit D - General Operational Procedures
KSR 10-01-03	Unit D - Inmate Tracking System and Records System
KSR 10-01-04	Unit D - Administrative Segregation
KSR 10-01-05	Unit D - Disciplinary Segregation
KSR 10-01-06	Unit D - Protective Custody
KSR 10-01-07	Unit D - Geriatrics
KSR 10-01-08	Unit D - Safekeepers and Pretrial Contract Hold Status Inmates
KSR 10-01-09	Unit D - Hold Ticket Residents
KSR 10-02-01	Mental Health Staffing Pattern
KSR 10-02-02	Unit E Designated Staff Visits
KSR 10-02-03	Unit E-1 Convalescent Care
KRS 10-02-04	Unit E-General Operating Procedures
KSR 11-00-01	Meal Planning for the General Population
KSR 11-00-02	Special Diets
KSR 11-00-03	Food Service Inspections
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates
KSR 11-00-06	Health Standards/Regulations for Food Service Employees
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates [~~(Amended 9/15/93)~~]
KSR 12-00-01	Inmate Summer Dress Regulations
KSR 12-00-03	State Items Issued to Inmates
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 12-00-09	Treatment of Inmates with Body Lice
KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 13-00-04	Medical and Dental Care
KSR 13-00-05	Medical Records
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Health Evaluation
KSR 13-00-12	Vision Care/Optometry Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 13-00-17	Special Care
KSR 13-02-01	Mental Health Services
KSR 13-02-02	Mentally Retarded Inmates
KSR 13-02-03	Suicide Prevention and Intervention Program
KSR 13-02-04	Division of Mental Health's Residential Services
KSR 14-00-01	Inmate Rights
KSR 14-00-04	Inmate Grievance Procedure
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 15-00-06	Inmate I.D. Cards
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08	Firehouse Living Area
KSR 15-00-09	Smoking and No Smoking Areas for Inmates and Staff
KSR 15-00-10	Program Services for Special Housing Placement
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application
KSR 15-01-05	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services
KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations
KSR 16-00-02	Inmate Correspondence and Mailroom Operations
KSR 16-00-03	Inmate Access to Telephones
KSR 16-01-01	Visiting Regulations
KSR 16-01-02	Lawn Visit Procedure and Regulations
KSR 16-01-03	Night Visit Regulations
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 18-00-07	Kentucky State Reformatory Placement Committee
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 19-00-05	Food Service On-The-Job Training and Workers Rules
KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs
KSR 20-00-04	Criteria for Participation in A College Program
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 15, 1993

FILED WITH LRC: October 15, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 523 employees of the Kentucky State Reformatory, 1406 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised October 15 [~~August 12~~], 1993 are incorporated by reference and shall be referred to as Luther Luckett Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

LLCC 01-12-01	Duty Officer Responsibilities (Amended 10/15/93)
LLCC 02-01-02	Fiscal Management: Accounting Procedures [~~(Amended 8/12/93)~~]
LLCC 02-01-03	Fiscal Management: Agency Funds [~~(Amended 8/12/93)~~]
LLCC 02-01-04	Fiscal Management: Insurance [~~(Amended 8/12/93)~~]
LLCC 02-03-01	Fiscal Management: Audits
LLCC 08-01-01	Offender Records
LLCC 08-04-01	Storage of Expunged Records
LLCC 08-05-01	Psychological and Psychiatric Reports
LLCC 10-03-09	Duties and Responsibilities of Building 1 and 2 Officer
LLCC 11-09-01	Rules and Regulations of the Unit [~~(Amended 8/12/93)~~]
LLCC 11-13-01	Inmate Dress and Use of Access Areas [~~(Amended 8/12/93)~~]
LLCC 11-18-02	Use of Monitor Telephone
LLCC 11-19-01	Unit Shakedowns/Control of Excess Property
LLCC 11-20-01	Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01	Special Management Inmates [~~(Amended 8/12/93)~~]
LLCC 12-01-02	Pretrial Contract Hold Status (Added 10/15/93)
LLCC 13-01-01	Dining Room Guidelines
LLCC 13-04-01	Food Service: Meals
LLCC 13-04-02	Food Service: Menu, Nutrition and Special Diets
LLCC 13-05-02	Medical Screening of Food Handlers
LLCC 13-06-01	Food Service: Inspections and Sanitation
LLCC 13-07-01	Food Service: Purchasing, Storage and Farm Products
LLCC 13-08-01	OJT Food Service Training Placement
LLCC 14-01-01	Sanitation, Living Condition Standards, and Clothing Issue [~~(Amended 8/12/93)~~]
LLCC 14-05-01	Institutional Inspections [~~(Amended 8/12/93)~~]
LLCC 15-01-01	Health Maintenance Services; Sick Call and Pill Call (Amended 10/15/93)
LLCC 15-03-01	Pharmacy
LLCC 15-03-02	Pharmacy Personnel
LLCC 15-03-03	Distribution, Procurement and Control
LLCC 15-03-04	Inmate - Self Administration of Medication
LLCC 15-03-05	Use of Psychotropic Medications
LLCC 15-05-02	Licensure and Training Standards
LLCC 15-06-02	Specialized Health Services
LLCC 15-06-03	Emergency Medical/Dental Care Services
LLCC 15-06-04	First Aid/CPR Training Program
LLCC 15-06-05	Suicide Prevention and Intervention Program
LLCC 15-07-01	Health Records
LLCC 15-08-01	Special Diets
LLCC 15-14-01	Informed Consent
LLCC 15-15-01	Medical Restraints
LLCC 15-16-01	Health Education/Special Health Programs
LLCC 15-17-01	Serious and Infectious Diseases
LLCC 16-01-01	Inmate Rights and Responsibilities
LLCC 16-03-01	Inmate Legal Services
LLCC 18-01-01	Inmate Correspondence
LLCC 18-01-02	Issuance of Legal Mail to Inmate Population
LLCC 18-02-01	Inmate Visiting
LLCC 18-02-03	Extended Visit and Furloughs
LLCC 18-02-04	Meritorious Visits
LLCC 18-03-01	Entry and Identification of Visitors for Inmate Visitation
LLCC 18-03-03	Inmate Visiting Disciplinary Segregation Administrative Segregation
LLCC 18-03-04	Parole Hearings (Amended 10/15/93)
LLCC 20-01-01	Personal Property Control
LLCC 20-04-01	Inmate Canteen Committee
LLCC 20-04-02	Inmate Canteen (Amended 10/15/93)
LLCC 20-04-03	Canteen Purchase Limits

LLCC 20-05-01	Inmate Control of Personal Funds
LLCC 20-05-02	Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays (Amended 10/15/93)
LLCC 20-05-03	Theft of Inmate Personal Property
LLCC 20-06-01	Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01	Classification/Security Levels
LLCC 21-03-01	Classification Process
LLCC 22-01-01	OJT/Job Assignments
LLCC 23-01-01	Academic School
LLCC 26-01-01	Religious Services
LLCC 26-01-02	Prayer
LLCC 28-01-01	Privileged Trips
LLCC 28-03-01	Temporary Release/Community Center Release
LLCC 28-04-01	Preparole Progress Report
LLCC 28-04-02	Parole Eligibility Dates

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 15, 1993

FILED WITH LRC: October 15, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1993 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 290 employees of the Luther Luckett Correctional Complex, 1060 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised October 11 [~~August 12~~], 1993, are incorporated by reference and shall be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

NTC 01-05-01	Extraordinary Occurrence Reports
NTC 01-10-01	Legal Assistance for Staff
NTC 01-11-01	Political Activities of Merit Employees
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer
NTC 01-17-01	Relationships with Public, Media and Other Agencies
NTC 02-02-02	Warden's Participation in the Agency Budgeting Process
NTC 02-03-01	Fiscal Management: Audits
NTC 02-04-01	Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02	Chapel Fund
NTC 02-08-01	Inmate Canteen
NTC 02-10-01	Insurance Coverage
NTC 02-12-01	Inmate Accounts
NTC 04-01-01	Training and Staff Development
NTC 04-04-01	Firearms and Chemical Agents Training
NTC 06-01-01	Offender Records (Amended 10/11/93)
NTC 06-01-02	Records - Release of Information
NTC 06-01-03	Taking Offender Record Folders onto the Yard
NTC 08-05-01	The Fire and Safety Officer
NTC 08-05-02	Fire Procedures
NTC 08-05-03	Fire Prevention
NTC 08-05-04	Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-07-01	Safety Standards
NTC 10-01-01	Special Management Unit (Amended 10/11/93)
NTC 10-02-01	Protective Custody Unit
NTC 10-03-01	Protective Custody
NTC 11-03-01	Food Services: General Guidelines
NTC 11-04-01	Food Service: Meals
NTC 11-04-02	Menu, Nutrition and Special Diets
NTC 11-05-02	Health Standards and Regulations for Food Service Employees
NTC 11-06-01	Inspection and Sanitation
NTC 11-07-01	Purchasing and Storage of Food Products
NTC 12-01-01	Institutional Inspection
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens (Amended 10/11/93)
NTC 12-02-02	Issuance of Personal Hygiene Products
NTC 13-01-01	Emergency Medical Care Plan

NTC 13-01-02 Emergency and Specialized Health Services
NTC 13-02-01 Administration and Authority for Health Services
NTC 13-03-01 Sick Call and Pill Call
NTC 13-04-01 Utilization of Pharmaceutical Products [~~(Amended 8/12/93)~~]
NTC 13-05-01 Dental Services [~~(Amended 8/12/93)~~]
NTC 13-05-03 Dental Radiation Levels
NTC 13-05-04 Attest Steam Incubator
NTC 13-06-01 Licensure and Training Standards
NTC 13-07-01 Provisions for Health Care Delivery
NTC 13-08-01 Medical and Dental Records
NTC 13-09-01 Special Diets
NTC 13-11-01 Inmate Health Screening and Evaluation
NTC 13-12-01 Special Health Care Programs
NTC 13-17-01 Inmates Assigned to Health Services
NTC 13-19-01 Mental Health Care Program
NTC 13-19-03 Suicide Prevention and Intervention Program
NTC 13-20-01 Infectious Disease [~~(Amended 8/12/93)~~]
NTC 13-20-02 Infection Control [~~(Amended 8/12/93)~~]
NTC 13-20-03 Disposal of Biohazard Waste
NTC 13-21-01 Vision Care and Optometry Services
NTC 13-22-01 Informed Consent
NTC 13-23-01 Special Needs Inmates
NTC 14-01-01 Legal Services Program
NTC 14-01-02 Receiving, Viewing, Handling and Storage of Video Tapes
NTC 14-02-01 Inmate Grievance Procedure
NTC 14-03-01 Inmate Rights and Responsibilities
NTC 14-03-02 Board of Claims
NTC 15-01-01 Restoration of Forfeited Good Time
NTC 15-02-01 Due Process/Disciplinary Procedures [~~(Amended 8/12/93)~~]
NTC 15-02-02 Extra Duty Assignments
NTC 15-02-03 Hearing Officer
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail [~~(Amended 8/12/93)~~]
NTC 15-03-02 Rules and Regulations for General Population Dormitories (Amended 10/11/93)
NTC 15-04-01 Inmate Identification
NTC 16-01-01 Mail Regulations (Amended 10/11/93)
NTC 16-02-01 Visiting
NTC 16-02-02 Extended and Special Visits [~~(Amended 8/12/93)~~]
NTC 16-02-03 Honor Dorm Visiting
NTC 16-03-01 Inmate Furloughs
NTC 16-05-01 Telephone Use and Control
NTC 17-01-01 Personal Property Control
NTC 17-01-02 Authorized Inmate Personal Property
NTC 17-01-03 Unauthorized Inmate Property
NTC 17-01-04 Disposition of Unauthorized Property
NTC 17-01-05 State Issue and Required Inmate Clothing (Amended 10/11/93)
NTC 17-03-01 Assessment/Orientation (Amended 10/11/93)
NTC 18-01-01 Preparole Progress Report
NTC 18-02-01 Classification
NTC 18-02-02 Classification - 48 Hour Notification
NTC 18-03-01 Special Notice Form
NTC 18-05-01 Transfers of Inmates
NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01 Inmate Work Program
NTC 19-01-03 Temporary Leave from Job Assignment
NTC 19-02-01 Correctional Industries
NTC 19-02-02 Guidelines for Correctional Industries
NTC 20-01-01 Educational Programs
NTC 20-02-02 Live Work Projects in Vocational School Classes
NTC 21-01-01 Library Services
NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01 Religious Services
NTC 23-03-01 Marriage of Inmates
NTC 24-04-01 Honor Status [~~(Amended 8/12/93)~~]
NTC 24-05-01 Unit Management
NTC 25-01-01 Release Preparation Program
NTC 25-01-02 Temporary Release/Community Center Release
NTC 25-01-03 Graduated Release
NTC 25-02-01 Funeral Trips and Bedside Visits
NTC 25-03-01 Inmate Release Procedure
NTC 26-01-01 Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: October 11, 1993
FILED WITH LRC: October 11, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1993, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and William Seabold, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 271 employees of the Northpoint Training Center, 925 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised October [~~March~~] 15, 1993, are incorporated by reference and shall be referred to as Roederer Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

RFC 01-06-01	Inmate Access to and Communication with RCC Staff
RFC 01-08-01	Public Information and News Media Access
RFC 01-09-01	Staff Participation in Professional Organization and Conferences; Provisions for Leave and Reimbursement for Expenses
RFC 01-10-01	RFC Cooperation with Outside Bodies Including Courts, Governmental Legislative, Executive, and Community Agencies
RFC 02-01-01	Fiscal Management: Organization
RFC 02-01-02	Fiscal Management: Accounting Procedures
RFC 02-01-03	Fiscal Management: Agency Funds
RFC 02-01-04	Fiscal Management: Insurance
RFC 02-02-01	Fiscal Management: Budget [~~(Amended 3/15/93)~~]
RFC 02-02-02	Inmate Control of Personal Funds [~~(Amended 3/15/93)~~]
RFC 02-02-03	Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
RFC 02-02-05	Inmate Canteen Services
RFC 02-03-01	Fiscal Management: Audits
RFC 02-04-01	Purchase Orders [~~(Amended 3/15/93)~~]
RFC 02-04-02	Processing of Invoices [~~(Amended 3/15/93)~~]
RFC 02-06-01	Property Inventory
[~~RFC 03-13-01~~	~~Staff/Visitor Meals (Deleted 10/15/93)~~]
RFC 04-01-01	Employee Training and Development [~~(Amended 3/15/93)~~]
RFC 06-01-01	Offender Records
RFC 06-03-01	Records Release of Information (Amended 10/15/93)
RFC 06-03-02	Storage of Expunged Records (Amended 10/15/93)
RFC 06-03-04	Access to Psychological and Psychiatric Reports
RFC 06-04-01	Court Trips
RFC 06-04-02	Receipt of Order of Appearance
RFC 08-01-01	Fire Prevention
RFC 08-08-01	Hazardous Communication Program
RFC 09-04-03	Duties and Responsibilities of the Fire Safety Officer
RFC 09-06-01	Search Policy/Disposition of Contraband
RFC 10-01-02	Temporary Holding Cell Guidelines (Amended 10/15/93)
RFC 11-01-01	Food Services: General Guidelines
RFC 11-02-01	Food Service: Security
RFC 11-03-01	Dining Room Guidelines (Amended 10/15/93)
RFC 11-04-01	Food Service: Meals
RFC 11-04-02	Food Service: Menu, Nutrition and Special Diets
RFC 11-05-02	Medical Screening of Food Handlers
RFC 11-06-01	Food Service: Inspections and Sanitation
RFC 11-07-01	Food Service: Purchasing, Storage and Farm Products
RFC 12-01-01	Sanitation, Living Conditions Standards, Clothing Issues (Amended 10/15/93)
RFC 12-01-02	Bed Areas (Amended 10/15/93)
RFC 12-01-03	General Guidelines for Living Units (Added 10/15/93)
RFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry
RFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule
RFC 12-03-02	Barber Shop Services and Equipment Control
RFC 12-04-01	Institutional Inspections (Amended 10/15/93)
RFC 12-05-02	Use of Noncombustible Receptacle
RFC 12-06-01	Insect and Vermin Control (Amended 10/15/93)
RFC 13-01-01	Organization of Health Services
RFC 13-02-01	Health Maintenance Services: Sick Call and Pill Call
RFC 13-03-01	Dental Policy/Sick Call
RFC 13-04-01	Preliminary Health Evaluation and Establishment of Inmate Medical [~~(Amended 3/15/93)~~]
RFC 13-05-02	Licensure and Training Standards for Medical Department
RFC 13-06-01	Suicide Prevention and Intervention Program
RFC 13-06-02	First Aid and CPR Training Program
RFC 13-06-03	Emergency Medical and Dental Care Services [~~(Amended 3/15/93)~~]
RFC 13-06-04	First Aid/CPR Training Program
RFC 13-07-01	Health Records
RFC 13-07-03	Use of Pharmaceutical Products
RFC 13-09-01	Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death
RFC 13-10-01	Health Education/Special Health Programs
RFC 13-11-01	Informed Consent
RFC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPC
RFC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
RFC 13-13-01	Identification of Special Needs Inmates
RFC 13-15-01	Medical Restraints
RFC 13-16-01	Specialized Health Services
RFC 13-17-01	Vision Care and Optometry Services
RFC 13-18-01	Infection Control
RFC 14-01-01	Inmate Rights and Responsibilities (Amended 10/15/93)
RFC 16-01-01	Inmate Visiting
RFC 16-02-01	Telephone Communications
RFC 16-03-01	Mail Regulations
RFC 17-01-01	Assessment/Orientation Procedure for Intrasystem Transfers (Amended 10/15/93)
RFC 17-03-01	Inmate Personal Property and Property Control
RFC 17-05-02	Housing Unit Assignment Assessment/ Classification Center
RFC 17-05-03	Notifying Inmate's Families of Admission and Procedures for Mail and Visiting
RFC 17-05-04	Assessment Center Operations Rules and Regulations (Amended 10/15/93)
RFC 17-05-05	Assessment Center Operations and Reception Programs [~~(Amended 3/15/93)~~]
RFC 18-01-01	Institutional Classification Committee
RFC 19-01-01	Job Assignments
RFC 19-02-01	Government Service Details
RFC 20-01-01	Academic Education Program (Amended 10/15/93)

RFC 21-01-01	Library Services [~~(Amended 3/15/93)~~]
RFC 22-01-01	Recreation and Inmate Activities
RFC 22-03-01	Inmate Clubs and Organizations [~~(Amended 3/15/93)~~]
RFC 23-01-01	Religious Services
RFC 24-01-01	Social Services and Counseling Program
RFC 25-04-02	Parole Eligibility Dates [~~(Amended 3/15/93)~~]
RFC 25-05-01	Inmate Discharge Procedure

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: October 15, 1993
FILED WITH LRC: October 15, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 175 employees of the Roederer Correctional Complex, 647 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to 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.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised October 11, 1993, are incorporated by reference [~~on October 15, 1992~~] and shall [~~hereinafter should~~] be referred to as Blackburn Correctional Complex and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays 8 a.m. to 4:30 p.m.

BCC 01-05-01	Duty Officer and Acting Warden
BCC 01-07-01	Extraordinary Occurrence Reports
BCC 01-09-01	Legal Assistance for Staff
BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01	Relationships with Public, Media, and Other Agencies
BCC 01-15-01	Internal Affairs Office
BCC 01-16-01	Tours of Blackburn Correctional Complex
BCC 01-19-01	Inmate Access to BCC Staff (Amended 10/11/93)
BCC 02-01-01	Inmate Canteen [~~(Amended 10/15/92)~~]
BCC 02-02-01	Fiscal Responsibility [~~(Amended 10/15/92)~~]
BCC 02-02-02	Fiscal Management: Accounting Procedures [~~(Amended 10/15/92)~~]
BCC 02-02-03	Fiscal Management: Checks [~~(Amended 10/15/92)~~]
BCC 02-02-04	Fiscal Management: Budget [~~(Amended 10/15/92)~~]
BCC 02-02-05	Fiscal Management: Insurance [~~(Amended 10/15/92)~~]
BCC 02-02-06	Fiscal Management: Audits [~~(Amended 10/15/92)~~]
BCC 02-04-01	Billing Method for Health Services Staff Paid by Personal Service Contract [~~(Amended 10/15/92)~~]
BCC 02-05-01	Property Inventory [~~(Amended 10/15/92)~~]
BCC 02-06-01	Purchasing [~~(Amended 10/15/92)~~]
BCC 02-07-01	Inmate Personal Accounts [~~(Amended 10/15/92)~~]
BCC 04-02-01	Firearms Training (Amended 10/11/93)
BCC 04-03-01	Educational Assistance Program
BCC 05-01-01	Inmate Participation in Authorized Research
BCC 06-01-01	Storage of Expunged Records
BCC 06-02-01	Records - Release of Information
BCC 06-02-02	Offender Records
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board
BCC 08-02-01	Natural Disaster Plan (Tornado)
BCC 08-03-01	Emergency Preparedness Plan Manual
BCC 08-04-01	Fire Safety Plan, Drills and Related Staff Duties (Amended 10/11/93)
BCC 08-04-02	Immediate Release of Inmates from Locked Areas (Amended 10/11/93)
BCC 08-05-01	Duties of Fire Safety Officer
BCC 08-06-01	Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
BCC 08-07-01	Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers
BCC 09-01-01	Inclement Weather/Emergency Condition Operation (Amended 10/11/93)
BCC 09-02-01	Restricted Areas (Amended 10/11/93)
BCC 09-02-02	Inmate Pass System to Restricted Areas
BCC 09-02-03	Regulation of Inmate Movement
BCC 09-02-04	Radio Escorted Yard Movement During Daylight

Savings Time (November 1 - April 30) (Amended 10/11/93)
BCC 09-03-01 Inmate Identification
BCC 09-04-02 Complex Entry & Exit
BCC 09-05-01 Key Control
BCC 09-06-02 Transportation to Courts
BCC 09-07-01 Drug Abuse and Intoxicants Testing (Amended 10/11/93)
BCC 09-08-02 Use of Restraints
BCC 09-09-01 Population Counts and Count Documentation (Amended 10/11/93)
BCC 09-10-03 Development of Institutional Post Orders
BCC 09-10-04 Governmental Services, Study Release Officer Post Orders (Amended 10/11/93)
BCC 09-10-05 Unit A-1 Post Orders
BCC 09-10-06 Recreation Post Orders: Observation
BCC 09-10-07 Entrance Gate Post Orders
BCC 09-10-08 Visiting Area Post Orders
BCC 09-10-09 Security Staff General Orders
BCC 09-10-10 Dining Room Officer Post Orders
BCC 09-12-01 Use of Physical Force; Prohibition of Personal Abuse and Corporal Punishment
BCC 09-13-01 Perimeter Patrol
BCC 09-14-01 Prohibiting Inmate Authority Over Other Inmates
BCC 09-15-01 Search Policy/Disposition of Contraband (Amended 10/11/93)
BCC 09-16-01 Security Activity Logs
BCC 09-17-01 Institutional Supervisor Inspections
BCC 09-18-01 Use of State Vehicles and Staff Owned Vehicles
BCC 09-19-01 Duties and Responsibilities of the Institutional Captain (Amended 10/11/93)
BCC 09-19-02 Duties and Responsibilities of the Shift Supervisor
BCC 09-20-01 Inmate Death
BCC 09-21-01 Tool Control
BCC 09-22-01 Emergency Communication System
BCC 10-01-01 Special Management Inmates (Amended 10/11/93)
BCC 10-01-02 Short-Term Administrative Segregation Holding Area (Amended 10/11/93)
BCC 11-01-01 Menu and Special Diets (Amended 10/11/93)
BCC 11-02-01 Food Service: Inspection, Health Protection and Sanitation (Amended 10/11/93)
BCC 11-03-01 Food Service: Meals (Amended 10/11/93)
BCC 11-04-01 Dining Room Guidelines
BCC 11-05-01 Food Service Security: Knife & Other Sharp Instrument/Utensil Control
BCC 11-06-01 Purchasing, Storage and Farm Products (Amended 10/11/93)
BCC 11-07-01 Food Service Operations Manual
BCC 12-02-01 Personal Hygiene Items
BCC 12-02-02 Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities (Amended 10/11/93)
BCC 12-05-01 Barber Shop Services
BCC 12-06-01 BCC Housekeeping Plan
BCC 13-01-01 Sick Call and Pill Call (Amended 10/11/93)
BCC 13-02-01 Administration and Authority for Health Services
BCC 13-03-01 Provisions of Health Care Delivery (Amended 10/11/93)
BCC 13-04-01 Licensure and Training Standards (Amended 10/11/93)
BCC 13-05-01 Medical Alert System
BCC 13-06-01 Health Care Practices
BCC 13-07-01 Emergency Medical Care Plan (Amended 10/11/93)
BCC 13-07-02 Emergency and Specialized Health Services (Amended 10/11/93)
BCC 13-07-03 Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent (Amended 10/11/93)
BCC 13-08-01 Inmate Health Screening and Evaluation (Amended 10/11/93)
BCC 13-09-01 Prohibition on Medical Experimentation
BCC 13-10-01 Dental Services (Amended 10/11/93)
BCC 13-11-01 Suicide Prevention and Intervention Program
BCC 13-12-01 Use of Pharmaceutical Products (Amended 10/11/93)
BCC 13-12-02 Parenteral Administration of Medications and Use of Psychotropic Drugs
BCC 13-13-01 Inmate Health Education (Amended 10/11/93)
BCC 13-14-01 Management of Serious and Infectious Diseases (Amended 10/11/93)
BCC 13-15-01 Informed Consent (Amended 10/11/93)
BCC 13-16-01 Health Records (Amended 10/11/93)
BCC 13-17-01 Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 13-19-01 Physicians Referrals/Continuity of Care (Amended 10/11/93)
BCC 13-20-01 Chronic and Convalescent Care (Amended 10/11/93)
BCC 13-22-01 Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers (Amended 10/11/93)
BCC 13-23-01 First Aid Kits
BCC 14-01-01 Office of Public Advocacy Attorney Visits
BCC 14-02-01 Law Library (Amended 10/11/93)
BCC 14-03-01 Inmate Grievance Procedure
BCC 14-04-01 Inmate Rights and Responsibilities (Amended 10/11/93)
BCC 14-05-01 Inmate Claims
BCC 14-06-01 Legal and Support Services for Indigent Inmates
BCC 15-02-01 Meritorious Living Unit (B-1)
BCC 15-02-02 Room Assignment
BCC 15-03-01 Rules and Regulations for Dormitories (Amended 10/11/93)
BCC 15-04-01 Restoration of Forfeited Good Time
BCC 15-05-01 Extra Duty Assignments (Amended 10/11/93)
~~[BCC 15-06-01 Due Process/Disciplinary Procedures (Deleted 10/11/93)]~~
BCC 16-01-01 Inmate Furloughs (Amended 10/11/93)
BCC 16-02-01 Visiting
BCC 16-03-01 Inmate Packages
BCC 16-03-02 Outgoing Inmate Packages
BCC 16-03-03 Inmate Correspondence
BCC 17-02-01 Authorized Inmate Personal Property
BCC 17-03-01 Processing of New Inmates From Local Jails
BCC 18-01-01 Classification: Institutional Classification and Reclassification
BCC 18-02-01 Racial Balance in Living Areas (Amended 10/11/93)
BCC 19-01-01 Inmate Work Programs
BCC 19-02-01 Classification of Inmates to Governmental Service Program
BCC 19-03-01 Correctional Industries (Amended 10/11/93)
BCC 20-01-01 Academic and Vocational School (Amended 10/11/93)
BCC 20-02-01 College Programs
BCC 20-04-01 Educational Program Evaluation
BCC 20-05-01 Educational Program Planning
BCC 20-06-01 Academic and Vocational Curriculum
BCC 21-01-01 Library Services
BCC 22-01-01 Arts and Crafts/Production and Sale of Items
BCC 22-02-01 Privileged Trips
BCC 22-03-01 Recreational Employees
BCC 22-04-01 Recreation and Inmate Activities
BCC 22-04-02 Inmate Clubs and Organizations
BCC 22-04-03 Conducting Inmate Organizational Meetings and Programs
BCC 22-04-04 Recreation Program Availability
BCC 22-04-05 Supervision of Leisure-time Craft Club Activities and

	Materials
BCC 22-06-01	Music Club
BCC 22-08-01	Unit Recreation Program
BCC 22-09-01	Use of Inmates in Recreation Programs
BCC 23-01-01	Religious Services (Amended 10/11/93)
BCC 24-01-01	Duties and Responsibilities of Classification and Treatment Officers
BCC 24-02-01	Duties and Responsibilities of the Unit Director and Assistant to Unit Director
BCC 24-03-01	Social Services
BCC 25-01-01	Inmate Check Out Procedure (Amended 10/11/93)
BCC 25-02-02	Temporary Release/Community Center Release
BCC 25-05-01	Supplemental Preparole Progress Reports
BCC 26-01-01	Citizen Involvement and Volunteer Service Program

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 11, 1993

FILED WITH LRC: October 11, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or William Seabold, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 95 employees of the Blackburn Correctional Complex, 401 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised October 15 [~~August 12~~], 1993, are incorporated by reference and shall be referred to as Western Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

WKCC 02-01-01	Inmate Funds
WKCC 02-01-02	Inmate Canteen
WKCC 02-00-03	Invoice and Voucher Processing
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06	Purchasing Procedures
WKCC 02-01-01	Inmate Funds
WKCC 02-02-01	Agency Funds and Accounting Procedures
WKCC 02-08-01	Property Receipt and Inventory Procedures
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01	Employee Training and Development
WKCC 04-04-01	Educational Assistance Program
WKCC 05-01-01	Research, Consultants, and Student Interns
WKCC 06-00-01	Offender Records and Information Access
WKCC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01	Drug Abuse and Alcohol Testing
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04	Food Service Security
WKCC 11-00-05	Food Service General Guidelines
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01	Inmate Clothing
WKCC 13-00-01	Special Health Programs [~~(Amended 8/12/93)~~]
WKCC 13-01-01	Use of Pharmaceutical Products (Amended 10/15/93)
WKCC 13-02-01	Health Care Services
WKCC 14-04-01	Legal Services Program
WKCC 14-06-01	Inmate Grievance Procedure
WKCC 15-01-01	Hair and Grooming Standards
WKCC 15-03-01	Meritorious Good Time
WKCC 15-05-01	Restoration of Forfeited Good Time
WKCC 16-01-01	Visiting Policy and Procedures
WKCC 16-02-01	Inmate Correspondence
WKCC 16-03-01	Inmate Access to Telephones
WKCC 16-04-01	Inmate Packages
WKCC 17-01-01	Inmate Personal Property

WKCC 17-02-01	Inmate Reception and Orientation
WKCC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee
WKCC 20-01-01	Education Program
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities
WKCC 22-00-02	Inmate Clubs and Organizations
WKCC 23-00-01	Religious Services
WKCC 25-02-01	Inmate Release Process
WKCC 25-03-01	Prerelease Programs

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 15, 1993

FILED WITH LRC: October 15, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and William Seabold, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 136 employees of the Western Kentucky Correctional Complex, 410 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

601 KAR 1:040. Application for operating authority and registration of motor carriers authorized to operate by the Interstate Commerce Commission.

RELATES TO: KRS Chapter 281, 49 CFR Part 1023

STATUTORY AUTHORITY: KRS 281.600, 281.620, 281.752, 49 CFR Part 1023

NECESSITY AND FUNCTION: This administrative regulation describes the procedure to follow in applying for intrastate operating authority in the Commonwealth and the registration of interstate motor carriers operating in Kentucky pursuant to authority granted by the Interstate Commerce Commission.

Section 1. Kentucky Intrastate Authority. (1)(a) All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the [~~forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty five (25) dollars. The required~~] form, "Application for Operating Authority" form TC 93-13 effective April, 1993. This form [~~March, 1992~~] is incorporated by reference as a part of this administrative regulation.

(b) The application shall be accompanied by a filing fee of twenty-five (25) dollars.

(c) All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application.

(b) This certification shall not be [~~no~~] more than thirty (30) days old at the time the application is submitted to the department.

(3) The application shall be accompanied by the applicant's financial statement prepared in accordance with 601 KAR 2:010.

(4)(a) All applications shall be sworn to by the applicant or a responsible official acting for the applicant.

(b) A [~~No~~] hearing shall not be called or authority issued upon an incomplete application.

(5) The form TC 93-13 may be viewed, copied or obtained free of charge from the Transportation Cabinet's Office of General Counsel, [~~located on the tenth floor of the~~] State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-2548 [~~7650~~].

Section 2. Temporary Authority Applications. (1)(a) Applications for temporary authority shall be made to the department by petition filed in duplicate.

(b) The petition shall set forth the facts relied on by the applicant as showing an immediate and urgent need for the authority sought.

(c) All existing carriers having authority to perform the proposed service between any of the points sought in the petition shall be fully identified and the authority of each as affected by the application shall be stated.

(d)1. The applicant shall have the burden of proof in showing that any existing carriers with authority are not capable of meeting the need for service.

2. In lieu of meeting this burden, the applicant may submit a waiver from each carrier authorized to serve the area sought or any

part thereof by filing a letter from each of the carrier waiving any objection to the temporary grant of authority.

(2) There shall also be filed with the petition verified statements from a supporting shipper or shippers. The supporting statement shall contain at least the following information:

(a) Name and address of the motor carrier who has filed the application for temporary authority;

(b) Statement of character and reputation of the applicant and a brief history of the applicant's work history, including any experience in providing transportation services;

(c) Name, address and interest of each person filing a supporting affidavit;

(d) Description of the specific commodity or passengers to be transported;

(e) Points or areas to, from, or between which the commodities or passengers are to be transported. An estimate of the volume of traffic that will be involved and the frequency of this traffic. If service is needed to or from a territory or area rather than a specific point, a description of the territory or area and evidence of a need to justify the territorial grant of authority is required;

(f) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past;

(g) How soon the transportation service is needed and the reasons for the time limit;

(h) How long the need for the transportation service likely will continue and if the person making the supporting statement would support a permanent service application;

(i) Statement of the consequences if this transportation service is not made available and the circumstances which create an immediate and urgent need for the requested service; and

(j) Whether efforts have been made to obtain the service from existing motor carriers and the dates and results of these efforts; name and address of all existing carriers who have either failed or refused to provide the service; and the reasons given for the failure or refusal.

(3) The department may issue temporary authority without following any of the requirements listed above if one (1) of the following conditions exists:

(a) [If] There are no existing carriers with authority within the scope and area of the application;

(b) [if] All existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority;

(c) [if] There are unusual and emergency conditions; or

(d) [if] The application is for temporary approval under KRS 281.632(2)[, the department may issue temporary authority without following any of the requirements listed above].

(4) If no application for corresponding permanent authority is made, applications for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2:010.

Section 3. Application for Approval of Transfer of Certificate or Permit. (1) All applications for approval to transfer a certificate or permit issued by the Department of Vehicle Regulation authorizing Kentucky intrastate commerce shall be [made on the forms prescribed and furnished by the department and shall be] accompanied by a filing fee of twenty-five (25) dollars. The application shall be made on "Application for Approval of Transfer of Certificate of Permit" form TC 93-17, effective April, 1993. This form [March, 1992] is incorporated by reference as a part of this administrative regulation. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application. This certification shall not be [ne] more than thirty (30) days old at the time the application is submitted to the department.

(3) The application shall be accompanied by the transferee's financial statement prepared in accordance with 601 KAR 2:010. All applications shall be sworn to by the applicant or a responsible official acting for the applicant. A [No] hearing shall not be called or authority issued upon an incomplete application.

(4) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.

(5) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

(6) The form TC 93-17 may be viewed, copied or obtained free of charge from the Transportation Cabinet's Office of General Counsel, [located on the tenth floor of the] State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-2548 [7650].

Section 4. Interstate Operating Authority - Exempt, For-hire. (1)(a) All for-hire motor carriers transporting commodities that have been exempted from the authority requirements of the Interstate Commerce Commission or is performing transportation functions that are exempt from the authority of the Interstate Commerce Commission shall before engaging in the interstate transportation of persons or property in Kentucky secure from the department a certificate [or permit] authorizing this interstate exempt transportation.

(b) All applications for this certificate [or permit] shall be made on the [forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. The] form, TC 95-12, effective August, 1993 [October, 1985], "FORM A, Uniform Application for Registration of Motor [Operating Authority Issued by ICC or These] Carriers Exempt from ICC Regulations".

(c) The application shall be accompanied by:

1. A twenty-five (25) dollar filing fee; and

2. A statement of reasons [a copy of the applicant's operating authority issued by the Interstate Commerce Commission, except where] the transportation activities are exempted from federal regulation[, in which event the application shall be for authority to transport persons or property under the particular exemption or exemptions of the Federal Motor Carrier Act].

(2)(a) All applications and exhibits shall be typewritten or printed legibly in ink.

(b) Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(c) All applications shall [must] be sworn to by the applicant or a responsible official acting for the applicant.

(3) If the motor [The department may issue a Kentucky interstate common carrier certificate, a Kentucky interstate irregular route common carrier certificate, and a Kentucky interstate contract carrier permit, all pursuant to the interstate authority. In the event the] carrier is engaged solely in transportation activities exempted by federal law from regulation, the department shall issue any qualified applicant a Kentucky interstate irregular route common carrier certificate [or permit] restricted to the federally exempted activities as may be appropriate.

(4) The form TC 95-12 may be obtained free of charge from the Transportation Cabinet's Department of Vehicle Regulation, Division of Motor Carriers located on the third floor of the State Office Building, 501 High Street, Frankfort, Kentucky. Their mailing address is Division of Motor Carriers, Qualification/Permit Branch, P.O. Box 2007, Frankfort, Kentucky 40602. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-4540.

Section 5. Interstate Operating Authority - For-hire Motor Carriers

Authorized by the Interstate Commerce Commission. (1) 49 CFR Part 1023 as effective May 18, 1993 shall govern the registration of the for-hire motor carriers which meet the following criteria:

(a) Those whose principal place of business is Kentucky; and

(b) Those which are operating in interstate commerce pursuant to authority granted by the Interstate Commerce Commission.

(2) The "Procedure Manual for the Single State Registration System" prepared by the National Conference of State Transportation Specialists and effective July 12, 1993 shall govern the procedures of the Department of Vehicle Regulation in the registration of for-hire motor carriers operating pursuant to authority granted by the Interstate Commerce Commission.

(3) A motor carrier which maintains its principal place of business in Kentucky shall apply to the Department of Vehicle Regulation for registration pursuant to 49 CFR Part 1023.

(4) The Kentucky fee for the issuance of the registration receipt required by the "Procedure Manual for the Single State Registration System" shall be ten (10) dollars per motor vehicle.

(5) The "Procedure Manual for the Single State Registration System" is incorporated by reference as a part of this administrative regulation. A copy of it may be viewed or copied at the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time on weekdays. Its telephone number is (502)564-4540.

Section 6. [~~5.~~] Contract Carrier Permit; Intrastate. (1) All applications for operating authority to engage in intrastate commerce as a contract carrier shall be made on the form incorporated by reference in Section 1 of this regulation [~~and shall be accompanied by a filing fee of twenty five (25) dollars~~] and be in conformity with this administrative regulation and 601 KAR 1:045.

(2) Each application shall include:

(a) A filing fee of twenty-five (25) dollars; and

(b) Two (2) copies of the contract under which the applicant desires to operate.

(3) The contracts shall be executed by the applicant and shipper, and shall set out:

(a) [~~, among other things,~~] The rates applicable;

(b) [~~and~~] The extent and scope of the activity covered by the contract; and

(c) The minimum amount of freight to be shipped.

(4) Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation.

(5) At least one (1) of the contract copies shall have original signatures.

(6) The extent of the authority of the contract carrier permit shall be:

(a) Limited to the scope of the contract on file with the department;

(b) Made a part of the permit; and

(c) [~~be~~] Briefly set out on the vehicle identification card carried in the vehicle operated by the contract carrier.

Section 7. [~~6.~~] Kentucky Intrastate Authority by a Single State Operator who Intends to Register with the ICC. All applications for a certificate of public convenience and necessity authorizing motor common carrier operations in the transportation of property or passengers in intrastate commerce, by an applicant who is a single state operator but also desires to engage in transportation in interstate and foreign commerce shall file a copy of its final Interstate Commerce Commission authority with the application for intrastate authority.

Section 8. (1) An applicant who only wants to transport exempt commodities pursuant to 601 KAR 1:090 or KRS 281.625 shall apply on form TC 95-14, "Application for Kentucky Irregular Route Truck Certificate, Intrastate Authority - Exempt Commodities" last revised in August, 1993.

(2) The form TC 95-14 is incorporated by reference as a part of this administrative regulation. A copy of it may be viewed, copied, or obtained at the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time on weekdays. Its telephone number is (502)564-4540.

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary
STEPHEN REEDER, Deputy Secretary

APPROVED BY AGENCY: October 6, 1993

FILED WITH LRC: October 15, 1993 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 23, 1993 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Fourth Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 18, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 18, 1993. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on November 23, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All motor carriers operating in Kentucky.

(a) Direct and indirect costs or savings to those affected: None as a result of the amendment to this administrative regulation.

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: Identifies the forms which are required to be filed when applying for operating authority.

(2) Effects on the promulgating administrative body: None, as a result of the changes to this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The application forms were revised and in accordance with KRS Chapter 13A they were incorporated by reference. In addition, a federal mandate imposed the requirement for base state insurance registration.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There are four regulations of the Department of Vehicle Regulation which had to be amended to implement the federal mandate in 49 CFR Part 1023. The others are 601 KAR 1:100 (replaced by 601 KAR 1:101), 601 KAR 2:010, and 601 KAR 9:040. They must be considered together to determine how the federal mandate will be implemented in Kentucky.

Tiering: Was tiering applied? Yes. Different forms for requests of different types.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 102-240, Section 4005 of Title IV and the implementing federal regulations 49 CFR Part 1023.

2. State compliance standards. Kentucky is one of the states eligible under 49 CFR Part 1023 to register the motor carriers based within its borders. Kentucky is complying exactly with the provisions of 49 CFR Part 1023.

3. Minimum or uniform standards contained in the federal mandate. The eligible states prepared uniform procedures for the implementation of the single state insurance registration. Each base state is to collect the registration fees for all participating states. Kentucky's fee is $10 and replaces the cost of the vehicle identification card set forth in 601 KAR 9:040.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, the administrative regulation is exactly the same as the portion of the federal mandate implemented in this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

TRANSPORTATION CABINET
Department of Vehicle Regulation
Office of General Counsel
(Proposed Amendment)

601 KAR 2:010. General procedures.

RELATES TO: KRS Chapters 186, 281, 49 CFR Part 1023

STATUTORY AUTHORITY: KRS 186.050, 281.600, 365.015, 40 CFR Part 1023

NECESSITY AND FUNCTION: This administrative regulation sets forth general procedures of the Department of Vehicle Regulation that are not specifically covered by topics in other administrative regulations. This administrative regulation is to provide for a more orderly operation of the department.

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

Section 2. Method of Payment; Exception. (1) Except as set forth in subsection (2) of this section, the department shall accept personal checks, corporate checks, certified checks, cashier's checks, money orders or cash for payment of fees and[~~/or~~] taxes owed to the Commonwealth that are the responsibility of the department to collect.

(2) [~~; except, however,~~] The payment of apportioned registration licensing fees, fees collected pursuant to 49 CFR part 1023, and payment to replace a check for which there was insufficient funds shall be made only by certified checks, cashier's checks, money orders, [~~or~~] cash, or other guaranteed funds.

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

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

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

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

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

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

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

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

(5) The form TC 93-24 may be obtained free of charge, viewed or copied from the Transportation Cabinet's Office of General Counsel, [~~located on the tenth floor of the~~] State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-2548 [~~7650~~].

Section 8. Change of Name. Any authorized carrier may effect a change in the trade, assumed or corporate name under which it conducts its business by making written application therefor to the

department and by furnishing evidence to the department of compliance with the applicable Kentucky laws regarding the use of trade or assumed names. The twenty-five (25) dollars application fee shall also be submitted.

Section 9. Papers to be Carried on Common Carrier Vehicles and Available for Inspection. (1) Every vehicle being operated as a common carrier of property in intrastate or interstate commerce shall carry in the possession of the driver thereof, a manifest, bills of lading, freight bills, or other similar papers, covering the intrastate or interstate freight carried by that vehicle. The manifest, bills of lading, freight bills, or other shipping documents may be of any form within the carrier's discretion, but shall clearly show the following:

(a) The name of the carrier;

(b) The name of the shipper;

(c) The name of the consignee; and

(d) The address of each.

(2) The manifest, bills of lading, freight bills or other such shipping documents shall be made available for inspection to any authorized officer upon demand.

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

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

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

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

STEPHEN REEDER, Deputy Secretary
NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: October 5, 1993

FILED WITH LRC: October 15, 1993 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 23, 1993 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Fourth Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 18, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 18, 1993. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on November 23, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All persons interacting with the Department of Vehicle Regulation.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: No change as a result of this amendment. Listed the specific form to be used to file financial statement.

(2) Effects on the promulgating administrative body: The requirement that the fees collected pursuant to 49 CFR Part 1023 be guaranteed will prevent many administrative problems.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: While the federal regulation does not mandate that the fees be guaranteed, the decision was made by the participating states to require them to be guaranteed because much of the funds collected will belong to other jurisdictions. If a check were to "bounce", it would cause major administrative problems for all the jurisdictions. This requirement for guaranteed funding is included in the Procedures Manual incorporated by reference in 601 KAR 1:040.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: The Procedures Manual incorporated by reference in 601 KAR 1:040 specifies that the fees collected pursuant to 49 CFR Part 1023 be in a guaranteed form.

(a) Necessity of proposed regulation if in conflict: Since 601 KAR 2:010 already specified the fees which must be paid in a guaranteed form, the Department of Vehicle Regulation felt it would cause less confusion if it were set forth in this administrative regulation also.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. This administrative regulation sets forth uniform general requirements for dealing with the Department of Vehicle Regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 1023

2. State compliance standards. The $10 registration fee allowed in 49 CFR Part 1023 is specified to be in guaranteed funds of some sort.

3. Minimum or uniform standards contained in the federal mandate. The maximum fee is set by the federal regulation at $10 per vehicle.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation requires the $10 registration fee to be in guaranteed funds. The federal regulation does not address how the fees are to be paid but the uniform Procedures Manual adopted by the implementing states does require it.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Requiring the fee to be paid in guaranteed funds is appropriate since the fees are also being collected for 37 other states and the District of Columbia. If they were not guaranteed and a check were to "bounce", it would be a gigantic administrative task to cancel the registration in each

jurisdiction.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

601 KAR 9:040. Reciprocity and motor vehicle identification cards.

RELATES TO: KRS Chapters 138, 186, 281
STATUTORY AUTHORITY: KRS 281.600, 281.610, 281.750, 281.752
NECESSITY AND FUNCTION: KRS Chapters 138, 186 and 281 require the Transportation Cabinet to administer and enforce motor vehicle laws and the highway use tax laws and to regulate the transportation of persons and property for hire. This administrative regulation establishes the identifying documents required, and the fees therefor, necessary to enforce and administer the requirements of these laws.

Section 1. In General. (1) Before a motor carrier is entitled to reciprocity whereby the operation of its motor vehicles engaged exclusively in interstate commerce is exempted from payment of registration fees as required by KRS 186.050, or seat taxes as required by KRS 186.276-186.286, there shall be a reciprocity agreement between the Commonwealth of Kentucky and the state in which the motor carrier's equipment should be and is properly licensed.

(2) In determining if [~~whether~~] a motor vehicle is entitled to reciprocity, the law of Kentucky dealing with reciprocity, administrative regulations of the cabinet, and the reciprocity agreements between the states involved shall be the determining factors.

Section 2. Identification Cards for Vehicles Operating Under Reciprocity Agreements. (1) Before any motor vehicle operated under a reciprocity agreement and operated by a motor carrier as described in KRS 138.655(5) and (7) and KRS 281.011(3), (4) and (5) shall be entitled to reciprocal privileges when operating in interstate commerce in Kentucky and entitled to use the highways of this state, the owners and operators shall apply to the Transportation Cabinet for a motor vehicle identification card. [~~Such application shall be made on forms prescribed and furnished by the cabinet and~~]

(2) The application shall be on form TC 95-38, "Application for Kentucky Vehicle Identification Card for Year ____" last revised in September, 1993. This form is hereby incorporated by reference.

(3) Except as provided in Section 9 of this administrative regulation, the application shall be accompanied by a fee of ten (10) dollars for each motor vehicle identification card applied for.

(4) This [~~Such~~] card shall be carried in the cab of the motor vehicle at all times. Failure to display this card shall constitute a violation of KRS 138.665, 281.750 or 281.752.

Section 3. Motor Vehicle Identification Cards for Vehicles Licensed in Kentucky. (1) Before any motor vehicle registered and licensed in Kentucky and operated by a motor carrier as described in KRS 138.655(5) and (7) and KRS 281.011(3), (4) and (5) can be operated in intrastate commerce or interstate commerce, the [~~such~~] vehicle shall [~~must~~] have a vehicle identification card issued by the Transportation Cabinet after application by the owner or operator on form TC 95-38.

(b) This [~~, which~~] card shall [~~must~~] be carried in the cab of the vehicle at all times. [~~The owner or operator of such vehicle shall apply to the Transportation Cabinet for the motor vehicle identification card. The application shall be on forms prescribed and furnished by the cabinet.~~]

(c) A [~~No~~] fee shall not be charged by the cabinet for the issuance of this card.

(d) Failure to display this card shall constitute a violation of KRS 138.665, 281.750 or 281.752.

Section 4. Information to be Set Out on the Motor Vehicle Identification Cards. Motor vehicle identification cards shall be issued annually upon payment of the prescribed fee and upon compliance with all statutory requirements and appropriate administrative regulations. The card shall contain the following:

(1) A designation of "private carrier" or "for hire carrier";

(2) The name and address of the holder;

(3) The identification of the vehicle;

(4) The vehicle combined license weight or the actual combined weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration year; [~~such other information as may be required;~~] and

(5) [~~in addition, shall have thereon~~] The KYU license number issued to the owner or operator by the Transportation Cabinet under KRS 138.655 for the use of gasoline and special fuels on the public highways of this state.

Section 5. Temporary Identification Documents. (1)(a) Notwithstanding the provisions of Sections 2 and 3 of this administrative regulation, any operator of a motor vehicle qualified to operate intrastate or interstate in Kentucky and using either a leased or owned vehicle may elect to obtain a thirty (30) day emergency permit issued by the cabinet.

(b) The permits shall be issued for a fee of ten (10) dollars each.

(c) The permit shall [~~, which must~~] be displayed in the cab of the vehicle, as identification for the [~~such~~] vehicle.

(d) The motor carrier to whom a thirty (30) day emergency permit is issued shall be [~~is~~] responsible for the proper use of the [~~such~~] permit by the lessor.

(e) The motor carrier shall write in ink on each thirty (30) day emergency permit issued to it the date of execution.

(f) The thirty (30) day emergency permit shall be removed from the vehicle and destroyed at the expiration of the lease or thirty (30) days, whichever is shorter.

(g) Any vehicle operating with a thirty (30) day emergency permit which has not been dated as required herein shall be deemed to be operating without identification and the motor carrier shall be subject to the penalties provided by law.

(2)(a) Effective February 1, 1987, notwithstanding the provisions of Sections 2 and 3 of this administrative regulation, any operator of a vehicle qualified to operate intrastate or interstate in Kentucky may elect to obtain a temporary authority permit in lieu of an annual vehicle identification card.

(b) The temporary permit shall be issued for a period not to exceed ten (10) days.

(c) Temporary permits may be issued in person, by mail or transmitted collect on delivery via designated wire or transmittal company.

(d) The fee for this permit is ten (10) dollars plus any applicable transmittal charges when transmitted collect on delivery via designated wire or transmittal company to a requested location.

(e) The permit shall contain the same information as set forth on the annual vehicle identification card.

(f) The permit shall [~~and must~~] be displayed in the cab of the vehicle while it is operating in Kentucky.

(3) [~~Any operator of a motor vehicle subject to the supplemental highway use tax imposed by KRS 138.660(4) may elect to purchase a ten (10) day supplemental highway use (SHU) tax permit in lieu of obtaining an annual supplemental highway use tax decal. The charge for the SHU tax permit is fifty (50) dollars. Such permit may be transmitted collect on delivery via designated wire or transmittal company to a requested location. This temporary tax permit may be~~

~~purchased in person or by mail, provided all other pertinent requirements have been met. The tax permit must be displayed in the cab of the vehicle at all times while operating in Kentucky.~~

~~(4)~~] For the purpose of convenience for permit applicants and of the cabinet, [~~any and~~] all permits requested by an applicant may be combined and transmitted in one (1) document.

Section 6. Itinerant Truckers. Motor vehicles used by itinerant truckers, salesmen, solicitors and peddlers to transport merchandise to be sold and disposed of in Kentucky, while upon or from a public highway or street, shall not be entitled to reciprocal privileges while in Kentucky except where contrary provisions are made by the reciprocity agreements in effect between Kentucky and the state where the vehicle is licensed.

Section 7. Violations of Kentucky Law. Any motor vehicle operating into or through Kentucky within the discretion of the cabinet, shall be denied reciprocal privileges in Kentucky in addition to the other penalties provided by the Kentucky revised statutes if the vehicle is being operated:

(1) In excess of the maximum weight or size limit allowed by the provisions of KRS 189.221 and 189.222, or in excess of the maximum weight or size limits allowed by overweight or oversize permits issued pursuant to the provisions of KRS 189.221 through 189.274;

(2) While [~~any motor vehicle operating into or through Kentucky and~~] failing to display the motor vehicle identification card to display the motor vehicle identification card required by Sections 2, 3, 4 and 5 of this regulation; or

(3) [~~any vehicle operating in Kentucky~~] In intrastate commerce without a nonreciprocal trip permit unless apportioned registered in Kentucky under the provisions of the Interstate Registration Plan[~~, may, within the discretion of the cabinet, be denied reciprocal privileges in Kentucky in addition to the other penalties provided by the Kentucky Revised Statutes~~].

Section 8. Nonreciprocal Trip Permits. (1) A nonreciprocal trip permit issued in accordance to KRS 281.838 shall [~~must~~] be obtained in advance of operations in this state.

(2) The application for the [~~such~~] permit shall [~~must~~] at a minimum briefly describe the vehicle and include the name of the operator.

Section 9. Proof of Fee Payment. (1) In conjunction with payment of the fees set forth in KRS 281.752, if a for-hire motor carrier is operating in interstate or foreign commerce under a certificate or permit issued by the Interstate Commerce Commission and has been issued a registration receipt applicable to operations in Kentucky pursuant to 49 CFR Part 1023, a fee shall not be required for the motor vehicle identification card required in Section 2 of this administrative regulation.

(2) In order to provide proof that Kentucky's portion of the fees collected by another jurisdiction pursuant to 49 CFR Part 1023 have been paid the representative of the Interstate Commerce Commission authorized for-hire motor carrier shall certify this payment on form TC 95-38.

Section 10. Material Incorporated by Reference. The forms incorporated by reference as part of this section may be copied, viewed or obtained from the Division of Motor Carriers. The Division of Motor Carriers is on the Third Floor of the State Office Building in Frankfort, Kentucky. Its mailing address is P.O. Box 2007, Frankfort, Kentucky 40602. The telephone number is (502)564-4540. Its business hours are 8 a.m. to 4:30 p.m. local prevailing time on all weekdays except state holidays.

STEPHEN REEDER, Deputy Secretary
NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: October 5, 1993
FILED WITH LRC: October 15, 1993 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 23, 1993 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Fourth Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 18, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 18, 1993. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on November 23, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All motor carriers operating in Kentucky.

(a) Direct and indirect costs or savings to those affected: None as a result of the amendments to this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: None as a result of the amendments to this administrative regulation.

(2) Effects on the promulgating administrative body: None as a result of the amendments to this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The identification cards required in this administrative regulation are for proof of compliance with taxing and licensing statutes for ICC-authorized motor carriers - not proof of insurance. The federal mandate does not address proof of compliance with these statutes or proof of insurance for intrastate motor carriers. Therefore, no changes were made to these.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: To implement the federal mandate requires the amendment of four Department of Vehicle Regulation administrative regulations. The other three are 601 KAR 1:040, 601 KAR 1:100 (replaced by 601 KAR 1:101), and 601 KAR 2:010. All four must be considered together to evaluate the implementation of the federal mandate set forth in 601 KAR 1:040 and 601 KAR 1:101.

Tiering: Was tiering applied? Yes. The administrative regulation

has different requirements for ICC-authorized and intrastate motor carriers.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Proposed Amendment)

781 KAR 1:040. Rehabilitation technology ~~[engineering]~~ services.

RELATES TO: KRS 151B.190, 29 USC 706(8)(A), 34 CFR 361.31(b)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Department of Vocational Rehabilitation. This regulation prescribes when, and under what conditions, rehabilitation engineering services shall be provided, in order to distribute limited funds more equitably over the entire population of otherwise eligible clients.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

Section 2. Computer Hardware and Software. The Department of Vocational Rehabilitation shall not purchase computers, microcomputers, other hardware or software for the personal use of applicants or clients. The agency may consider the provision or upgrade of computer hardware and software when:

(1) The equipment is essential to compensate for the limitations caused by the disability;

(2) The equipment is required for the client to achieve a vocational objective of competitive employment;

(3) There are no comparable benefits available to acquire the hardware or software necessary to accomplish the vocational objective; and

(4) In addition, one (1) or more of the following criteria shall be met:

(a) The equipment is required for vocational preparation;

(b) The equipment is required by the job and no provision is made by the employer to supply the equipment; or

(c) The equipment will enable a client to become competitive with nondisabled employees performing the same duties.

Section 3. Vehicle Modification (General). (1) Modification of a van for a client who can be functional in an automobile shall be authorized only to the maximum cost of the automobile modification.

(2) The agency may provide van modifications for clients determined by the agency specialist of the Driver Evaluation/Vehicle Modification Program to be unable to transfer independently into and out of an automobile.

(3) Vehicle modifications shall be provided only on the recommendation of the agency specialist of the Driver Evaluation/Vehicle Modification Program.

(4) Individuals who are clients of the agency in need of drive evaluation, driver training or vehicle modification may purchase evaluation services on a fee for service basis when all agency applicants and clients have been served.

(5) Vehicle modification shall be provided only after the client completes a driver evaluation and vehicle modification assessment by an agency specialist of the Driver Evaluation/Vehicle Modification Program.

(6) Vehicle modifications shall be inspected and approved by an agency specialist from the Driver Evaluation/Vehicle Modification Program before payment is made.

Section 4. Specific Modifications Costing Less than $1,000. Agency staff may approve modifications to a vehicle when the following conditions apply:

(1) Modifications is simple and is not related to overall vehicle engine or body condition;

(2) Modification is not of a substantial structural nature; and

(3) Maintenance records and overall condition of the vehicle can justify modification.

Section 5. Specific Vehicle Modifications Costing More Than $1,000. (1) Except as provided in subsection (2) of this section, vehicle modifications costing in excess of $1,000 shall be provided only for [~~these~~] clients whose vocational objective is competitive employment and who are within one (1) year of job placement.

(2) Vehicle modifications may be provided to individuals who are not within one (1) year of job placement if the division director of program services determines that documentation exists that the modification would result in a substantial cost savings to the department.

(3) Vehicle modifications costing in excess of $1,000 shall only be provided on new vehicles except as provided in this section.

(4) [~~(3)~~] The agency may approve vehicle modifications for older vehicles in excess of $1,000 when maintenance records and overall condition of the vehicle can justify the modification as attested by an agency specialist of the Driver Evaluation/Vehicle Modification Program. The modification must demonstrate cost savings to the agency.

Section 6. Upgrading and Repair of Vehicle Modification. (1) Vehicle modification upgrades and repair may be provided for a client when such upgrades are needed for obtaining or maintaining employment.

(2) Upgrading and repair of vehicle modification in excess of $1,000 shall require the approval of the Director of Field Services or a designee.

Section 7. Second Time Modifications. (1) Except as provided in this section, the agency shall provide only one (1) vehicle modification per client.

(2) The agency may approve a second time vehicle modification under the following conditions:

(a) The client has demonstrated a two (2) year continuous work history;

(b) The client's employer attests that the modification is needed to maintain employment.

Section 8. Vehicle Repair. (1) The agency shall not provide repair to vehicles.

(2) The agency shall not provide or repair any standard or optional automatic equipment. Equipment includes but is not limited to: power steering, power brakes, automatic transmission, air conditioning, tilt steering, etc.

Section 9. Property Modification. (1) Permanent, nonrecoverable

modification to private homes, businesses or property is an allowable expenditure if [~~such is~~] necessary to effect vocational rehabilitation of the individual. The individual shall meet economic need qualifications. The counselor shall make every attempt to utilize recoverable, nonpermanent modifications if possible or cost effective.

(2) The agency may provide essential services necessary to alter or adapt the work situation to enable the client to obtain employment or to insure continuation of employment, including but not limited to the building of a permanent ramp for a wheelchair, modification of machinery to enable the individual to use that particular machine, or a specially designed safety device.

(3) Except as provided in this section, property modifications in excess of [~~over~~] $6,000 shall not be allowed.

(4) Property modifications in excess of $6,000 may be provided if the division director of program services determines that documentation exists that the modification would result in a substantial cost savings to the department.

SAM SERRAGLIO, Commissioner

APPROVED BY AGENCY: October 1, 1993

FILED WITH LRC: October 13, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1993 at 10 a.m. eastern time in the 3rd floor conference room, Capital Plaza Tower, 500 Mero 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: George Parsons, Division of Program Development, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3694.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Parsons

(1) Type and number of entities affected: Applicants and clients of the Department of Vocational Rehabilitation who are in need of driver evaluation or vehicle modification and individuals who may want to purchase driver evaluations.

(a) Direct and indirect costs or savings to those affected: There are no identifiable cost savings.

(1) First year: None

(2) Continuing costs or savings: None

(3) Additional factors increasing or decreasing costs: (Note any effects upon competition.) None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no additional paperwork requirement other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, rule, or regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, regulation, or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions:

(6) Any additional information or comments: The department proposes to allow modifications to vehicles when it is in the best interest of the individual to be served and a substantial cost savings for the agency can be demonstrated. Instances have arisen in which modification to a vehicle would allow the individual to remain at home and use family and friends as care providers while pursuing a vocational goal. In such instances it would be beneficial to both the individual and the agency to provide the modification and avoid more expensive care. The current regulatory language prevents that practice and should be changed. Additional language clarifies agency policy of giving priority consideration to applicants and clients. Language in the current regulation caps property modification services. Federal officials have advised that any necessary service must be provided and should not be capped. The proposed language removes the cap but allows the agency strict control over exception to the current limitation.

TIERING: Was tiering applied: No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation details the agency standards for providing rehabilitation technology to eligible individuals.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate permits a state to restrict access to services based on acceptable policy.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Rehabilitation technology is heavily emphasized in the 1992 amendments to the Rehabilitation Act. Technology is available to assist individuals with severe disabilities to achieve suitable employment outcomes. This regulation establishes guidelines for the provision of services that are not addressed in the Act.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 4:010. Fees of the Department of Insurance.

RELATES TO: KRS 304.4-010

STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010

NECESSITY AND FUNCTION: KRS 304.2-110 authorizes the Commissioner of Insurance to adopt regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the Commissioner of Insurance to prescribe those services for which fees shall be charged and the amounts of the fees. This regulation prescribes these services for which the Department of Insurance will charge fees and the amounts

of those fees.

Section 1. The commissioner shall collect in advance fees as follows:

(1) Annual statement.

(a) Filing each year, $100.

(b) Filing additional or supplemental statement in the same year, $100.

(2) Filing charter documents.

(a) Original charter document, bylaws, and records of organization, or certified copies thereof required to be filed, $100.

(b) Amended charter documents, bylaws, and records of organization, or certified copies thereof required to be filed, $50.

(3) Certificate of authority.

(a) Issuance of original certificate, $500.

(b) Amending, to add a line, $50.

(c) Renewal, each year, $100.

(4) Organization of domestic mutual insurers: filing application for solicitation permit and issuance of such permit, $200.

(5) Self insurer.

(a) Application to become self insurer under subtitle 39, $200.

(b) Notification of self-insurance program under subtitle 32, $50.

(6) Agent licenses, foreign and alien insurers.

(a) Agent license, per insurer represented, biennial, $40.

(b) Temporary license as agent, $20.

(c) Nonresident agent, per insurer represented, biennial, $50.

(d) Resident corporate or partnership agent, per insurer represented, biennial, $100.

(e) Nonresident corporate or partnership agent, per insurer represented, biennial, $120.

(7) Surplus lines broker, reinsurance intermediary, or managing general agent, biennial, $100.

(8) Solicitor license, biennial, $40.

(9) Adjuster license, biennial, $50.

(a) Temporary license as apprentice adjuster, $25.

(b) Administrator's license, biennial, $50.

(10) Consultant license, biennial, $100.

(11) Agent licenses for fraternal benefit societies, subtitle 32 corporations, health maintenance organizations, prepaid dental plan organizations, per fraternal benefit society, subtitle 32 corporation, health maintenance organization, or prepaid dental plan represented, biennial.

(a) Residents, $40.

(b) Nonresidents, $50.

(12) Filing agent and solicitor continuing education courses for:

(a) Approval, $5 per hour of continuing education credit; minimum of $10, maximum of $300.

(b) Biennial renewal, $5 per hour of continuing education credit; minimum of $10, maximum of $150.

(13) Late renewal of agent licenses pursuant to KRS 304.9-260, 304.32-190, 806 KAR 38:020, 806 KAR 43:010, and KRS 304.99-100, per insurer, subtitle 32 corporation, health maintenance organization, or prepaid dental plan organization represented.

(a) Residents, $40.

(b) Nonresidents, $50.

(14) Examination for or in connection with licensing of agents, solicitors, adjusters, and consultants, $50.

(15) Annual registration fee of unauthorized insurer under KRS 304.11-020(2), $500.

(16) Advisory organizations.

(a) Application for license, $500.

(b) Annual renewal, $100.

(17) Rate and form filings.

(a) Rate level revision filing in a noncompetitive market or other rate level revision filings subject to prior approval by the commissioner, $100.

(b) Credit life or health insurance filing requiring review for compliance with KRS 304.19-080, $100.

(c) Other rate and form filings, $5.

(18) Insurance premium finance companies.

(a) Application for license, $500.

(b) Annual renewal, $100.

(19) Cost of administering subtitle 32 per membership contract in force on December 31 of each year, except the health insurance contract or contracts for state employees as authorized by KRS 18A.225, ten (10) cents.

(20) Computer printouts of lists, computer printouts of mailing labels, and magnetic tapes:

(a) Agents:

1. General lines or life and health, $500.
2. General lines or life and health magnetic tape, $1,000.
3. All other lines, $100.
4. Listing for each ZIP code, $50.
5. Appointments (activity) of a specific agent, $5.

(b) Adjusters, consultants, managing general agents, solicitors, surplus lines brokers, and third party administrators, $100.

(c) Insurer directories:

1. All authorized insurers, $150.
2. Insurers by line of insurance, $100.
3. Appointments (activity) by a specific insurer, $50.

(d) Corporate or partnership agents:

1. Corporate or partnership agent directory, $150.
2. Corporate or partnership agents by line of insurance, $100.
3. Appointments (activity) of a specific corporation or partnership agent, $10.

(e) Other printouts or magnetic tapes not specified above, if the request is approved by the commissioner, $500.

(21) Miscellaneous services.

(a) Filing other documents, each, $5.

(b) Commissioner's certificate under seal, other than certificates, licenses, and other documents provided for above, each, $5.

(c) For copies of any document on file with the commissioner, per page, fifty (50) cents.

(d) Copy of annual statements, per page, $1.

Section 2. The biennial renewal fees specified in Section 1(6), (7), (8), (9), (10), and (11) of this regulation are payable as follows:

(1) Licensees for life, health, or life and health insurers[~~, or fraternal benefit societies~~] shall renew their licenses on or before March 31 in odd numbered years and biennially thereafter; and

(2) Licensees for casualty, marine and transportation, property, surety, mortgage guaranty, [~~or~~] multiple line insurers, fraternal benefit societies, or reinsurance intermediaries shall renew their licenses on or before March 31 in even numbered years and biennially thereafter.

Section 3. When a statute or regulation requires payment of a fee as provided in KRS 304.4-010, it refers to a fee as specified in this regulation.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 9, 1993
FILED WITH LRC: October 11, 1993 at 10 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for November 22, 1993, at 9:30 a.m., (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Don W. Stephens, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9:30 a.m., (ET) on November 22, 1993, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance

to comment.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: Carla H. Montgomery

Need for the Proposed Amendment: The Commissioner of Insurance is to prescribe those services for which fees shall be charged and the amounts of such fees. In 1992, under KRS 304.9-700 to 304.9-759, the Commissioner of Insurance began regulating reinsurance intermediaries. The department has charged a licensing fee for reinsurance intermediaries and needs to properly state those fees and the time period for those fees in the appropriate administrative regulation. Also, in KRS 304.4-015, fraternal benefit societies are to pay biennial renewal fees in even years. However, in 806 KAR 4:010, Section 2(1), fraternal benefit societies pay their renewal fees in odd numbered years. This amendment will bring the administrative regulation into compliance with KRS 304.4-015.

(1) Type and number of entities affected: At this time, there are two reinsurance intermediaries licensed in Kentucky. There are approximately 363 fraternal benefit societies licensed in Kentucky.

(a) Direct and indirect cost or savings to those affected:

1. First year: Reinsurance intermediaries and fraternal benefit societies are already paying the appropriate renewal fees to the department; therefore, there is no additional cost or savings expected.

2. Continued cost or savings: The current license reinsurance intermediaries and fraternal benefit societies will continue to pay the appropriate fees. No additional cost or savings is expected.

3. Additional factors increasing or decreasing costs: The only factors that may change in cost would be the fact that more reinsurance intermediaries or fraternal benefit societies become licensed by the Kentucky Department of Insurance. However, if additional organizations are licensed with the state no significant additional cost or savings is expected.

(b) Reporting and paperwork requirements: Reinsurance intermediaries must pay a biennial renewal fee to the Department of Insurance. Fraternal benefit societies must pay a biennial renewal fee in even numbered years. Both of these activities are already occurring in the Department of Insurance.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: The Department of Insurance has already been accepting biennial fees from reinsurance intermediaries and fraternal benefit societies in accordance with the proposed amendment for the administrative regulation. There would be no additional cost or savings to the Department of Insurance.

2. Continued cost or savings: The Department of Insurance will continue with the same activities. Therefore, no additional cost or savings is expected.

3. Additional factors increasing or decreasing costs: The department may in the future issue more licenses to reinsurance intermediaries or fraternal benefit societies. However, these additional factors would not appear to have any significant increase or decrease in cost to the Department of Insurance.

(b) Reporting and paperwork requirements: The Department of Insurance will continue to collect and process biennial renewal fees from these organizations.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: At this time the Department of Insurance is already collecting and processing biennial fees in accordance with the proposed amendment. If no amendment is made to this administrative regulation, then the administrative regulation will be in direct conflict with the statute relating to fraternal benefit societies. Also, if no amendment is made, there will be no specific language in the Kentucky Insurance Code to inform the reinsurance intermediaries of the appropriate fees to be paid and the time for these fees to be paid to the Department of Insurance.

(5) Statutes regulations or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None

TIERING: Tiering is not used since the proposed administrative regulation should apply to all reinsurance intermediaries and fraternal benefit societies equally.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:073. Installation standards for water and waste piping material of types K, L, M and DWV copper; types R-K, R-L, R-DWV brass tubing and seamless stainless steel tubing, G or H.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the proper installation of copper pipe and fittings. This amendment is necessary to allow for new technology in the joining of copper pipe and fittings. This amendment was approved by the Plumbing Code Committee and the Board of Housing. [~~bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.~~]

Section 1. The installation of copper, brass and seamless stainless steel tubing water and waste piping shall be made according to recommended procedures, since care taken in installing will assure the satisfactory performance of the plumbing water distribution and drainage systems.

Section 2. Cutting, Reaming and Sizing. (1) Tube shall be cut to exact length with a square cut using tube cutters, hacksaw blade or abrasive saw.

(2) Tube shall have burrs and slivers removed by using a reamer or other appropriate tool.

(3) Tube shall be brought to true dimensions and roundness by using a sizing tool which consists of a plug and ring.

Section 3. Cleaning. Surfaces to be joined shall be clean and free from oil, grease and heavy oxides. Clean the end of the tube a distance slightly more than is required to enter the socket of the fitting with fine sand cloth or special wire brushes.

Section 4. Jointing Techniques. (1) Soldered joints. After cleaning, cover the surfaces with a thin film of mildly corrosive liquid or petroleum based pastes that contain chlorides of zinc and ammonium. [~~No "so called"~~] Self-cleaning flux shall not be used in lieu of cleaning pipe as outlined in Section 3 of this administrative regulation. Wipe off excess flux in fitting socket. Insert tube end into socket, making sure the tube is firmly seated against the end of the socket. Remove excess flux with a rag. Apply heat to the fitting and then move in order to heat as large an area as possible. Do not overheat. When the joint is hot enough, the solder will melt on contact with the pipe and will flow by capillary attraction into joint. Remove heat and allow to cool before moving (refer to 815 KAR 20:060).

(2) Brazed joints. After cleaning, cover the surface of the tube end and the fitting socket with a thin film of flux in accordance with the recommendations of the manufacturer of the brazing filler metal being used. Avoid getting flux inside the tube itself. Flux may be omitted when joining copper tube to wrought copper fittings with copper-phosphorus alloys (B-cup Series) which are self fluxing on copper. Insert tube end into socket hard against the stop and turn if possible. Apply

heat to parts to be joined, heating the tube first, then the fitting at the base of the cup. Apply brazing wire, rod or strip where tube enters the socket of the fitting. Remove heat and allow to cool.

(3) Flared joints; impact tools.

(a) See Sections 2 and 3 of this administrative regulation.

(b) Slip the coupling nut over the end of the tube.

(c) Insert flaring tool into the tube end and drive the flaring tool by hammer strokes expanding the end of the tube to the desired flare.

(d) Place the fitting squarely against the flare. Engage the coupling nut with the fitting threads. Tighten with two (2) wrenches, one (1) on the nut and one (1) on the fitting.

(4) Screw type flaring block.

(a) Follow subsection (3)(a) and (b) of this section for impact flaring.

(b) Clamp the tube in the flaring block so that the tube is slightly above the block. Place the yoke of the flaring tool on the block so that the beveled end of the compression cone is over the tube end. Turn the compressor screw down firmly, forming the flare between the chamber in the flaring block and the beveled compressor cone. Remove the flaring tool and assemble as in subsection (3)(d) of this section.

(5) Mechanically formed tee connection.

(a) For use in domestic hot and cold water distribution systems above ground only.

(b) Mechanically extracted collars shall be formed in a continuous operation consisting of drilling a pilot hole and drawing out the tube surface to form a collar having a height of not less than three (3) times the thickness of the tube wall. The collaring device shall be fully adjustable so to insure proper tolerance and complete uniformity of the joint.

(c) The joining branch tube shall be no less than one (1) pipe size smaller than the main and shall be notched and dimpled in a single process to set the proper penetration of the branch tube into the fitting to assure a free flow joint.

(d) All joints shall be brazed in accordance with subsection (2) of this section and the manufacturer's instructions. NOTE: Soldered joints shall not be permitted.

(6) Mechanical couplings. Types K and L copper tubing systems from two (2) inch through six (6) inch and used for water distribution may be installed using mechanical pipe couplings of a bolted type with a flush seal gasket along with grooved end copper fittings. Couplings shall be of the angle pad design to obtain rigidity.

Section 5. Hangers and Supports. Hangers, anchors and supports shall be of material of sufficient strength to support the piping and its contents. Hangers, anchors and supports shall be securely attached to the building construction at sufficiently close intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement and vibrations.

(1) Vertical piping. Copper tubing shall be supported at each story for piping one and one-half (1 1/2) inches and larger in diameter. For piping one and one-quarter (1 1/4) inches and smaller in diameter, it shall be supported at each story and not more than ten (10) foot intervals. Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.

(2) Horizontal piping. Copper tubing shall be supported at six (6) foot intervals for one (1) inch and smaller in diameter and ten (10) foot intervals for one and one-quarter (1 1/4) inch and larger. Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 23, 1993
FILED WITH LRC: October 4, 1993 at 2 p.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 Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: All licensed master and journeyman plumbers.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved with the implementation of this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None created by this amendment.

(2) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to regulations.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by the Plumbing Code Committee and the Board of Housing.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering is used in that each standard approved is considered separately for compliance.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:100. Joints and connections.

RELATES TO: KRS 198B.040(7), 198B.050(2), Chapter 318
STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 318.130
NECESSITY AND FUNCTION: The department is directed by

KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the methods that shall be used in joining certain types of piping materials together and denoting the methods that shall be used in securing plumbing fixtures to waste piping outlets. This administrative regulation also identifies the manufacturer's specification number of the material accepted in those installations. This amendment is necessary to allow for new technology in the joining of copper pipe and fittings. This amendment was approved by the Plumbing Code Committee and the Board of Housing. [~~comply with KRS Chapter 13A and to delete obsolete language regarding material used in subsoil drainage systems which are no longer under the jurisdiction of the department.~~]

Section 1. Water and Airtight Joints. Joints and connections shall be made gas and water tight.

Section 2. Vitrified Pipe Joints; Concrete Pipe Joints; House Sewers - Combined Sewers. Joints in vitrified clay pipe shall be ASTM specification C-425. Joints in concrete pipe shall be ASTM specifications C-443. If it is necessary to use piping in other than standard lengths hot poured joints may be used. Joints between cast iron pipe and vitrified clay pipe or concrete pipe shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. The ring shall completely fill the annular space between the cast iron spigot and the vitrified clay or concrete pipe hub. Joints in pipe and fittings with no more than two (2) pipe sizes between vitrified clay, acrylonitrile-butadiene-styrene or polyvinyl chloride to cast iron pipe and fittings or the joining of either material may be made with proper fittings by using a dispersion grade polyvinyl chloride ring produced and labeled as either ASTM C-443, C-425, C-594, C-564 or D-1829 or a elastomeric polyvinyl chloride coupling. Copies of ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

Section 3. Caulked Joints. Caulk joints shall be firmly packed with oakum or hemp and shall have at least one (1) inch of pure lead properly caulked. Paint, varnish or putty shall not be permitted until tests have been performed.

Section 4. (1) Screw joints. Screw joints shall be American Standard screw joints and all burrs or cuttings shall be removed.

(2) Mechanical joint couplings for hot and cold water. Mechanical joint couplings for hot and cold water shall not be used above ground unless the couplings are galvanized and the gaskets produced and labeled as ASTM D-735-61, grade N-R-615 BZ, or other material listed in approved parts or materials list, 815 KAR 20:020.

(3) Mechanical joint couplings for storm water piping. Mechanical joint couplings for storm water piping shall not be used above ground unless the couplings are either black iron or galvanized and the gaskets produced and labeled as ASTM D-735-61, grade N-R-615 BZ.

(4) Joints in PVC and ABS Schedule 40 or 80 pipe and fittings. Joints in polyvinyl chloride schedule 40 or 80 pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D-2665-69. Joints in acrylonitrile-butadiene-styrene pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D-2661-90. Acrylonitrile-butadiene-styrene and polyvinyl chloride sewer piping produced and labeled as ASTM 3033 or 3034 shall be joined by solvent cement produced and labeled as ASTM D-2661-90 for acrylonitrile-butadiene-styrene and ASTM D-2665-69 for polyvinyl chloride or with an elastomeric joint in compliance with ASTM D-3212-73.

(5) Copper pipe, brass and stainless steel tubing joints.

(a) Joints of copper pipe, brass and stainless steel tubing shall be soldered.

(b) Mechanical couplings. Types K and L copper tubing systems from two (2) inch through six (6) inch and used for water distribution may be installed using mechanical pipe couplings of a bolted type with a flush seal gasket along with grooved end copper fittings. Couplings shall be of the angle pad design to obtain rigidity.

(6) Expansion. An expansion joint shall be of an approved type and the material shall comply with the type of piping in which it is installed.

(7) Brazed joints. Brazed joints shall be made by cleaning the surfaces to be joined down to the base metal, applying flux approved for the joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.

(8) Elastomeric polyvinyl chloride coupling. Elastomeric polyvinyl chloride couplings shall be used for connecting cast iron, vitrified clay, concrete, or plastic pipe or the combination of these pipe materials for use on house sewers and combination sewers only. This coupling shall be provided with #305 stainless steel clamps.

(9) Joints in aluminum pipe shall be made by use of an adaptor ring (complete with mastic seal) over the cut end of the pipe and the use of an approved elastomeric sealing sleeve with a corrosion resistant clamping device.

Section 5. Cast Iron Soil Pipe Joints. (1) Joints in cast iron shall either be caulked, screwed, or joints made with the use of neoprene gaskets. Neoprene gaskets shall be produced and labeled as ASTM C-564-70.

(2) Cast iron coupling for joining hubless cast iron pipe shall consist of neoprene gasket produced and labeled as ASTM C-564, cast iron clamps produced and labeled as ASTM A-48 and stainless steel bolts and nuts produced and labeled as ANSI B-18.2.1 and ANSI B-18.2.2. Copies of ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 6. Borosilicate Joints. Joints and gaskets used for borosilicate pipe shall be made in a manner approved by the department.

Section 7. (1) Steel, brass and copper connections to cast iron pipe. Steel, brass and copper joints when connected to cast iron pipe shall be either screwed or caulked joints. Caulked joints shall be made by the use of a caulking spigot.

(2) PVC and ABS pipe and fitting connections to steel, brass, copper and cast iron pipe. Polyvinyl chloride and acrylonitrile-butadiene-styrene pipe and fitting connections to steel, brass, copper or cast iron pipe shall be either a screwed or caulked joint. Joints between Schedule 40 PVC or ABS pipe and cast iron pipe may be made by the use of a neoprene gasket produced and labeled as ASTM C-564-70. Caulk joints shall be made with the use of either a polyvinyl chloride or acrylonitrile-butadiene-styrene or cast iron caulking spigot.

(3) Stainless steel tubing to cast iron pipe or galvanized steel pipe or to copper tubing. Stainless steel tubing to cast iron pipe shall be made by caulking spigot. Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(4) Joints in acid waste piping. Joints in vitreous glazed piping shall be made in a manner and of a material approved by the department. Joints in polyethylene and polypropylene piping shall be made by the heat fusion process. Joints in polypropylene shall be made with a union joint. Joints in borosilicate pipe shall be a stainless steel mechanical joint. Joints between silicon iron pipe shall be either caulk joint or stainless steel mechanical joint.

Section 8. Lead Pipe. Joints in lead pipe or between lead pipe and brass or copper pipes, ferrules, soldering nipples, or trap, shall

be full-wiped joints with an exposed surface of the solder at each side of the joint of not less than three-quarters (3/4) of an inch. The minimum thickness of the thickest part of the joint shall be at least as thick as the material being used. If lead pipe is used for acid waste lines, the pipe may be joined by burning.

Section 9. Lead Pipe to Cast Iron, Steel, or Wrought Iron Pipe. The joints between lead to cast iron, steel or wrought iron shall be made by means of a caulking ferrule or a soldering nipple.

Section 10. Wall or Floor Flange Joints. Wall or floor flange joints shall be made by using a lead ring or brass flange and shall be properly soldered.

Section 11. Soil Pipe, Iron Pipe, Copper Pipe; Tubular Trap Joints. Joints between soil pipe, iron pipe, copper pipe and tubular traps shall be made by the use of a heavy red cast brass adaptor. Tubular traps shall be soldered to the adaptor in a manner approved by the department.

Section 12. Slip Joints. Slip joints shall be permitted only on the inlet side of a trap.

Section 13. Unions. Unions shall be ground faced and shall not be concealed or enclosed.

Section 14. Roof Joints. The joint at the roof shall be made watertight by use of copper, lead or other approved flashing or flashing material. The approved flashing shall not extend less than six (6) inches from the pipe in all directions and shall extend upward twelve (12) or more inches and turn down into the pipe. A hub flashing may be used if it is constructed in a manner allowing the flashing to be caulked into a hub above the roof.

Section 15. Increasers and Reducers. If different size pipes or fittings are to be concealed, the proper size increaser or reducer pitched at an angle of forty-five (45) degrees between the two (2) sizes, shall be used. This section does not apply to nonmetallic installations.

Section 16. Prohibited Joints and Connections. A fitting or connection which has an enlargement chamber, or recess with a ledge shoulder, or reduction of the pipe area in the direction of the flow shall be prohibited.

Section 17. Hangers and Supports. Piping and fixtures shall be adequately supported by hangers or anchors securely attached to the building construction.

Section 18. Welded Pipe for Soil, Waste and Vent Systems. Mild steel pipe may be welded for a soil waste and vent system if the welds are mechanically sound and the bore of the piping is smooth throughout its length. The welded piping shall be covered with a metallic continuous coating. Written permission shall be secured from the department for this type system.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 23, 1993
FILED WITH LRC: October 4, 1993 at 2 p.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 Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: All licensed master and journeyman plumbers.
(a) Direct and indirect costs or savings to those affected: No costs or savings involved with the implementation of this amendment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None created by this amendment.
(2) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to regulations.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by this amendment.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by the Plumbing Code Committee and the Board of Housing.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. Tiering is used in that each standard approved is considered separately for compliance.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:150. Inspection and tests.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 198B.040(1) [~~211.090~~], 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to tests and inspections that are necessary in order to cause compliance with other administrative regulations of this code. This administrative regulation is amended to reduce the air pressure test requirements thereby making the test consistent with the water

test requirements. Other amendments were necessary to bring the administrative regulation into technical compliance with KRS Chapter 13A.

Section 1. Inspections and Tests. The water distribution system, the soil, waste and vent system, the fixtures and fixture traps, appurtenances and all connections [~~thereto~~] in a plumbing system shall be inspected and tested by the department to insure compliance [~~with all the sections of this code~~]. In buildings condemned by other authorities because of unsanitary conditions of the plumbing system, the alterations shall be considered as a new plumbing system.

Section 2. Material and Labor for Tests. All equipment, material and labor necessary for inspections and tests shall be furnished by the persons procuring the plumbing construction permits.

Section 3. Systems of Tests. (1) Test for the potable water supply system. The potable water supply system shall be tested and found without leaks under the normal working pressure under which the system will function.

(2) Tests for the soil [~~and/~~]or waste and vent system. The soil [~~and/~~]or waste and vent system of the plumbing system shall be tested with water or other tests approved by the department before it is concealed or covered within the floors or walls of a building. After the plumbing fixtures have been set and their traps filled with water and before the building is occupied, the entire system, other than the house sewer, shall be subjected to a final air pressure test. It shall be the responsibility of the person who secured the plumbing construction permit to notify the department representative and request a final inspection and air test upon completion of the installation. In the event only a portion of the plumbing fixtures are set, an air test shall be requested and given prior to the time a building is occupied. After the plumbing system is finally completed, another inspection and test must be requested and given. The department may require the removal of any clean-outs to ascertain whether or not the pressure has reached all parts of the system.

(3) Tests of the house sewer. The house sewer shall be tested with either a water or a smoke test.

Section 4. Methods of Testing. (1) The potable water supply system, as well as the water service, shall be tested under a pressure of not less than the maximum working pressure under which it is to be used and be free from leaks.

(2) The entire soil [~~and/~~]or waste and vent system shall be subjected to a water test or it may be tested in sections. When it is applied to the entire system, all openings shall be closed, except the highest opening and the system shall be filled with water to the point of overflow. If the system is tested in sections, each opening shall be tightly plugged, except the highest opening and it shall be tested with not less than a ten (10) foot head of water. In testing successive sections, at least the upper ten (10) feet of the preceding section shall be retested.

(3) In lieu of a water test, an air pressure test may be used by attaching an air compressor or test apparatus to any suitable opening. All other inlets and outlets to the system shall be closed, forcing air into the system until there is a uniform pressure of five (5) [~~ten (10)~~] pounds per square inch (PSI). The pressure shall be maintained for fifteen (15) minutes.

(4) The final air test shall test the entire soil [~~and/~~]or waste and vent system including the fixture and appurtenances by connecting an air machine to any suitable opening or outlet and applying air pressure equivalent to a one (1) inch water column. It shall be maintained for at least a fifteen (15) minute period. If there are no leaks or forcing of trap seals as may be indicated by the functioning of a drum, float, or water column, the system shall be deemed airtight.

(5) A garage drainage system shall be tested in the same manner as the soil, waste and vent system.

(6) The house sewer shall be tested by either a water or a smoke test. After the sewer trench has been filled with at least two (2) feet of earth cover, it shall be retested. A four (4) inch test tee or Y connection shall be provided at the property line for testing.

Section 5. Order of Tests. Tests may be made separately or as follows:

(1) The house sewer and its branches from the property line to the house drain.

(2) The house drain including its branches.

(3) The soil, waste, and vent system as well as inside rain water conductors.

(4) The final inspection and air test which shall include the complete plumbing system as required by Section 4(2) of this regulation, exclusive of the house sewer.

Section 6. Tests of Alterations, Extensions or Repairs. Any alterations, repairs, or extensions that require more than ten (10) feet of soil, waste [~~and/~~]or vent piping, shall be inspected and tested as required by Section 3(2) of this regulation.

Section 7. Covering of Work. The [~~No part of a~~] plumbing system shall not be covered until it has been inspected, tested, and approved [~~as herein provided~~].

Section 8. Uncovering of Work. If any part of a plumbing system is covered or concealed before being inspected, tested, and approved, it shall be uncovered, or unconcealed and tested as required [~~herein~~].

Section 9. Defective Work. If an inspection or a test indicates defective work or material, it shall be replaced and the inspection and the test repeated.

Section 10. Testing Defective Plumbing. An air test shall be used in testing the condition of a plumbing system where there is reason to believe it has become defective.

Section 11. Inspections and Tests not Required for Exhibition Purposes. Tests and inspections shall not be required where a plumbing system shall [~~or a part thereof is to~~] be used for exhibition purposes and is not directly connected to a sewerage system.

Section 12. Inspections and Tests for the Replacement of Old Plumbing Fixtures. Inspections and tests shall not be required when old plumbing fixtures are replaced with new ones or where faucets or valves are replaced or where leaks are repaired.

Section 13. Certificate of Approval. Upon the satisfactory completion and final test of the plumbing system, a certificate of approval shall [~~may~~] be issued by the department.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 23, 1993
FILED WITH LRC: October 4, 1993 at 2 p.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 Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received.

If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: All licensed master and journeyman plumbers.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved with the implementation of this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None created by this amendment.

(2) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to regulations.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by both groups.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering is used in that each standard approved is considered separately for compliance.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

901 KAR 5:020. Delayed birth registration.

RELATES TO: KRS Chapter 213

STATUTORY AUTHORITY: KRS 194.050, 211.090, 213.056

NECESSITY AND FUNCTION: KRS Chapter 213 relating to Vital Statistics directs the Cabinet for Human Resources to register all births that occur in Kentucky. The purpose of this administrative regulation is to provide a uniform procedure for registering births which were not reported [~~by the attending physician or midwife~~] at the time of birth.

Section 1. Definitions. [~~As used in this regulation~~] "Delayed birth registration" means the registration of a [~~child's~~] nonrecorded birth after the time prescribed by KRS 213.046 [~~213.050~~].

Section 2. Delayed Birth Registration. (1) A delayed birth certificate prepared by an institution or bearing the bona fide signature of the [~~attending~~] physician or midwife shall be accepted by the State Registrar [~~Director~~] of Vital Statistics for registration if filed before the child is seven (7) years old. In the event that a birth did not occur in an institution, the [~~attending~~] physician or midwife is deceased or otherwise not available, or if there was no professional attendant at the birth, the birth certificate shall be accepted for registration if filled out by a parent or nearest living relative and the facts stated therein are supported by the affidavit of the parent or nearest living relative, and a document which reflects the date of birth, place of birth, and parents name and was established one (1) year or more prior to the date of application [~~and a document and by the affidavit of a nonrelative of legal age~~].

(2) Any birth certificate presented for registration [~~No birth certificate shall be accepted for registration if presented for registration~~] more than seven (7) years after birth occurred shall be [~~unless the certificate is~~] prepared on [~~a special delayed~~] form VS-B-5, "Delayed Certificate of Birth and Affidavits" (11/91). This form is incorporated by reference and may be viewed or obtained at the Office of Vital Statistics, 275 East Main Street, Frankfort, Kentucky, 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Facts stated therein shall be supported by:

(a) The affidavit of a parent or nearest living relative of legal age no less than [~~at least~~] ten (10) years older than the applicant;

(b) The affidavit of a nonrelative of legal age no less than [~~at least~~] ten (10) years older than the applicant; and

(c) One (1) document which was established no less than [~~item of documentary evidence at least~~] ten (10) years prior to the date of application [~~old~~] showing the date of birth, place of birth and names of parents. [~~Provided, however, that~~] If the individual [~~person,~~] whose birth is to be recorded is between the ages of seven (7) and seventeen (17) the document shall be established no less than [~~documentary evidence in support thereof need be only~~] three (3) years prior to the date of application [~~old~~] and [~~provided further that~~] if the affidavits required in paragraphs (a) and (b) of this subsection are not obtainable a[~~n acceptable~~] document shall [~~may~~] be substituted for each affidavit.

(d) Acceptable documents for paragraph (c) of this subsection may include:

1. [~~Items of documentary evidence may be:~~] Insurance policies; [~~policy,~~]

2. Census, hospital, school or church records; [~~, baptismal certificate,~~]

3. Marriage application forms; and

4. Military records. [~~or other documents deemed acceptable by the Director of Vital Statistics.~~]

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: August 19, 1993

FILED WITH LRC: October 4, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 23, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 18, 1993, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara F. White

(1) Type and number of entities affected: Persons seeking to establish delayed certificates of birth. Total: approximately 1600 per fiscal year.

(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 promulgated administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: No revenue generated.
TIERING: Was tiering applied? No. Tiering does not apply because this administrative regulation does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. 901 KAR 5:020 contains sections relative to functions of the local health department.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation establishes requirements for registering delayed certificates of birth, which may be done by the local registrar in the county health department.
4. How does this administrative regulation affect the local government or any service it provides? 901 KAR 5:020(2) has been amended to require a piece of documentary evidence when establishing certain delayed births.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

901 KAR 5:070. Certificate of birth amended.

RELATES TO: KRS Chapter 213
STATUTORY AUTHORITY: KRS 194.050, 211.090, 213.121 [~~Chapter 213, HB 64 as enacted by the 1990 General Assembly~~]
NECESSITY AND FUNCTION: KRS Chapter 213 relating to Vital Statistics authorizes the Cabinet for Human Resources to regulate the registration of births in Kentucky. The purpose of this administrative regulation is to provide for uniform procedures for changing birth certificates of children born to mothers who are not married [~~out of wedlock~~] where a paternity affidavit is executed or where paternity is established by law or when a request is received to amend or correct an item on the birth certificate and who may apply for the change or amendment.

Section 1. Paternity Affidavits. Paternity affidavits executed in accordance with KRS 213.046, 213.049, 213.071 or 213.121 may [~~Chapter 213 shall~~] be on one (1) of the following forms:
(1) If no father is designated on the birth certificate, the form VS-8 shall be used to declare paternity at any time after the birth certificate has been registered and filed.
(2) If the mother is unmarried at the time of the birth, the form VS-8B shall be completed at the request of both natural parents at the time of birth. This form shall accompany the birth certificate at the time of registration and filing.
(3) If the mother is married the form VS-8C shall be used to delete a legally named father from the birth certificate and affirm and acknowledge the natural father.
(4) Paternity forms VS-8, "Declaration of Paternity" (2/91); VS-8B, "Paternity Affidavit" (7/92); and VS-8C, "Three (3)-way Paternity Affidavit" (7/90); are incorporated by reference and may be viewed or obtained at the Office of Vital Statistics, 275 E. Main Street, Frankfort, KY 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [~~a special declaration of paternity form provided by the cabinet and shall be signed by both natural parents.~~]

Section 2. Amendment or Issuance of New Certificate. When paternity has been established for a child born [~~out of wedlock~~] in Kentucky to a mother who is not married, the State Registrar of Vital Statistics shall amend the original certificate of birth or prepare a new certificate of birth.

Section 3. Amendment of Obvious Errors on Birth Certificate. Amendment of obvious errors, transposition of letters of common knowledge or omissions on the birth certificate, shall [~~may~~] be made by the State Registrar within one (1) year after the date of birth either upon [~~request of registrant,~~] observation, query, or request of parents [~~if the applicant is under eighteen (10) years of age~~], legal guardian or individual [~~persons~~] responsible for filing the birth certificate.

Section 4. Amendment of Name. [~~Unless otherwise provided in these regulations or in KRS Chapter 213,~~] A change of name ordered by a court of competent jurisdiction shall be [~~is~~] required to change the name as shown on the birth certificate, unless the registrant, parents, legal guardian, or individual responsible for filing the birth certificate presents documentation [~~documentary evidence~~] that the name was incorrectly recorded at the time of registration of the birth and meets the requirements in Section 8 of this administrative regulation.

Section 5. Amendment of Date of Birth. The date of birth shall only be changed with a court order from a court of competent jurisdiction, unless proof is shown that the error occurred upon the original filing of the birth certificate by the individual responsible for filing the birth certificate.

Section 6. All Other Amendments. All other amendments to the birth certificate shall be supported by an affidavit or a document established [~~and/or documentary evidence which is~~] five (5) years prior to the date of the amendment [~~old~~] and supports the alleged facts, if the registrant is eighteen (18) years or older and three (3) years if the registrant is between the ages of seven (7) and seventeen (17) and one (1) year if the registrant is between the ages of three (3) and six (6).

Section 7. Amendment of the Same Item More Than Once. Once an amendment of an item is recorded on the birth certificate, that item shall not be amended again except upon receipt of a court order from a court of competent jurisdiction.

Section 8. Who May Apply to Amend a Certificate of Birth. To amend a certificate of birth, application shall be made by a parent or legal guardian, if the registrant is, under age eighteen (18), the registrant is eighteen (18) years of age or over, or the individual

responsible for filing the birth certificate.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 19, 1993
FILED WITH LRC: October 4, 1993 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 23, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 18, 1993, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara F. White
(1) Type and number of entities affected: Persons seeking to amend certificates of birth. Total: approximately 11,000 per fiscal year.
(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 promulgated administrative body: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: No revenue generated.
TIERING: Was tiering applied? No. Tiering does not apply because this administrative regulation does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. 901 KAR 5:070 contains sections relative to forms provided by the local health department, circuit court clerks, and other court officials.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation establishes procedures for amending birth certificate. Orders issued by courts of competent jurisdiction, as well as forms provided by local health departments are included.
4. How does this administrative regulation affect the local government or any service it provides? Changes made on this administrative regulation will not affect current process.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Local Health
(Proposed Amendment)

902 KAR 10:020. Frozen food locker plants.

RELATES TO: KRS Chapter 221
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS Chapter 221 authorizes the Cabinet for Human Resources to regulate frozen food locker plants. The purpose of this administrative regulation is to provide uniform requirements for the regulation of frozen food locker plants [~~in Kentucky~~].

[~~Section 1. Citation of Regulation. This regulation may be cited as the "Kentucky Frozen Food Locker Regulation."~~]

Section 1. [~~2.~~] Plan Review of Future Construction. No person shall construct, remodel or extensively alter [~~the construction of~~] any frozen food locker plant until the plans and specifications [~~in triplicate~~] have first been submitted to the [~~cabinet, through the appropriate~~] local health department, and approved in writing.

Section 2. [~~3.~~] Display of Licenses. Frozen food locker plant licenses issued by the cabinet [~~under the provisions of KRS Chapter 221~~] shall be displayed in a conspicuous place in the plant.

Section 3. [~~4.~~] Construction [~~and Sanitation~~] Requirements. (1) [~~Construction requirements of~~] Walls, ceilings and floors.
(a) [~~The~~] Side walls and ceilings of every frozen food locker plant shall be [~~so~~] constructed of smooth surfaces and [~~that they can easily be~~] kept clean.
(b) Each [~~Every~~] building, room or enclosure [~~occupied or~~] used for the preparation, manufacture, packing, storage, freezing, sale or distribution of food [~~in frozen food locker plants~~] shall have an impermeable floor [~~made of material~~] that can be flushed and washed clean with water.
(2) Ventilation. All frozen food locker plants shall be adequately ventilated excluding areas devoted exclusively to refrigeration.
(3) Lighting.
(a) All working surfaces shall be provided with at least twenty (20) foot-candles of [~~nonglare~~] artificial light.
(b) [~~The~~] Storage rooms including those under refrigeration shall have at least ten (10) foot-candles of artificial light, measured at a distance of thirty (30) inches from the floor.
(c) [~~All~~] Light fixtures in rooms under refrigeration shall be provided with vapor-proof globes.
(4) Water supply. All frozen food locker plants shall be supplied with adequate hot and cold running water under pressure from a source approved by the Natural Resources and Environmental Protection Cabinet pursuant to administrative regulations 401 KAR Chapter 8.
(5) Lavatory and toilet facilities.
(a) Adequate, conveniently located, lavatory and toilet facilities [~~that comply with the sanitary requirements relating thereto promulgated by the Cabinet for Human Resources~~] shall be provided for employees.
(b) Toilet facilities including rooms and fixtures shall be kept in a clean condition and in good repair.
(c) Toilet tissue, cleansers, single service towels or hand drying devices and covered waste receptacles shall be provided.
(6) Construction of utensils and equipment. [~~All~~] Utensils and equipment used in the processing of food shall be nontoxic, constructed [~~of such construction so as~~] to be easily cleanable, [~~cleaned~~] and kept in good repair. Utensils containing or plated with cadmium or lead shall not be used [~~except that solder of low lead content may be~~

~~used for jointing~~].

(7) Cleaning and bactericidal treatment [~~of utensils and equipment~~]. [~~All~~] Utensils and equipment shall be subjected to [~~the~~] cleaning and bactericidal treatment [~~provided by regulations relating thereto promulgated by the cabinet~~].

(8) Plumbing. All plumbing shall be installed in accordance with the state Plumbing Code, KRS Chapter 318.

(9) Waste disposal. Garbage, trash, sewage and other wastes shall be disposed of in an approved manner [~~in accordance with the regulations of the cabinet, and the Natural Resources and Environmental Protection Cabinet~~].

Section 4. [~~5.~~] Refrigeration Controls. (1) The refrigeration system for a frozen food locker plant shall be equipped with:

(a) Accurate and automatic [~~reliable~~] controls [~~and shall be~~] of adequate capacity to provide under extreme conditions of outside temperatures and under peak load conditions [~~in the normal operations of the plant~~] for the [~~automatic~~] maintenance of uniform safe temperatures in [~~the various~~] refrigerated rooms.

(b) [~~An~~] Accurate self-recording or self-registering thermometer shall be provided in the locker room.

(c) [~~The~~] Temperature records of [~~these~~] thermometers shall be kept at the plant and shall be preserved for at least one (1) year from the date of the recording. The thermometer in the locker room shall be placed in a position where it may be readily observed by the patrons. [~~Temperatures shall be maintained in conformity with the provisions of KRS 221.080.~~]

(2) Recording thermometers [~~in use at all frozen food locker plants~~] shall:

(a) Continually record temperatures in [~~such~~] plants for a period of not less than seven (7) days;

(b) Be enclosed in moisture-proof cases, permanently fastened to a substantial wall in the vestibule or waiting room; and

(c) Be installed in such a manner as to be visible at all times.

(3) Recording [~~The~~] instrument shall [~~must~~] be kept locked at all times except when changing recording dials or charts, inking, or repairing. Charts shall:

(a) Be changed once each week;

(b) Be properly dated so as to indicate the period for which temperatures were recorded;

(c) Be signed by the operators; and

(d) Be made available for inspection for at least one (1) year.

(4) [~~(3)~~] The sensitive bulb used to determine temperatures shall be located in the locker room and installed [~~in such a manner as~~] to insure efficient and proper operation at all times. The bulb shall not be placed directly in front of any door or blower.

(5) If [~~(4) When~~] more than one (1) room or one (1) section of lockers is maintained in a frozen food plant, which rooms or sections of lockers are refrigerated independently of each other, a sensitive bulb properly connected to an accurate recording thermometer shall be installed in each room or section of lockers [~~in such a manner as~~] to provide [~~give~~] accurate recordings or temperatures in each [~~such~~] room or section of lockers.

Section 5. [~~6.~~] Storage and Handling of Food. (1) [~~No~~] Food shall not be placed in a locker for storage unless it has been inspected by the operator and sharp-frozen for preservation so rapidly that ice crystals formed are too small to rupture the cells and natural juices and flavor are preserved.

(2) The lockers in any plant shall be [~~so~~] constructed [~~as~~] to protect the contents from contamination, or deterioration[~~, or injury~~]. Lockers with perforated bottoms shall be provided with a suitable unperforated liner or tray.

(3) All meats to be frozen or stored shall be wrapped in paper or other material which meets the requirements of the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart B, Substances for Use Only as Components of Paper and Paperboard which is incorporated by reference. Copies may be examined at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. [~~wrapping material suitable for wrapping meats that are to be frozen or stored.~~] All fruits and vegetables shall be wrapped or packed before they are placed in a locker. Each wrapped portion shall be marked or stamped with the correct locker number and the date of wrapping.

(4) [~~When the operator comes into the custody or possession of~~] Fresh carcass meats [~~they~~] shall be identified with a suitable tag or stamp. [~~If the~~] Meats that are not clean [~~they~~] shall be washed with cold water and [~~or otherwise suitably~~] cleaned or rejected. If accepted, the carcass shall be placed in the chill room, [~~sufficiently~~] long enough to lose body heat.

(5) In applying marks directly to meats or other food products, the operator shall use only nontoxic ink or other harmless substances.

(6) Before being frozen, vegetables shall be cleaned, [~~blanched if required, and immediately cooled with cold water~~] and packed in [~~suitable~~] containers for freezing.

(7) Before being frozen, fruit shall be cleaned and packed in [~~suitable~~] containers for freezing.

(8) All fish shall be promptly washed with clean water, wrapped, frozen and marked with the date and the [~~patron's~~] locker number.

(9) Foods not intended for human consumption, shall be stored in a room or locker specifically set apart for that purpose. Nonconsumable [~~Such~~] foods shall not be stored in the chill room, aging room, sharp-freeze room or locker room of any frozen food locker plant where foods intended for human consumption are stored.

(10) Patrons shall not be permitted to handle meats or foods, other than their own [~~(unless specifically authorized by the owner)~~] which are stored in the chill room, or are in the process of preparation or freezing for storage.

(11) Foods stored shall be protected from filth, flies, dust, dirt, insects, vermin and other contamination. No food shall be stored in a [~~such condition or~~] manner as to cause [~~injury to, or~~] deterioration of food in adjacent lockers.

(12) Whenever refrigeration coils or plates are located directly above a patron's locker, they shall be defrosted [~~in such a manner~~] so that contents of the locker are not contaminated.

(13) Patrons renting lockers, who are directly or indirectly engaged in the selling of food, shall declare this fact to the operator, and suitable entry shall be made on the operator's record.

Section 6. [~~7.~~] Employee Health and Cleanliness. (1) Frozen food locker plant operators shall not permit any person who has a communicable [~~skin~~] disease or is a carrier of a communicable disease, or who is suffering from any infected wound, to work in any physical contact with food [~~capacity~~] in a frozen food locker plant or a branch frozen food locker plant.

(2) Every person employed in a frozen food locker plant and engaged in direct physical contact with the food during its preparation, processing or storage, shall be clean in person and wear clean washable outer garments and suitable head coverings, which are to be used only for that purpose.

Section 7. [~~8.~~] Miscellaneous Requirements. (1) All frozen food locker plants shall be provided with adequate lockers or dressing rooms for employees separate and apart from any room in which food is prepared, processed, chilled, frozen or stored.

(2) Tobacco shall not be used in any room where food is processed or stored.

(3) No room used for the preparation, processing, storage, display or sale of foods shall be used as a living or sleeping room.

(4) No dogs, cats or other animals shall be permitted in a frozen food locker plant.

(5) Any plant using a toxic gas refrigerant shall have at least one (1) gas mask of a type approved by the National Institute of Occupa-

tional Safety and Health [~~cabinet~~] and shall have the gas mask placed where it will be readily accessible.

Section 8. Enforcement Procedures. (1) The frozen food locker license shall be suspended immediately upon notice to the holder without a hearing when the local health department has reason to believe that an imminent health hazard exists. In such event, the permit holder may request a hearing. If requested a hearing shall be granted within seven (7) days of receipt of request.

(2) In all other instances of violation of the provisions of this administrative regulation the local health department shall serve the holder of the frozen food locker license a written notice specifying the violations and afford the license holder a reasonable opportunity to correct same.

(3) Whenever a frozen food locker license holder has failed to comply with any written notice issued under the provisions of this administrative regulation the local health department may suspend the license.

(4) The holder of the frozen food locker license shall be notified in writing that the license shall be suspended at the end of ten (10) days following service of such notice unless a request for a hearing is made to the local health department within the ten (10) day period.

(5) Any person whose license has been suspended may make a request in writing for reinstatement of the license.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 23, 1993
FILED WITH LRC: October 1, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 23, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 18, 1993, of their desire to appear and testify at the hearing: Masten Childers II, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dudley Conner
(1) Type and number of entities affected: 3 frozen food lockers.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgated administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the administrative process under KRS Chapter 13A is applicable.
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied because the administrative regulation applies equally to all frozen food locker businesses. 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 impacted as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Local health departments.
3. State the aspect or service of local government to which this administrative regulation relates. License and inspection of frozen food locker plants will continue to be conducted by local health departments.
4. How does this administrative regulation affect the local government or any service it provides? Continues mandate of annual licensing and surveillance activities of frozen food locker plants.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Local Health
(Proposed Amendment)

902 KAR 45:005. Retail food code.

RELATES TO: KRS 217.005 to 217.215, 217.992, 21 CFR Chapter 1, Subparts B, D, Subchapter B, Part 170 [~~219.011 to 219.081, 219.991(1)~~]
STATUTORY AUTHORITY: KRS 194.050, 211.090, 219.031, 21 CFR Chapter 1, Subparts B, D, Subchapter B, Part 170
NECESSITY AND FUNCTION: [~~Senate Bill 30 of the 1990 General Assembly combines food service requirements of KRS 219.011 to 219.081 with~~] KRS 217.005 to 217.215 and 217.992(4)[~~, the Kentucky Food, Drug and Cosmetic Act. This act~~] authorizes the Cabinet for Human Resources to regulate food service establishments and retail food stores [~~in Kentucky~~]. The function of this administrative regulation is to establish a uniform code for the regulation of all food service establishments and retail food stores [~~within the Commonwealth of Kentucky~~] for the purpose of protecting the public health.

Section 1. Definitions. [~~As used in this administrative regulation:~~]
(1) "Adulterated food and food products" means any food or food product adulterated as provided by KRS 217.025 [~~of the Kentucky Food, Drug and Cosmetic Act~~].
(2) "Approved" means acceptable to the cabinet based on determination as to conformance with appropriate standards and good public health practices.
(3) "Chemical preservative" means any chemical that, when added to a food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.
(4) "Closed" means without openings large enough for the entrance of insects. An opening of one-sixteenth (1/16) inch or less is closed.
(5) "Corrosion-resistant material" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions and other conditions of the use

environment.

(6) "Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(7) "Employee" means the permit holder, individuals having supervisory or management duties and any other person working in a food handling establishment.

(8) "Equipment" means stoves, ranges, hoods, ovens (including microwave), cookers, bins, conveyor belts, refrigerators, freezers, mixers, grinders, saws, sinks, tables, display cases, meat blocks, wrapping machines, scales, check-out counters, vehicles and similar items.

(9) "Food contact surfaces" means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

(10) "Hermetically sealed container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

(11) "Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

(12) "Liquid waste" means the discarded fluid discharge from any fixture, appliance, area or appurtenance.

(13) "Misbranded food and food products" means any food or food product misbranded as provided by KRS 217.035 [~~of the Kentucky Food, Drug and Cosmetic Act~~].

(14) "Mobile food unit" means a food service establishment that is designed to be readily movable.

(15) "Packaged" means bottled, canned, cartoned, or securely wrapped at a food processing establishment.

(16) "Package" means any container or wrapping in which any food is enclosed for use in the delivery or display to retail purchasers, but does not include: shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; containers used for tray pack displays in retail establishments; transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring the label information, and any other exemption granted pursuant to the 21 USC 341 to 345 [~~Federal Food, Drug and Cosmetic Act~~].

(17) "Perishable food" means food of such type or in such condition or physical state that it may spoil or otherwise become unfit for human consumption.

(18) "Pesticides" includes pesticides, insecticides, fungicides, herbicides, and rodenticides as defined in KRS 217B.040(2).

(19) "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) In a form capable of supporting the:

1. Rapid and progressive growth of infectious or toxigenic microorganisms; or

2. Slower growth of Clostridium botulinium.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:

1. Has been treated; or

2. Is raw seed sprouts.

(d) The following are excluded:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) value of 0.85 or less;

3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Food in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinium cannot occur.

(20) "Pushcart" means a nonself-propelled vehicle limited to serving nonpotentially hazardous foods or commissary-wrapped food maintained at safe temperatures or limited to the preparation and serving of frankfurters.

(21) "Reconstituted" means dehydrated food products combined with water or other liquids.

(22) "Safe temperature" means, when considering potentially hazardous food, food temperature of forty-five (45) degrees Fahrenheit or below and 140 degrees Fahrenheit or above, except for frozen food, which should be stored at zero degrees Fahrenheit, or less.

(23) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

(24) "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

(25) "Seasonal restricted food concession" means any food service establishment which operates for not longer than eight (8) consecutive months in one (1) year; and shall prepare and serve only nonpotentially hazardous foods, except that plain frankfurters with bread and nachos with cheese sauce may be served. It shall not include concessions or establishments which serve only prepackaged, snack type nonpotentially hazardous foods.

(26) "Shellfish" means clams, mussels, or oysters.

(27) [~~(26)~~] "Sewage" means liquid waste containing fecal material or organic material from garbage grinders.

(28) [~~(27)~~] "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping material including bags, toothpicks and similar articles which are designed for one-time, one-person use and then discarded.

(29) [~~(28)~~] "Tableware" means all multiuse eating and drinking utensils.

(30) [~~(29)~~] "Utensil" means any food-contact implement used in the storage, preparation, transportation, dispensing, service or sale of food.

(31) [~~(30)~~] "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils such as kitchenware and tableware.

(32) [~~(31)~~] "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

Section 2. Applicability. The requirements of this administrative regulation are applicable to all food service establishments, retail food stores, or a combination of both within the same establishment, as defined by KRS 217.015[~~, located within the Commonwealth of Kentucky~~].

Section 3. Application for Permit to Operate. (1) Any person desiring to operate a food service establishment; [~~or~~] a retail food store; or a seasonal restricted food concession shall make written application for a permit on form DFS-200 [~~208~~] provided by the cabinet. This form is incorporated by reference and may be viewed at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(2) If the application is for a retail food store and food service combined operation in one (1) establishment under one (1) ownership, the application shall:

(a) Designate: "retail food and food service combination".

(b) Include the name and address of the applicant;

(c) The location and type of the proposed food service establishment; and

(d) The signature of the applicant.

(3) If the application is for a temporary food service establishment, it shall also include the dates of the proposed operation.

(4) Prior to approval of an application for permit, the cabinet shall:

(a) Inspect the proposed food service establishment to determine compliance with the provisions of this administrative regulation; and

(b) Issue a permit to the applicant if the inspection reveals that the proposed food service establishment complies with the requirements of this administrative regulation.

Section 4. Food Supplies. (1) Food shall be wholesome and free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all applicable federal and state laws relating to food and food labeling. The use of food and food products canned, prepared or processed in the home is prohibited.

(2) Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the Grade A quality standards as established by law and regulation. Dry milk and milk products shall be made from pasteurized milk and milk products.

(3) All shellfish, fresh or frozen shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, mussels, clams) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and the interstate certification number issued by the state or foreign shellfish control agency and shall comply with applicable cabinet administrative regulations. Shellstock source information shall be maintained on the container until it is empty and then shall be kept on file at the establishment for ninety (90) days.

(4) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid or pasteurized dry egg or egg products shall be used; except that hard-boiled peeled eggs, commercially prepared and packaged, may be used.

(5) All meat and meat products, poultry and poultry products shall have been inspected and passed for wholesomeness under an official governmental regulatory program.

(6) All fish and fish products shall be from approved sources that comply with all applicable federal and state laws relating to food and food labeling.

Section 5. Food Protection. (1) Food shall be protected while being stored, prepared, displayed, served, or transported from potential contamination including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage or condensation. The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times, except during necessary periods of preparation and service. Shell eggs shall be stored at forty-five (45) ~~[sixty (60)]~~ degrees Fahrenheit or below.

(2) Precluding unsafe additives. Food shall be protected against contamination resulting from the addition of unsafe or unapproved food or color additives other than those specified in the Code of Federal Regulations, Title 21, Food and Drug Administration Subchapter B, Part 170 - Food Additives.

(3) Spoiled, damaged, returned or detained food items shall be segregated from other foods pending final disposition. A designated area shall be established for temporarily holding returned and damaged food items awaiting disposition. The area shall be marked or identified as, "Not for sale or consumption".

(4) In the event of fire, flood, power outage, water cutoff, or similar catastrophic event that might result in the contamination of food, or that might prevent potentially hazardous foods from being held at required temperatures, the person in charge shall immediately contact the cabinet. Upon receiving notice of this occurrence, the cabinet shall take whatever action that it deems appropriate to protect the public health.

Section 6. Food Storage. (1) Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.

(2) Containers of food shall be stored a minimum of six (6) inches above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:

(a) Metal pressurized beverage containers, and cased food packaged in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture;

(b) Containers may be stored on dollies, racks or pallets, provided such equipment is easily movable.

(3) Food or containers of food shall not be stored under exposed sewer or nonpotable water lines, except for automatic fire protection sprinkler heads. Food shall not be stored in toilet rooms or toilet room vestibules.

(4) Food not subject to further washing or cooking before serving shall be stored in a way that protects it against contamination from food requiring washing or cooking. Food shall be stored in such a way that protects it from cross-contamination.

(5) Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice or water.

(6) Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, flour, meal and similar products, not stored in the container or package in which it was obtained shall be stored in a container identifying the food by common name.

(7) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of forty-five (45) degrees Fahrenheit or below during storage. Each mechanically refrigerated facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers accurate to plus or minus three (3) degrees Fahrenheit may be used in lieu of indicating thermometers.

(8) The temperature of potentially hazardous foods requiring refrigeration shall be forty-five (45) degrees Fahrenheit or below except during necessary periods of preparation.

(9) Frozen foods shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit or below.

(10) Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers, or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head, provided: tubes, cold plates and etc., are kept clean, in good repair, and are constructed from approved materials. Ice used for cooling and maintaining cold temperatures of stored food and food containers shall not be used for human consumption.

(11) Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of 140 degrees Fahrenheit or above during storage. Each hot food facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to

plus or minus three (3) degrees Fahrenheit, may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer accurate to within plus or minus three (3) degrees Fahrenheit shall be readily available and used by the establishment personnel to check internal food temperatures.,

(12) The internal temperature of potentially hazardous foods requiring hot storage shall be 140 degrees Fahrenheit or above except during necessary periods of preparation and such hot potentially hazardous foods to be transported shall be held at an internal temperature of 140 degrees Fahrenheit at all times during transportation.

Section 7. Food Preparation. (1) Food shall be prepared with the least possible manual contact, using suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.

(2) Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served; this requirement shall not apply to whole, uncut fruits and raw vegetables for sale in retail food stores.

(3) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit prior to being placed in steam tables or other hot storage facilities except that:

(a) Poultry, poultry stuffings, and stuffed meats shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process.

(b) Raw pork and products containing raw pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit.

(c) Rare roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit, and rare beef steak shall be cooked to a temperature of 130 degrees Fahrenheit unless otherwise ordered by the immediate customer.

(4) Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes.

(5) Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

(6) Potentially hazardous foods that were cooked and then refrigerated shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bainmaries, warmers, and other hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

(7) Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one (1) gallon in capacity and cooled to forty-five (45) degrees Fahrenheit or below.

(8) Metal stem-type numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided and used to assure attainment of proper internal cooking temperatures of all potentially hazardous foods.

(9) Potentially hazardous foods shall be thawed:

(a) In refrigerated units in a way that the temperature of the food does not exceed forty-five (45) degrees Fahrenheit; or

(b) Under potable running water of a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or

(c) In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

Section 8. Food Display and Service. (1) Potentially hazardous foods shall be kept at a temperature of forty-five (45) degrees Fahrenheit or lower or at a temperature of 140 degrees Fahrenheit or higher during display and service.

(2) Food, except raw fruits and vegetables, on display shall be protected from consumer contamination by the use of package overwrapping; counter service line or salad bar food guards; display cases; or other effective means.

(3) Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement if the refilling process is contamination free. Clean tableware shall be made available and a sign shall be posted in self-service food area to inform customers of this requirement.

(4) Suitable utensils shall be used by employees or provided for consumers self-service to avoid unnecessary contact with food. Between uses during service, utensils shall be:

(a) Stored in food containers with the food they are being used to serve; or

(b) Stored clean and dry; or

(c) Stored in running water; or

(d) In the case of dispensing utensils and malt collars used in serving frozen desserts, stored either in a running water dipper well, or clean and dry.

(5) Ice for consumer use shall be dispensed only with scoops, tongs, or other ice-dispensing utensils by either employees or self-service or through automatic self-service ice-dispensing equipment. Between uses during service, ice-dispensing utensils and ice receptacles shall be stored in a way that protects them from contamination.

(6) Sugar, condiments, seasonings, and dressings for self-service use shall be provided only in individual packages or from dispensers or containers that protect their contents.

(7) Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one (1) pint in capacity, or served from an approved bulk milk dispenser. When a bulk dispenser for milk or milk products is not available and portions of less than one-half (1/2) pint are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half (1/2) gallon capacity.

(8) Cream, half and half, or nondairy creamers or whitening agents shall be provided in an individual service container, protected pour-type pitcher or drawn from a refrigerated dispenser designed for such service; milk, cream, half-and-half or nondairy creamers in unopened commercially filled containers may be sold without restriction as to container size in retail food stores.

(9) Once served to a consumer, individual portions of food shall not be served again. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome, may be re-served.

Section 9. Food Transportation. During transportation, food and food utensils shall be in covered containers or completely wrapped or packaged so as to be protected from contamination. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of this administrative regulation relating to protection and storage of food. Cold, potentially hazardous foods shall be maintained at forty-five (45) degrees Fahrenheit or below during transportation.

Section 10. Employee Health. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food service establishment, except as noted in Section 39 [~~38~~] of this administrative regulation.

Section 11. (1) Personal Cleanliness. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap or

detergent and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking or using the toilet. Employees shall keep their fingernails clean and trimmed.

(2) Handwashing shall take place at a handwashing lavatory or designated service sink and not at food preparation sink or at a warewashing sink.

Section 12. Clothing. (1) The outer clothing of all employees shall be clean and suitable for the task to be performed.

(2) Hairnets, hats, scarfs, or similar hair coverings that effectively restrain head and facial hair shall be required for all employees working in food preparation areas. Employees working in other areas of establishments shall arrange their hair to prevent the contamination of food, equipment and utensils.

Section 13. Employee Practices. (1) Employees shall eat food, drink, or use tobacco only in designated areas. Such an area shall not be designated if consuming food there might result in contamination of other food, equipment, utensils, or other items needing protection.

(2) Employees shall handle soiled tableware in a way that minimizes contamination of their hands.

(3) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices.

(4) Employees shall remove all insecure jewelry, and during periods when food is manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

Section 14. Equipment and Utensils Materials. (1) Multiuse equipment and utensils shall be made and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Singleservice articles shall be made from clean, sanitary, safe materials. Equipment, utensils and single-service articles shall not impart odors, color or taste, nor contribute to the contamination of food.

(2) If soft solder or hard solder (silver solder) is used, it shall be composed of safe materials and be corrosion resistant.

(3) Hard maple or equivalently nonabsorbent materials that meet the general requirements set forth in subsection (1) of this section may be used for cutting blocks, cutting boards, salad bowls, bakers' tables, and wooden paddles in confectionery operations for pressure scraping kettles when manually preparing confections at a process temperature of 230 degrees Fahrenheit or above. The use of wood as a food-contact surface under other circumstances is prohibited, except in the case of single service articles such as chopsticks, coffee stirrers, ice cream spoons and similar articles.

(4) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in subsection (1) of this section are permitted for repeated use. The use of equipment and utensils made of materials not meeting the requirements of this section is prohibited.

(5) Mollusk and crustacea shells may be used only once as a serving container. Further reuse of such shells for food service is prohibited.

Section 15. Equipment and Utensils Design and Fabrication. (1) All equipment and utensils, including plastic ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult to clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited, except that in equipment, such as ice makers or hot oil cooking equipment and hot oil filtering systems, the use of such threads shall be minimized.

(2) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

(3) Sinks, dish tables, and drain boards shall be self-draining.

(4) Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(a) Without being disassembled; or

(b) By disassembling without the use of tools; or

(c) By easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open-end wrench.

(5) Pipes, tubes, valves, and lines contacting food and intended for in-place cleaning shall be so designed and fabricated that:

(a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

(b) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

(c) The system is self-draining or capable of being completely evacuated.

(6) Thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to plus or minus three (3) degrees Fahrenheit.

(7) Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated so as to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

(8) Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food-contact surfaces. Filters where used, shall be readily removable for cleaning and replacement.

Section 16. Equipment Installation and Location. (1) Equipment, including ice makers and ice storage equipment, shall not be located under exposed sewer lines, nonpotable water lines, stairwells or other sources of contamination. This prohibition does not apply to automatic fire protection sprinkler heads.

(2) Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or mounted on legs at least four (4) inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(3) Equipment is portable within the meaning of subsection (2) of this section if:

(a) It is small and light enough to be moved easily by one (1) person; and

(b) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(4) Floor mounted equipment, unless readily movable, shall be:

(a) Sealed to the floor; or

(b) Installed on raised platforms of concrete or other smooth masonry in a way that prevents liquids or debris from seeping or settling underneath, between, or behind the equipment in spaces that are not fully open for cleaning and inspection; or

(c) Elevated on legs at least six (6) inches off the floor, except that vertically mounted floor mixers may be elevated as little as four (4) inches off the floor if no part of the floor under the mixer is more

than six (6) inches from cleaning access. Unless sufficient space is provided for easy cleaning between and behind each unit of floor mounted equipment, the space between it and adjoining equipment units and between it and adjacent walls shall be closed or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls.

(5) Aisles and working spaces between units of equipment and between equipment and walls should be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

(6) Equipment which was installed prior to the effective date of this administrative regulation and which does not meet fully all of the requirements of this section, shall be deemed acceptable, if it is in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are nontoxic. Such equipment shall be so located and installed as to enable reasonable compliance with the requirements of this section.

Section 17. Equipment and Utensil Cleaning and Sanitization. (1) Tableware shall be cleaned and sanitized after each use.

(2) Kitchenware and food-contact surfaces of equipment used in the preparation, service, display or storage of potentially hazardous foods shall be cleaned and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.

(4) The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day, except that this shall not apply to hot oil cooking and filtering devices and systems. Food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.

(5) Nonfood contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(6) Cloths used during service for wiping food spills on food-contact surfaces shall be clean, dry, and used for no other purpose. Moist cloths used for wiping food-contact surfaces of equipment shall be clean and rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section. Moist cloths, or sponges, used for cleaning nonfood-contact surfaces shall be clean and used for no other purpose. These cloths shall be rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section.

(7) When manual cleaning and sanitizing is used, sinks shall be cleaned prior to use. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil. Equipment and utensils shall be thoroughly washed in a hot detergent solution at a temperature of at least ninety-five (95) degrees Fahrenheit in the first compartment, rinsed in the second compartment and shall be sanitized in the third compartment according to one (1) of the methods included in paragraph (a)1 through 4 of this subsection.

(a) All tableware and the food-contact surfaces of all other equipment and utensils shall be sanitized by:

1. Immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least 170 degrees Fahrenheit; or

2. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least seventy- five (75) degrees Fahrenheit; or

3. Immersion for at least one (1) minute in a clean solution containing at least twelve and five-tenths (12.5) parts per million of available iodine and having a pH not higher than five (5.0) and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

4. Immersion in a clean solution containing other chemical sanitizing agents approved by the department that will provide the equivalent bactericidal effect of a solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute; or

5. Treatment with steam free from harmful materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under subsection (7)(a)4 of this section when used for immersion sanitization in the case of equipment too large to sanitize by immersion.

(b) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "B", Substances Utilized to Control the Growth of Microorganisms, Section 178.1010 Sanitizing Solutions, and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(c) A three (3) compartment sink shall be used if cleaning and sanitization of equipment or utensils is done manually; retail food establishments that were operating with a valid and effective permit prior to the effective date of this administrative regulation not having a three (3) compartment sink that can demonstrate an acceptable procedure for cleaning and sanitizing equipment and utensils may be exempt from this requirement by the cabinet. Sinks shall be large enough to permit the complete immersion of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water. Suitable equipment shall be made available if cleaning and sanitizing cannot be accomplished by immersion. Those retail food stores that do not cut, process or package any foods, but purchase and offer for sale only prepackaged foods shall not be required to provide a three (3) compartment sink.

(d) Dish tables or drain boards of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the warewashing facilities.

(e) When hot water is used for sanitizing, the following facilities shall be provided and used:

1. An integral heating device or fixture installed in or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170 degrees Fahrenheit; and

2. A numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit convenient to the sink that can be used for frequent checks of water temperature; and

3. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(8) When mechanical cleaning and sanitizing is used, cleaning and sanitizing may be done by spray-type or immersion warewashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. Such machines and devices shall be properly installed and maintained in good repair. Automatic detergent dispensers and wetting agent dispensers, if any, shall be properly installed and maintained.

(a) The pressure of water supplied to spray-type warewashing machines shall be not less than fifteen (15) or more than twenty-five (25) pounds per square inch measured in the water line immediately adjacent to the machine. A suitable gauge cock shall be provided immediately upstream from the final rinse sprays to permit checking the flow pressure of the final rinse water.

(b) Easily readable numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided that indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(c) Rinse water tanks shall be so protected by baffles or other effective means as to minimize the entry of wash water into the rinse water. Conveyors in warewashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as determined by specifications attached to the machines.

(d) Drain boards shall be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the warewashing facilities.

(e) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to their being cleaned in a warewashing machine. After flushing, scraping, or soaking, equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are subject to the unobstructed application of detergent wash and clean rinse waters and that permits free draining. Clean rinse water shall remove particulate matter and detergent residues. All warewashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

(9) When chemicals are used for sanitization, they shall be automatically dispensed in such concentration and for such a period of time as to provide effective bactericidal treatment of equipment and utensils. Wash water shall be kept clean. In machines using chemicals for sanitization (single-tank, stationary-rack, door-type machines, and spray-type glass washers), the temperature of the wash water shall be not less than 120 degrees Fahrenheit. The sanitizing rinse water shall be not less than seventy-five (75) degrees Fahrenheit nor less than the temperature specified by the machine manufacturer.

(10) Where machines using hot water sanitization are used, wash waters and pumped rinse waters shall be kept clean. Water shall be maintained at not less than the temperatures stated in paragraphs (a) to (e) of this subsection; existing machines not fully meeting the requirements of this subsection may be acceptable, if capable of meeting such time and temperature requirements as are acceptable by the cabinet. Wash and pumped rinse temperatures shall be measured in the respective tanks, and final rinse temperatures shall be measured at the manifold.

(a) Single tank, stationary rack, dual temperature machine:

1. Wash temperature: 150 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(b) Single tank, stationary rack, single temperature machine:

1. Wash temperature: 165 degrees Fahrenheit.
2. Final rinse temperature: 165 degrees Fahrenheit.

(c) Single tank, conveyor machine:

1. Wash temperature: 160 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(d) Multiple tank, conveyor machine:

1. Wash temperature: 150 degrees Fahrenheit.
2. Pumped rinse temperature: 160 degrees Fahrenheit.
3. Final rinse temperature: 180 degrees Fahrenheit.

(e) Single tank, pot, pan, and utensil washer (either stationary or moving rack):

1. Wash temperature: 140 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(11) All equipment and utensils shall be air-dried.

Section 18. Equipment and Utensil Storage. (1) Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, and bowls shall be handled without contact with inside surfaces or with surfaces that contact the user's mouth.

(2) Cleaned and sanitized utensils and movable equipment shall be stored at least six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer or nonpotable water lines. This requirement does not apply to automatic fire protection sprinkler heads.

(a) Utensils shall be air-dried before being stored or shall be stored in a self-draining position on suitably located racks.

(b) Wherever practical, stored utensils shall be covered or inverted. Facilities for the storage of spoons, knives, and forks shall be provided and shall be designed to present the handle to the employee or consumer.

(3) If presetting is practiced, all unprotected, unused, preset tableware shall be collected for washing and sanitizing after the meal period; and after any place at a table is occupied.

(4) Single-service articles shall be stored at least six (6) inches above the floor in closed cartons or containers which protect them from contamination.

(a) Single-service articles shall be commercially packaged for individual use or shall be available to the consumer from a dispenser in a way that prevents contamination of surfaces that may contact food or the user's mouth. Handling of single-service articles in bulk shall be conducted in a way that protects them from contamination. Storage shall not be in toilet rooms or vestibules of toilet rooms nor under nonpotable water lines or exposed sewer lines.

(b) Single-service articles shall be used only once.

Section 19. Sanitary Facilities and Controls. (1)(a) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available.

(b) If a public water supply of a municipality or a water district is not available, the supply for the establishment shall be developed and approved pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 8.

(c) If a public water supply of a municipality or water district becomes available, connections shall be made to it and the private supply shall be discontinued.

(d) Retail food stores holding a valid and effective permit prior to the effective date of this administrative regulation shall not be required to have hot and cold running water if:

1. Only prepackaged foods are sold; or
2. Cutting and slicing is limited to ready-to-eat, cold-cut foods, and performed in a sanitary manner complying with this administrative regulation.

(e) Hot and cold running water under pressure shall be provided in all areas where food is prepared, or equipment, utensils or containers are washed.

(f) Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "D", Specific Usage Additives Section 173.310 Boiler Water Additives.

(2) Bottled and packaged potable water shall be obtained from a source that complies with all applicable laws and regulations and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original containers.

(3) All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed of approved materials and operated pursuant to applicable laws and regulations.

Section 20. Sewage. All sewage shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 5 or [~~and~~] the Cabinet for Human Resources administrative regulations 902 KAR Chapter 10; if a public sewerage system becomes available, connections shall be made thereto and the private sewerage system shall be disconnected. Only nonwater- carried disposal methods which have been approved by the cabinet for temporary use shall be used [~~and operation of such facilities shall be in conformance with applicable state laws and regulations~~].

Section 21. Plumbing. (1) All plumbing shall be sized, installed, and maintained pursuant to the State Plumbing Code, KRS Chapter 318. There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, or source of pollution through which the safe water supply might become contaminated. All reservoir-type and other produce foggers or misters shall be operated, maintained, and cleaned in a manner consistent with the manufacturer's most recent specifications.

(2) A nonpotable water system is permitted only for purposes such as air-conditioning and fire protection and only if the system is installed pursuant to applicable state laws and administrative regulations and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) The potable water system shall be installed to preclude the possibility of backflow. Devices to protect against backflow and backsiphonage shall be installed at all fixtures and equipment wherever backflow or backsiphonage may occur. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(4) If used, grease traps shall be located to be easily accessible for cleaning.

(5) Except for properly trapped open sinks, there shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment or utensils are placed.

Section 22. Toilet Facilities. (1) In existing food service establishments, adequate toilet facilities shall be provided and shall be so located as to be readily accessible to employees at all times. In new establishments, or establishments that are extensively altered, toilet facilities shall be provided pursuant to the requirements of the State Plumbing Code, KRS Chapter 318.

(2) Toilets and urinals shall be designed to be easily cleanable.

(3) Toilet room doors shall be solid, tight-fitting, and self- closing, and shall be closed except during cleaning or maintenance. Doors may be louvered if installed pursuant to the State Fire Marshal's administrative regulations.

(4) Toilet facilities, including vestibules, if any, shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and the receptacles in toilet rooms used by women shall be covered.

Section 23. Lavatory Facilities. (1) Lavatories shall be installed pursuant to the State Plumbing Code and shall be equipped with hot and cold running water or running water tempered by means of a mixing valve or combination faucet. Steam mixing valves are prohibited. Hand cleansing soap or detergent, and approved sanitary towels or other approved hand drying devices are to be conveniently located at each lavatory. If disposable towels are used, waste receptacles shall be located near the lavatory. Common towels are prohibited.

(2) Lavatories shall be located within or immediately adjacent to all toilet rooms. In all new establishments, and establishments which are extensively altered, lavatories shall be conveniently located within the food preparation area and warewashing area. Sinks used for food preparation or for washing equipment or utensils shall not be used for hand- washing.

(3) Lavatories, soap dispensers, and hand drying devices and all related facilities shall be kept clean and in good repair.

Section 24. Garbage and Refuse. (1) Garbage and refuse shall be kept in durable insect-proof and rodent-proof containers that are leak-proof and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and may be used for storage inside the food service establishment when protected from insects and rodents.

(2) Containers, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. Drain plugs, where required, shall be in place at all times, except during cleaning.

(3) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(4) After being emptied, each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food-preparation areas. In new establishments, suitable facilities, including hot water and detergent, shall be provided and used for washing containers.

(5) The garbage and refuse on the premises shall be stored in a place inaccessible to insects and rodents. Outside storage of plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(6) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent- proof, and shall be large enough to store the garbage and refuse containers that accumulate.

(7) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

(8) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(9) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter pursuant to [~~applicable~~] administrative regulations 401 KAR Chapter 63 of the Cabinet for Natural Resources and Environmental Protection. Areas around incineration facilities shall be kept clean and orderly.

(10) Nonsewage liquid waste shall be disposed of in a manner that will not create a public health nuisance.

Section 25. Insect and Rodent Control. (1) Effective measures intended to eliminate the presence of rodents and flies, roaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(2) Openings to the outside shall be effectively protected against the entrance of rodents and shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, and other openings to the outside shall be tight-fitting and free of breaks.

Screening material shall not be less than sixteen (16) mesh to one (1) inch.

Section 26. Construction and Maintenance of Physical Facilities. (1) The floors of all food preparation, food storage, and utensil-washing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, and toilet rooms and vestibules shall be constructed of smooth, durable materials such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair.

(2) Carpeting, if used, shall be properly installed, easily cleanable and maintained in good repair. Carpeting is prohibited in toilet rooms, food preparation areas, and in warewashing areas where it would be exposed to large amounts of grease and water.

(3) Sawdust, wood shavings, peanut hulls, or similar material on the floors in food processing areas is prohibited.

(4) Properly installed floor drains shall be provided in floors that are water flushed for cleaning or that receive discharge of water or other fluid waste from equipment. Such floors shall be constructed of sealed concrete, terrazzo, ceramic tile, or similar material graded to drain all parts of the floor.

(5) The floor of each walk-in refrigerator shall be graded to drain all parts of the floor to the outside through a waste pipe, doorway, or other opening, or equipped with a floor drain.

(6) Mats and duckboards shall be of nonabsorbent, grease resistant materials and of such size, materials, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.

(7) In all new establishments utilizing concrete, terrazzo, ceramic tile or similar material, and where water flush cleaning methods are used, junctures of walls with floors shall be coved and sealed. In all other cases, the junctures between the walls and floors shall not present an open seam of more than one 1/32 of an inch.

(8) Utility service lines and pipes shall not be unnecessarily exposed on floors in food preparation and warewashing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(9) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(10) The walls, including nonsupporting partitions, wall coverings, and ceilings of all food preparation and warewashing areas and of toilet rooms shall be smooth, nonabsorbent, and easily cleanable. The use of rough or unfinished building materials such as brick, concrete blocks, wooden beams, or shingles is prohibited in those locations except by special plan approval by the cabinet.

(11) Studs, joists, and rafters shall not be exposed in walk-in refrigerators, food preparation areas, warewashing areas and in toilet rooms except by special plan approval by the cabinet.

(12) Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in food preparation and warewashing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(13) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(14) Covering material such as sheet metal, linoleum, vinyl, and similar materials shall be easily cleanable and nonabsorbent and shall be attached and sealed to the wall and ceiling surfaces so as to leave no open spaces or cracks.

(15) Concrete or pumice blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface.

Section 27. Cleaning Physical Facilities. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with push brooms. All cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. In new establishments, or establishments that are extensively altered, readily accessible service sinks or curbed cleaning facilities shall be provided.

Section 28. Lighting. (1) At least thirty (30) foot-candles of natural or artificial light shall be provided to all working surfaces and to all other surfaces and equipment in food preparation, warewashing, and hand washing areas, and in toilet rooms. At least twenty (20) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all walk-in refrigerators, food storage areas and dining and entry areas, except that this requirement applies to dining areas only during cleaning operations.

(2) Shielding to protect against broken glass falling into food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service and display facilities and facilities where utensils and equipment are cleaned and stored. Shatter proof bulbs may be approved by the cabinet without further shielding. Heat lamps shall be protected by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

Section 29. Ventilation. (1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, smoke and fumes. Ventilation systems shall be installed and operated according to applicable state laws and administrative regulations and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

(2) Rooms, including toilet room areas, and equipment, from which aerosols, obnoxious odors, or noxious fumes or vapors may originate shall be vented effectively to the outside.

(3) Intake air ducts, if any, shall be designed and maintained to prevent the entrance of dust, dirt, insects and other contaminating materials.

Section 30. Dressing Areas and Lockers. (1) If employees routinely change clothes within the establishment, areas shall be designated for that purpose. Those areas shall not be located in areas used for food preparation, storage, or service or for warewashing or storage, except that a storage room containing only completely packaged food may be so designated.

(2) Enough lockers or other suitable facilities shall be provided and used for the storage of employees' clothing and other belongings. If dressing areas are designated, the lockers or other facilities shall be located within those areas.

Section 31. Poisonous or Toxic Materials. (1) Only those poisonous or toxic materials required to maintain the establishment in a sanitary condition or required for sanitization of equipment or utensils shall be present in retail food establishments.

(2) Containers of poisonous or toxic materials, including insecticides and rodenticides, shall be prominently and distinctly labeled pursuant to the requirements of applicable law.

(3) Insecticides and rodenticides shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose.

(4) Working containers used for storing cleaners and sanitizers taken from bulk supplies shall be identified with the common name of the material.

(5) Poisonous or toxic materials stored or displayed for retail sale shall be separated by spacing or partitioning from, and not stored above, food, single service articles or single use articles intended for use with food.

(6) Detergents, sanitizers, related cleaning or drying agents, caustics, acids, polishes, lubricants and other chemicals shall not be stored above or intermingled with food equipment, utensils, single

service articles, single use articles intended for use with food, except that: this requirement does not prohibit the convenient location and availability of cleaning and sanitizing agents at warewashing facilities.

(7) Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, or in a way that constitutes a hazard to employees or other persons.

(8) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons nor in a way other than in full compliance with the manufacturer's labeling. All pesticides and other materials whose label has a "warning" statement or displays the "skull and crossbones" and any other hazardous product that may be designated by the cabinet shall be handled and bagged separately at check-out counters.

(9) Personal medications shall not be stored in food storage, preparation, or service areas.

(10) First aid supplies shall be stored in a way that prevents them from contaminating food and food contact surfaces.

Section 32. Premises. (1) Retail food establishments and all parts of the property used in connection with operation of the establishment shall be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of the establishment shall be surfaced with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust. These surfaces shall be drained and shall be kept clean.

(3) Only articles necessary to the operation and maintenance of the establishment shall be stored on the premises.

(4) The traffic of unnecessary persons through the food preparation and warewashing areas and the presence in those areas of persons not authorized to be there by the permit holder or person in charge is prohibited.

(5) No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. A solid self-closing door shall separate food service operations from any living or sleeping area.

(6) No laundry operation shall be conducted, except that linens, uniforms and aprons used in the establishment may be laundered on the premises separate from food preparation and service areas.

(7) Clean cloths and napkins shall be stored in a clean place and protected from contamination until used. Nonabsorbent containers or washable laundry bags shall be provided and damp or soiled linens and cloths shall be kept in them until removed for laundering.

(8) Maintenance and cleaning materials and equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linen storage.

(9) Live animals, including birds and turtles, shall be excluded from all food service establishments and from areas adjacent to serving areas that are under the control of the permit holder. The exclusion does not apply to edible crustacea, shellfish, or fish, nor to fish in aquariums. Escorted police patrol dogs or guide dogs accompanying blind or other persons with physical limitations shall be permitted in dining areas.

Section 33. Mobile Food Units or Pushcarts. (1) Mobile units or pushcarts shall comply with the requirements of this administrative regulation, except as otherwise provided in this subsection and in subsection (2) of this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the establishment as a mobile or pushcart operation, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this administrative regulation relating to physical facilities, except those requirements of subsections (4) and (5) of this section and Sections 34 and 35 of this administrative regulation.

(2) A mobile unit or pushcart that serves only food that was prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of this administrative regulation or beverages that are not potentially hazardous and are dispensed from protected equipment need not comply with requirements of this administrative regulation pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its commissary; however, frankfurters may be prepared and served from these units or pushcarts.

(3) Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

(4) A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitization, and hand-washing, pursuant to the requirements of this administrative regulation. The water inlet shall be located in such a position that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed according to the State Plumbing Code, KRS Chapter 318.

(5) If liquid waste results from operation of a mobile food unit it shall be stored in permanently installed retention tanks that are at least 100 percent larger than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

Section 34. Commissary. (1) Mobile food units or pushcarts shall operate from a commissary or other fixed food service establishment that is constructed and operated in compliance with this administrative regulation; mobile food units equipped with a potable water supply system under pressure, liquid waste system retention tanks, sinks, lavatories, etc., shall not be required to operate from a commissary or other fixed food service establishment.

(2) Mobile retail food stores that sell only prepackaged, commercially prepared, sealed, and protected ready-to-eat foods, shall not be required to operate from a fixed retail food establishment.

Section 35. Mobile Food Unit or Pushcart Servicing Area and Operations. (1) Potable water servicing equipment shall be stored and handled in a way that protects the water and equipment from contamination.

(2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. The flushing and draining area for liquid wastes shall be separate from the area used for loading and unloading of food and related supplies. All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 5 and the Cabinet for Human Resources administrative regulations 902 KAR Chapter 10; if a public sewerage system becomes available, connection shall be made thereto and the establishment sewerage system shall be disconnected.

Section 36. Temporary Food Service Establishment. (1) A temporary food service establishment shall comply with the requirements of this administrative regulation, except as otherwise provided

in this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this administrative regulation, except those requirements of subsections (2) to (10) of this section.

(2) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters, which require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish is prohibited. This prohibition does not apply, however, to any potentially hazardous food that is obtained in individual servings, is stored at a temperature of forty-five (45) degrees Fahrenheit or below, or at a temperature of 140 degrees Fahrenheit or above, and is served directly in the unopened container in which it was packaged.

(3) Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this administrative regulation. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use food grade plastic or wet- strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until used, and when used, it shall be dispensed in a way that protects it from contamination.

(4) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

(5) Enough potable water shall be available in the establishment for cleaning and sanitizing utensils and equipment and for hand-washing. Enough hot water for these purposes shall be provided.

(6) The storage of packaged food in contact with water or undrained ice is prohibited, except that cans or bottles of nonpotentially hazardous beverages may be so stored when the water contains at least fifty (50) parts per million of available chlorine and is changed often enough to keep both the water and containers clean.

(7) Liquid waste shall be disposed of in such a manner as not to create a public health hazard or nuisance.

(8) A facility shall be provided for employee hand-washing. Where water under pressure is unavailable, such facility shall consist of a pan, warm water, hand cleanser, and individual paper towels.

(9) Floors shall be made of concrete, tight wood, asphalt, or other similar cleanable material, except that dirt or gravel floors may be used if graded to preclude the accumulation of liquids and covered with removable, cleanable platforms or duckboards.

(10) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Screening material used for walls shall be at least sixteen (16) mesh to the inch. Counter service openings shall not be larger than is necessary for the particular operation conducted. When flies are prevalent, counter-service openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Doors and windows, if any, shall be kept closed, except when food is being served.

Section 37. Seasonal Restricted Food Concessions. (1) A seasonal restricted food concession shall comply with the requirements of this administrative regulation except as otherwise provided in this section. When no health hazard will result, the cabinet may waive or modify requirements of this administrative regulation except those requirements of subsections (2) to (14) of this section.

(2) Only nonpotentially hazardous foods shall be prepared and served by seasonal restricted food concessions except that plain frankfurters may be served with bread. Frankfurters may be heated by steaming or boiling; grilling shall be prohibited. Nachos with cheese sauce may be served. Seasonal restricted food concessions shall provide only single service articles for use by consumers. Condiments such as catsup, mustard, and relish shall be obtained from approved commercially prepared sources and shall be provided in individually prepackaged portions or dispensed from protected pump or squeeze-type dispensers only. The preparation or service of meat or artificial meat sauces shall be prohibited. The use of food or food products canned, prepared or processed in the home is prohibited.

(3) Reconstitutable products or ingredients which contain milk or egg components shall have been made from pasteurized products. Cheese sauce for nachos shall be obtained from commercially approved sources.

(4) Flavorings made from concentrate shall not be formulated or mixed in the home; preparation shall be accomplished in the seasonal restricted food concession or other permitted retail food establishment.

(5) Equipment and utensil cleaning and sanitization. Cleaning and sanitizing of food equipment and utensils shall be accomplished in a manner that complies with applicable requirements of Section 17 of this administrative regulation. In seasonal restricted concessions where running water and sewerage are impracticable and where only the use of basic utensils such as knives, tongs, or scoops is necessary, utensil washing facilities shall consist of three (3) containers sufficiently large enough for immersion of the utensils requiring washing; the first for hot detergent wash, the second for clean rinse, and the third for a sanitizing rinse. The cleaning and sanitizing of flavoring containers and equipment in the home or other nonpermitted location shall be prohibited.

(6) Equipment and utensil storage. All cleaned and sanitized utensils and equipment in a seasonal restricted food concession shall be stored and handled consistent with requirements of Section 18 of this administrative regulation.

(7) Sanitary facilities and controls.

(a) If running water is available it shall be potable, adequate and from a supply approved pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 8.

(b) All water not provided by pipe to the establishment shall be obtained from an approved source, shall be potable, shall be transported in protected food grade bulk containers and shall be of sufficient quantity for the operation. Hot water, at least ninety-five (95) degrees Fahrenheit, shall be provided for utensil and handwashing. An insulated container may be used. A push button or turn spout shall be provided through which potable water may be drawn from the storage container for hand and utensil washing.

(8) Liquid waste. All nonsewage liquid shall be collected and disposed of in accordance with applicable requirements of Section 24 of this administrative regulation.

(9) Plumbing and toilet facilities.

(a) All plumbing shall comply with applicable provisions of the State Plumbing Code, KRS Chapter 318.

(b) Sanitary toilet facilities shall be provided for employees and shall comply with the requirements of the State Plumbing Code, KRS Chapter 318, and Section 22 of this administrative regulation; provided that where an approved sewage system with running water is impracticable, commercial type portable toilet facilities shall be provided for employees and shall be serviced and maintained in a sanitary manner.

(c) Written permission shall be obtained and made available for health authority review, for use of convenient toilet facilities when not owned by the seasonal restricted food concession operator.

(10) Handwashing facilities.

(a) Where running water is impracticable an ample supply of water, as described in Section 7 of this administrative regulation, shall

be provided for washing hands. Wastewater shall be collected and disposed of in a manner that will not create a public health nuisance.

(b) When a seasonal restricted food concession is located adjacent or connected to a facility with existing approved water and sewerage facilities properly plumbed handwashing facilities shall be provided conveniently located for employees where the operation requires manual contact with food.

(11) Garbage and refuse. Garbage and refuse shall be collected, stored and disposed of in accordance with the requirements of Section 24 of this administrative regulation.

(12) Construction, maintenance, and cleaning of physical facilities.

(a) Construction, maintenance and cleaning shall be carried out in accordance with applicable requirements of Sections 26 and 27 of this administrative regulation except as provided in paragraphs (b) and (c) of this subsection.

(b) Seasonal restricted food concessions which are located in open-air areas shall be completely enclosed or equipped with an eighteen (18) inch maximum high service opening that is either self-closing or equipped with an air current to preclude the entry of flying insects when prevalent.

(c) Floors shall be made of concrete, tightwood, asphalt, or other similar cleanable material; gravel or dirt floors shall be prohibited.

(13) Plan review. When a seasonal restricted food concession is constructed or extensively remodeled, or when an existing structure is converted for use as a seasonal restricted food concession, appropriate plans with specifications for such construction, remodeling or alteration showing size, location, type of interior wall, ceiling and floor construction including the method of outer opening protection shall be submitted to the cabinet for review and approval before construction is begun.

(14) Inspection frequency. The cabinet shall inspect each seasonal restricted food concession at the time of initial permit issuance and at least once during each eight (8) month period of operation thereafter, with as many additional inspections and reinspections as necessary.

Section 38. [~~37.~~] Plan Review of Future Construction. When a retail food establishment is hereafter constructed or extensively remodeled, or plumbing relocated, or additional plumbing added, or when an existing structure is converted for use as a retail establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, size, location and type of facilities and a plumbing riser diagram shall be submitted to the cabinet for approval before such work is begun.

Section 39. [~~38.~~] Procedure When Infection is Suspected. When the cabinet has reasonable cause to suspect possibility of disease transmission from any food service establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The cabinet may require any or all of the following measures:

(1) The immediate exclusion of the employee from all food service establishments;

(2) The immediate closing of the food service establishment concerned until, in the opinion of the cabinet, no further danger of disease outbreak exists;

(3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;

(4) Adequate medical and laboratory examinations of the employee, of other employees, and of the body discharges of such employees.

Section 40. [~~39.~~] Food Caterers Must Display Permit Number. Each catering kitchen or similar food service establishment shall have posted in letters at least three (3) inches high the establishment's permit number clearly visible on vehicle(s) used in transporting foods. A copy of the establishment's permit to operate shall also be carried in each vehicle at all times. The permit number shall be declared in all forms of advertisements or promotional materials used by food service catering establishments.

Section 41. [~~40.~~] Enforcement Provisions. (1) Whenever the cabinet has substantial reason to believe that an imminent public health hazard exists, or whenever the permit holder or an authorized agent thereof has interfered with the cabinet in the performance of its duties, after its agents have duly and officially identified themselves, or if an inspection of an establishment reveals a rating score of less than sixty (60), the permit shall be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing on form DFS-212. This form is incorporated by reference and may be viewed at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday [~~217~~]. A hearing shall be granted as soon as practical, or in any event not to exceed seven (7) days.

(2) In all other instances of violation of the provisions of this administrative regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violations and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the cabinet may suspend the permit. The permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period. Where there is a combination food service and retail food store, permit suspension shall apply only to the operation in violation of requirements.

(3) Any person whose permit has been suspended may, at any time, make application on form DFS-215 for a reinspection for the purpose of reinstatement of the permit. This form is incorporated by reference and may be viewed at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the reinspection reveals that the conditions causing suspension of the permit have been corrected, the permit shall be reinstated.

(4) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Notices provided for under this administrative regulation shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

(6) The hearings provided for in this administrative regulation shall be conducted by the cabinet at a time and place designated by it. An appellant may examine the record of evidence in support of the action of the cabinet. During the hearing, an appellant may be represented by counsel, may cross-examine witnesses and may offer evidence in his behalf. Based upon the record of such hearing, the cabinet shall

make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.

(7) At least once every six (6) months, the cabinet shall inspect each establishment and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation. Retail food stores offering only prepackaged foods for sale shall be inspected at least once each twelve (12) months, with as many additional inspections and reinspections as necessary. Seasonal restricted food concessions shall be inspected at least once during the eight (8) month permitted period of operation each year.

(8) Whenever an inspection is made of an establishment, the findings shall be recorded on inspection report form DFS-208, provided for that purpose, and shall constitute a written notice to the permit holder. This form is incorporated by reference and may be viewed at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. The original of the inspection report shall be furnished to the permit holder or person in charge. The inspection report form shall summarize the requirements of this administrative regulation and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100.

(9) The inspection report form shall specify a specific and reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, pursuant to the following provisions:

(a) When the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

(b) When the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the cabinet but in any event, not to exceed ten (10) days.

(d) When the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) days after receipt of such notice unless a written request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period.

(e) In the case of temporary food service establishments, all violations shall be corrected within a specified period of time not to exceed twenty-four (24) hours. If violations are not so corrected, the permit shall be immediately suspended. In such event the permit holder may request a hearing which shall be granted as soon as practical.

(f) The report of inspection shall state that failure to comply with any time limits for corrections may result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for hearing is filed within ten (10) days. If a request for hearing is received, a hearing shall be held at a time and place designated by the cabinet.

(g) Whenever a food service establishment is required under the provisions of this administrative regulation to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time, but in no event to exceed seven (7) days.

Section 42. [~~41.~~] Examination and Detention of Foods. The cabinet may examine and collect samples of foods as often as necessary for the enforcement of this administrative regulation. The cabinet shall, upon written notice to the permit holder or authorized agent specifying the reason therefor, place under quarantine any food which it has probable cause to believe is adulterated or misbranded within the meaning of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992.

Section 43. [~~42.~~] The provisions of this administrative regulation shall apply to both food service establishments and retail food stores, unless otherwise specified.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: September 20, 1993
FILED WITH LRC: October 1, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 23, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 18, 1993, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dudley Conner

(1) Type and number of entities affected: estimated 1,500-2,000.

(a) Direct and indirect costs or savings to those affected:

1. First year: $50 (annual permit fee).

2. Continuing costs or savings: $50 (1 year).

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: Applications for permit, fee collection procedures, permit issuance and inspection sheets.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings:

1. First year: $75,000-$100,000 cost.

2. Continuing costs or savings: State cost $10,000; local cost $65,000-$90,000.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Additional inspection sheets, enforcement forms, applications and permits.

(3) Assessment of anticipated effect on state and local revenues: State cost - $10,000; local cost $65,000-$90,000.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No feasible alternative methods were identified.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Fees are to cover cost of program only. This regulation was requested by local health departments. The intent is to provide for a class of operation that excluded requirements under the food service code and allow for operations with less stringent requirements when nonpotential hazardous foods are handled. This requirement will affect facilities in all areas of the state and will provide uniform protection for all of the Commonwealth citizens and visitors to these facilities.

TIERING: Was tiering applied? No. Fees apply to all concessions equally.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. State fee collection, permit issuance and inspections conducted by local environmental health personnel.

3. State the aspect or service of local government to which this administrative regulation relates. 1,500-2,000 additional sanitation inspections, follow-ups and enforcement activities.

4. How does this administrative regulation affect the local government or any service it provides? Provides directives for concession operations; sets minimum sanitation standards to be applied by local health departments.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Local Health
(Proposed Amendment)

902 KAR 45:020. Shellfish.

RELATES TO: KRS Chapter 217 [~~217.005 to 217.215, 217.992~~]
STATUTORY AUTHORITY: KRS 194.050, 217.125 [~~211.090~~]
NECESSITY AND FUNCTION: [~~The Kentucky Food, Drug and Cosmetic Act,~~] KRS Chapter 217 [~~217.005 to 217.215 and 217.992~~] authorizes the Cabinet for Human Resources to protect the public against the adulteration and misbranding of foods. The purpose of this administrative regulation is to establish uniform sanitary standards and permit requirements for shellfish repacking, and to establish uniform standards of identity for shellfish and frozen raw breaded shrimp.

[~~Section 1. Citation of Regulation. This regulation may be cited as the "State Shellfish Regulation."~~]

Section 1. [~~2.~~] Definitions. [~~The following definitions shall apply in the interpretation and enforcement of this regulation:~~]

(1) "Shellfish" means clams, mussels, or oysters.

(2) "Shell oysters" means live oysters of any of the species, Ostrea virginica, Ostrea gigas, Ostrea lurida, in the shell, that [~~which~~], after removal from their beds, have not been floated or otherwise held under conditions that [~~which~~] result in the addition of water.

(3) [~~(2)~~] "Shrimp" means the tail portion of [~~properly~~] prepared shrimp of commercial species.

(4) [~~(3)~~] "Thoroughly drained" means one of the following:

(a) The oysters are drained on a strainer or skimmer that [~~which~~] has an area of not less than 300 square inches per gallon of oysters, drained, and has perforations of at least one-fourth (1/4) of an inch in diameter and not more than one and one-fourth (1 1/4) inches apart, or perforations of equivalent areas and distribution. The oysters are distributed evenly over the draining surface of the skimmer and drained for not less than five (5) minutes; or

(b) The oysters are drained by any method other than that prescribed by paragraph (a) of this subsection whereby liquid from the oysters is removed so that when the oysters are tested within fifteen (15) minutes after packing by draining a representative gallon of oysters on a skimmer of the dimensions and in the manner described in paragraph (a) of this subsection for two (2) minutes, not more than five (5) percent of liquid by weight is removed by such draining.

Section 2. [~~3.~~] Shellfish Repacking Plant Permit. (1) No person, firm or corporation shall repack shucked or raw oysters [~~in Kentucky~~] unless a permit to repack has been issued by the cabinet [~~in accordance with the provisions of this regulation~~].

(2) Any person desiring to operate a shellfish packing establishment shall make written application for a permit to operate on Form DFS-200 provided by the cabinet which is incorporated by reference and may be obtained at the commissioner's office, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. [~~An application for a permit shall be made in writing to the cabinet before operation commences and shall include the usual business name, business and mailing address, name or names and titles of responsible officers or owners, a filing of the label to be used on the final package, and a statement as to the proposed records to be kept.~~]

(3) The permit issued by the cabinet shall list the name, address, certificate number, classification and shall expire December 31, following date issued [~~expiration date of the permit~~].

(4) A permit issued to a repacker shall not be transferable as to person or place [~~and shall be reapplied for prior to expiration date~~].

[~~(5) The permit may be revoked at any time for violation of any requirement of this regulation or any other public health law or regulation.~~]

Section 3. [~~4.~~] Submission of Plans. Plans for an oyster repacking plant shall be submitted for approval to the [~~cabinet in triplicate through the~~] local health department [~~in accordance with applicable regulations of the cabinet~~].

Section 4. [~~5.~~] Shellfish Repacking Plant Sanitation Requirements. (1) Plant arrangements. The repacking establishment shall be [~~so located as to be~~] free of contaminating surroundings and shall not be subject to flooding.

(a) Repacking room shall be [~~separate and~~] of sufficient size to permit sanitary handling of the oysters and thorough cleaning of equipment.

(b) A separate room or rooms or lockers, shall be provided for storing employees' street clothing, aprons, gloves, and personal articles.

(2) Floors. The floors shall be:

(a) Constructed of concrete or other material impervious to water; [~~and shall be~~]

(b) Graded to drain;

(c) [~~quickly and be~~] Free from cracks and uneven surfaces that interfere with proper cleaning or drainage; and

(d) [~~be~~] Maintained in good repair [~~condition~~].

(3) Walls and ceilings. The interior surface of rooms in which shellfish are repacked, or in which utensils are washed shall be smooth, washable, light colored and kept in good repair.

(4) Fly control measures. All outer openings to the toilet and wash rooms, repacking rooms, utensil cleaning and storage rooms, and locker rooms shall be effectively screened during the season when flies are present, unless other effective means are provided for preventing the entrance of flies.

(a) Effective in-plant fly control measures shall be used to kill or capture flies which may enter the plant despite the screening.

(b) All interior doors or other openings into the repacking room shall be screened whenever necessary to keep the packing room free of flies.

(5) Lighting.

(a) At least thirty (30) foot-candles of [~~Adequate~~] light shall be provided on [~~in~~] all working surfaces and at least twenty (20) foot-candles in all storage rooms.

(b) Light bulbs, fixtures, skylights or other glass suspended over exposed food in any step of preparation shall be of the safety type or otherwise protected to prevent food contamination in case of breakage.

(6) Heating and ventilation. Working rooms shall be ventilated and shall be heated when necessary.

(7) Water supply. The water supply shall be potable, adequate and from an approved source pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 8. [~~easily accessible, adequate and of safe, sanitary quality.~~]

(8) Plumbing and related facilities. Plumbing shall be installed in compliance with the State Plumbing Code, KRS Chapter 318. Lavatories with water shall be so located that their use by repacking plant personnel can be readily assessable [~~observed~~]. Conveniently located toilets shall be provided.

(9) Sewage disposal. Sewage shall be discharged into public sewers, if available. Where private sewage disposal systems must be utilized, they shall be constructed, operated and maintained according to the requirements of 902 KAR 10:085 [~~the Natural Resources and Environmental Protection Cabinet~~].

(10) Rodent control. Shellfish repacking plants shall be free from rodents.

(11) Construction of utensils and equipment.

(a) The food-product zone of utensils and equipment, including that used for ice handling, shall be made of smooth, corrosion resistant, impervious, nontoxic material which will not readily disintegrate or crack;

(b) Utensils and equipment shall be constructed [~~as~~] to be easily cleaned; and

(c) Shall be kept in good repair.

(12) General cleanliness.

(a) Premises shall be kept clean and free of litter and rubbish.

(b) Miscellaneous and unused equipment and articles which are not necessary to plant operations shall not be stored in rooms used for repacking or food storage.

(c) No domestic animal or fowl shall be permitted in a shellfish repacking plant.

(d) The repacking portions of the plant, when in operation, shall be restricted to the handling of shellfish.

(e) Unauthorized persons shall be excluded from the plant.

(13) Cleaning of buildings and equipment.

(a) Floors, equipment, and [~~if necessary the~~] walls of the repacking room shall be cleaned within two (2) hours after the day's operations have ceased. Windows and skylights shall be kept clean.

(b) [~~All~~] Equipment, utensils and work surfaces shall be cleaned by scrubbing with water and detergent and rinsing with potable water within two (2) hours after the day's operations have ceased.

(14) Bactericidal treatment of utensils and equipment.

(a) [~~All~~] Utensils and equipment in the repacking room which come in contact with shucked shellfish shall be subjected to an effective bactericidal process at the end of each day's operation.

(b) [~~Large~~] Equipment which may [~~might~~] be contaminated before use shall be cleaned at the end of each day's operation, and shall be subjected to effective bactericidal treatment immediately before use.

(c) Returnable shipping containers, if used, shall be subjected to an effective bactericidal treatment process on the day they are used, and [~~are~~] protected against contamination until filled.

(15) Storage of equipment. Equipment and utensils which have been cleaned and given bactericidal treatment shall be stored so as to be protected against contamination.

(16) Source of shellfish. All shellfish shall be obtained from a source certified by the state of origin or the Food and Drug Administration [~~approved by the cabinet~~]. Shellfish shall be obtained from certified waters and harvesting areas certified by state of origin or the Food and Drug Administration [~~approved areas~~] and shall be properly identified and received from a shellfish shipper currently listed on the United States Public Health Service's Interstate Shellfish Shipper's List.

(17) Handling of single-service containers. [~~All~~] Single-service containers shall be stored and handled in a sanitary manner and [~~when necessary,~~] shall be given bactericidal treatment immediately prior to filling.

(18) Packing of shucked shellfish.

(a) Shucked shellfish shall be packed without exposing them to contamination.

(b) Shucked shellfish shall be packed and shipped in clean, single-service containers made of impervious materials and [~~so~~] sealed that tampering can be detected.

(c) Each individual package of fresh or frozen shellfish shall have permanently recorded on the package or label, so as to be easily visible, the packers', repackers', or distributors' name and address, and the packers' or repackers' certificate number preceded by the abbreviated name of the state.

(d) Containers holding one (1) gallon or more shellfish shall have the identification on the container wall, unless the cover becomes an integral part of the container during the sealing process. Packages of frozen shellfish shall show the date or code of repacking.

(19) Refrigeration of shucked shellfish. Shucked shellfish shall be kept at a temperature of forty-five (45) degrees Fahrenheit or less during repacking.

(20) Ice. Ice shall be obtained from a source [~~specifically~~] approved by the cabinet pursuant to KRS Chapter 217, and shall be stored and handled in a [~~clean~~] manner that does not result in contamination.

(21) Records. Complete and accurate records shall be kept by every shellfish repacker.

(22) Health of personnel. Any person known to be infected with any disease in a communicable form, or to be a carrier of any disease which can be transmitted through the handling of shellfish, or who has an infected wound or open lesion on any exposed portion of his body, shall be restricted to areas of [~~excluded from~~] the repacking plant where there would be no danger of transmitting disease. [~~An owner or manager who has reason to suspect that any employee has contracted a communicable disease shall immediately notify the cabinet. Pending appropriate action by the cabinet, said employee shall be excluded from the plant. The management shall designate a reliable individual to be accountable for compliance with the requirements of this regulation having to do with plant and personnel cleanliness.~~]

(23) Cleanliness of employees.

(a) Employees shall wash their hands with soap and water before beginning work and again after each interruption.

(b) Any person who handles shucked shellfish shall wear a clean apron or coat.

(c) Employees shall not use tobacco in any form in the rooms in which shellfish are repacked.

Section 5. [~~6.~~] Bacteriological Criteria for Shellfish. The following bacteriological criteria shall be applicable for all edible species of fresh and frozen shellfish at the wholesale market level.

(1) Shellfish having a fecal coliform density of not more than 230 most probable number (MPN) per 100 grams [~~and thirty-five (35) degrees Centigrade~~] or a standard plate count of not more than 500,000 per gram shall be considered satisfactory.

(2) Shellfish having a fecal coliform density of more than 230 most probable number (MPN) per 100 grams [~~and/or thirty-five (35) degrees Centigrade~~] or a standard plate count of more than 500,000 per gram shall be quarantined and disposed of [~~considered conditional and may be subject to rejection by the cabinet~~].

Section 6. [~~7.~~] Handling and Sale of Shellfish. (1) No oysters, clams, scallops or other shellfish shall be sold or offered for sale unless [~~such shellfish shall have been produced and shipped in conformity with the regulations of the state in which they were grown or packed, and unless~~] the shipment is [~~shall have been~~] accompanied by tag, label, or other mark showing that shipper has been [~~duly~~] certified by the state where the [~~in which his~~] plant is operated[~~, such certification having been approved by the United States Public Health Service for shipment in interstate commerce~~].

(2) All shippers, reshippers, packers and wholesalers shall keep an accurate record[~~, subject to inspection by proper officials,~~] of all lots received, shipped and sold. All retailers shall keep an accurate record[~~, subject to inspection by proper officials,~~] of all lots received.

(3) Shell oysters and clams shall be handled at a temperature below fifty (50) degrees Fahrenheit, but above freezing temperature.

(4) Shell oysters and clams shall be [~~have been~~] shipped in clean barrels, [~~or~~] sacks, or shipping containers plainly marked with the name, address and identification mark of the shipper.

(5) Shucked oysters shall be [~~have been~~] packed in containers sealed in a [~~such~~] manner that any tampering is easily discernible, and shall be marked with the name and address and identification mark of shipper or packer. All shipping containers shall have been washed and sterilized [~~by an approved method~~] before being filled.

(6) For refrigeration of shucked shellfish, outside containers shall be provided for ice, and no ice or other foreign substance shall be allowed in contact with the shellfish. Shucked shellfish shall be kept at a temperature of forty-five (45) degrees Fahrenheit or below, from the time it leaves the shipper until the time it reaches the consumer. Frozen shellfish shall be held at zero degrees Fahrenheit or less.

(7) All shucked stock received by wholesalers or retailers shall be kept in the original containers, except [~~such~~] shucked shellfish that are repacked by a certified repacker.

~~[Section 8. Canned Wet Pack Shrimp and Canned Dry Pack Shrimp in Nontransparent Containers; Fill of Container; Label Statement of Substandard Fill. (1) The standard of fill of nontransparent containers for canned wet pack shrimp is a fill such that the cutout weight of shrimp taken from each can is not less than sixty four (64) percent of the water capacity of the container, and, for canned dry pack shrimp (except that packed in the nontransparent cylindrical container which is two and eleven sixteenths (2 11/16) inches in diameter and four (4) inches in height), is a fill such that the cutout weight of shrimp taken from each can is not less than sixty (60) percent of the water capacity of the container. The standard of fill for canned dry pack shrimp packed in the nontransparent cylindrical container which is two and eleven sixteenths (2 11/16) inches in diameter and four (4) inches in height is a cutout weight of not less than six and one half (6 1/2) avoirdupois ounces of shrimp for each container.~~

~~(2) Cutout weight is determined by the following method: keep the unopened canned shrimp container at a temperature of not less than sixty eight (68) degrees Fahrenheit nor more than ninety five (95) degrees Fahrenheit for at least twelve (12) hours immediately preceding the determination. After opening, tilt the container so as to distribute the shrimp evenly over the meshes of a circular sieve which has been previously weighed. The diameter of the sieve is eight (8) inches if the quantity of the contents of the container is less than three (3) pounds, and twelve (12) inches if such quantity is three (3) pounds or more. The bottom of the sieve is woven wire cloth which complies with the specifications for such cloth set forth under "2380 Micron (No. 8)" in Table 1 of "Standard Specifications for Sieves," published March 1, 1940, in L. C. 584 of the United States Department of Commerce, National Bureau of Standards. Without shifting the material on the sieve, so incline the sieve as to facilitate drainage. Two (2) minutes from the time drainage begins, weigh the sieve and the drained shrimp. The weight so found, less the weight of the sieve, shall be considered to be the cutout weight of the shrimp.~~

~~(3) If canned wet pack shrimp or canned dry pack shrimp, in nontransparent containers, falls below the applicable standard of fill of container prescribed in subsection (1) of this section, the label shall bear the general statement of substandard fill.]~~

Section 7. [~~9.~~] Canned Oysters; Identity; Label Statement of Optional Ingredients. (1) Canned oysters shall be [~~is~~] the food prepared from one (1) or any mixture of two (2) or all of the forms of oysters specified in subsection (2) of this section, and a packing medium of water, or the watery liquid draining from oysters before or during processing, or a mixture of [~~such~~] liquid and water. The food may be seasoned with salt. It is sealed in containers and [~~so~~] processed by heat as to prevent spoilage.

(2) The forms of oysters referred to in subsection (1) of this section are prepared from oysters that [~~which~~] have been removed from their shells and washed and which may be steamed while in the shell or steamed or blanched or both after removal therefrom and are as follows:

(a) Whole oysters with [~~such~~] broken pieces of oysters as normally occur in removing oysters from their shells, washing, and packing.

(b) Pieces of oysters obtained by segregating pieces of oysters broken in shucking, washing, or packing whole oysters.

(c) Cut oysters obtained by cutting whole oysters.

(3) If [~~When~~] the form of oysters specified in subsection (2)(a) of this section is used, the name of the food is "Oysters" or "Cove Oysters," if of the species Ostrea virginica: "Oysters" or "Pacific Oysters," if of the species Ostrea gigas; "Oysters" or "Olympia Oysters," if of the species Ostrea lurida.

(a) If [~~When~~] the form of oysters specified in subsection (2)(b) of this section is used, the name of the food is "Pieces of ____," the blank being filled in with the name "Oysters" or "Cove Oysters," if of the species Ostrea virginica; "Oysters" or "Pacific Oysters," if of the species Ostrea gigas; "Oysters" or "Olympia Oysters," if of the species Ostrea lurida.

(b) If [~~When~~] the form of oysters specified in subsection (2)(c) of this section is used, the name of the food is "Cut _____," the blank being filled in with the name "Oysters" or "Cove Oysters," if of the species Ostrea virginica; "Oysters" or "Pacific Oysters," if of the species Ostrea gigas; "Oysters" or "Olympia Oysters," if of the species Ostrea lurida.

(c) In case a mixture of two (2) or all such forms of oysters are [~~is~~] used, the name is a combination of the names specified in this [~~sub~~]section of the forms of oysters used, arranged in order of their predominance by weight.

Section 8. [~~10.~~] Canned Oysters: Fill of Container; Label Statement of Substandard Fill. (1) The standard [~~of~~] fill of container for canned oysters shall be [~~is a fill such that~~] the drained weight of oysters taken from each container and shall [~~is~~] not be less than fifty-nine (59) percent of the water capacity of the container.

(2) Drained weight is determined by the following method:

(a) Keep the unopened canned oyster container at a temperature of not less than sixty-eight (68) degrees Fahrenheit or more than ninety-five (95) degrees Fahrenheit for at least twelve (12) hours immediately preceding the determination.

(b) After opening, tilt the container so as to distribute its contents evenly over the meshes of a circular sieve that [~~which~~] has been previously weighed.

(c) The diameter of the sieve is eight (8) inches if the quantity of the contents of the container is less than three (3) pounds, and twelve (12) inches if such quantity is three (3) pounds or more.

(d) The bottom of the sieve is woven-wire cloth that [~~which~~] complies with the specifications for [~~such~~] cloth set forth under Official Methods of Analysis of the Association of Official Analytical Chemists 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)", under the heading "Definitions of Terms and Explanatory Notes", which is hereby incorporated by reference. Copies may be examined at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. on weekdays. [~~"2380 Micron (No. 8)," in Table I of "Standard Specifications for Sieves," published March 1, 1940, in L. C. 584 of the United States Department of Commerce, National Bureau of Standards.~~]

(e) Without shifting the material on the sieve, so incline the sieve

as to facilitate drainage.

(f) Two (2) minutes from the time drainage begins, weigh the sieve and the drained oysters.

(g) The weight [~~se~~] found, less the weight of the sieve, shall be considered [~~to be~~] the drained weight of the oysters.

(3) [~~(2)~~] If canned oysters fall below the standard of fill of container prescribed in this section [~~subsection (1) of this section~~], the label shall bear the general statement of substandard fill, followed by the statement, "A can of this size should contain _____oz. of oysters. This can contains only _____oz." The blanks being filled in with the applicable figures.

Section 9. [~~11.~~] Oysters, Raw Oysters, Shucked Oysters; Identity. (1) Oysters, raw oysters, shucked oysters are the class of foods [~~each of which is~~] obtained by shucking shell oysters and preparing them [~~in accordance~~] with the procedure prescribed in subsection (2) of this section. The name of each [~~such~~] food shall be [~~is~~] the name specified in the applicable definition and standard of identity prescribed in Sections 10 [~~12~~] through 19 [~~21~~] of this administrative regulation.

(2) If water, or salt water containing less than 0.75 percent salt, is used in any vessel into which the oysters are shucked, the combined volume of oysters and liquid when [~~such~~] oysters are emptied from the [~~such~~] vessel shall [~~is~~] not be less than four (4) times the volume of [~~such~~] water or salt water. [~~Any liquid accumulated with the oysters is removed. The oysters are washed, by blowing or otherwise, in water or salt water, or both.~~] The total time that the oysters are in contact with water or salt water after leaving the shucker, including the time of washing, rinsing, and any other contact with water or salt water is not more than thirty (30) minutes. In computing the time of contact with water or salt water, the length of time that oysters are in contact with water or salt water that is agitated by blowing or otherwise, shall be calculated at twice its actual length. Any period of time that oysters are in contact with salt water containing not less than 0.75 percent salt before contact with oysters, shall not be included in computing the time that the oysters are in contact with water or salt water. Before packing into the containers for shipment or other delivery for consumption the oysters are thoroughly drained and are packed without any added substance.

Section 10. [~~12.~~] Extra large oysters, oysters counts (or plants), extra large raw oysters, raw oysters counts (or plants), extra large shucked oysters, shucked oysters counts (or plants)[~~; Identity. Extra large oysters, oysters counts (or plants); extra large raw oysters, raw oysters counts (or plants); extra large shucked oysters, shucked oysters counts (or plants),~~] are of the species Ostrea virginica and conform to the definition and standard of identity [~~prescribed~~] for oysters in [~~by~~] Section 9 [~~11~~] of this administrative regulation and are of a [~~such~~] size that one (1) gallon contains not more than 160 oysters and a quart of the smallest oysters selected therefrom contains not more than forty-four (44) oysters.

Section 11. [~~13.~~] Large oysters, oysters extra selects, large raw oysters, raw oysters extra selects, large shucked oysters[~~, Shucked Oysters Extra Selects; Identity. Large oysters, oysters extra selects, large raw oysters, raw oysters extra selects, large shucked oysters, shucked oysters extra selects~~] are of the species Ostrea virginica and conform to the definition and standard of identity prescribed for oysters by Section 9 [~~11~~] of this administrative regulation and are of such size that one (1) gallon contains more than 160 oysters but not more than 210 oysters; a quart of the smallest oysters [~~selected therefrom~~] contains not more than fifty-eight (58) oysters, and a quart of the largest oysters [~~selected therefrom~~] contains more than thirty-six (36) oysters.

Section 12. [~~14.~~] Medium oysters, oysters selects, medium raw oysters, raw oysters selects, medium shucked oysters, shucked oysters selects[~~; Identity. Medium oysters, oysters selects, medium raw oysters, raw oysters selects, medium shucked oysters, shucked oysters select,~~] are of the species Ostrea virginica and conform to the definition and standard of identity prescribed for oysters by Section 9 [~~11~~] of this administrative regulation and are of such size that one (1) gallon contains more than 210 oysters, but not more than 300 oysters; a quart of the smallest oysters [~~selected therefrom~~] contains not more than eighty-three (83) oysters, and a quart of the largest oysters [~~selected therefrom~~] contains more than forty-six (46) oysters.

Section 13. [~~15.~~] Small oysters, oysters standards, small raw oysters, raw oysters standards, small shucked oysters, shucked oysters standards[~~; Identity. Small oysters, oysters standards, small raw oysters, raw oysters standards, small shucked oysters, shucked oysters standards,~~] are of the species Ostrea virginica and conform to the definition and standards of identity prescribed for oysters by Section 9 [~~11~~] of this administrative regulation and are of a [~~such~~] size that one (1) gallon contains more than 300 oysters but not more than 500 oysters; a quart of the smallest oysters [~~selected therefrom~~] contains not more than 138 oysters and a quart of the largest oysters [~~selected therefrom~~] contains more than sixty-eight (68) oysters.

Section 14. [~~16.~~] Very small oysters, very small raw oysters, very small shucked oysters[~~; Identity. Very small oysters, very small raw oysters, very small shucked oysters,~~] are of the species Ostrea virginica and conform to the definition and standard of identity prescribed for oysters by Section 9 [~~11~~] of this administrative regulation and are of a [~~such~~] size that one (1) gallon contains more than 500 oysters, and a quart of the largest oysters [~~selected therefrom~~] contains more than 112 oysters.

Section 15. [~~17.~~] Olympia oysters, raw Olympia oysters, shucked Olympia oysters[~~; Identity. Olympia oysters, raw Olympia oysters,~~] are of the species Ostrea lurida and conform to the definition and standard of identity prescribed for oysters in Section 9 [~~11~~] of this administrative regulation.

Section 16. [~~18.~~] Large Pacific oysters, large raw Pacific oysters, large shucked Pacific oysters[~~; Identity. Large Pacific oysters, large raw Pacific oysters, large shucked Pacific oysters,~~] are of the species Ostrea gigas and conform to the definitions and standards of identity prescribed for oysters by Section 9 [~~11~~] of this administrative regulation and are of a [~~such~~] size that one (1) gallon contains not more than sixty-four (64) oysters, and the largest oyster in the container shall [~~is~~] not be more than twice the weight of the smallest oyster therein.

Section 17. [~~19.~~] Medium Pacific oysters, medium raw Pacific oysters, medium shucked Pacific oysters[~~; Identity. Medium Pacific oysters, medium raw Pacific oysters, medium shucked Pacific oysters,~~] are of the species Ostrea gigas and conform to the definition and standard of identity prescribed for oysters by Section 9 [~~11~~] of this administrative regulation and are of a [~~such~~] size that one (1) gallon contains more than sixty-four (64) oysters and not more than ninety-six (96) oysters, and the largest oyster in the container shall [~~is~~] not be more than twice the weight of the smallest oyster therein.

Section 18. [~~20.~~] Small Pacific oysters, small raw Pacific oysters, small shucked Pacific oysters[~~; Identity. Small Pacific oysters, small raw Pacific oysters, small shucked Pacific oysters,~~] are of the species Ostrea gigas and conform to the definition and standard of identity prescribed for oysters by Section 9 [~~11~~] of this administrative regulation and are of a [~~such~~] size that one (1) gallon contains more than ninety-six (96) [~~ninety (90)~~] oysters and not more than 144 oysters, and the largest oyster in the container shall [~~is~~] not be more than twice the weight of the smallest oyster therein.

Section 19. [21.] Extra small Pacific oysters, extra small raw Pacific oysters, extra small shucked Pacific oysters[; Identity. Extra small Pacific oysters, extra small raw Pacific oysters, extra small shucked Pacific oysters,] are of the species Ostrea gigas and conform to the definition and standard of identity prescribed for oysters by Section 9 [11] of this administrative regulation and are of a [such] size that one (1) gallon contains more than 144 oysters and the largest oyster in the container shall [is] not be more than twice the weight of the smallest oyster therein.

Section 20. [22.] Frozen Raw Breaded Shrimp[; Identity; Label Statement of Optional Ingredients]. (1) Frozen raw breaded shrimp shall be [is the food] prepared by coating one of the optional forms of shrimp specified in subsection (3) of this section with safe and suitable batter and breading ingredients as provided in subsection (4) of this section. The food shall be [is] frozen.

(2) The food tests not less than fifty (50) percent of shrimp material as determined by the method prescribed in subsection (7) of this section, except that if the shrimp are composite units the method prescribed in subsection (8) of this section shall be [is] used.

(3) Except for composite units, each shrimp unit shall be individually coated. The optional forms of shrimp are:

(a) Fantail or butterfly: prepared by splitting the shrimp; the shrimp are peeled, except that tail fins remain attached and the shell segment immediately adjacent to the tail fins may be left attached.

(b) Butterfly, tail off: prepared by splitting the shrimp, tail fins and all shell segments are removed.

(c) Round: round shrimp, not split; the shrimp are peeled, except that tail fins remain attached and the shell segment immediately adjacent to the tail fins may be left attached.

(d) Round, tail off: round shrimp, not split; tail fins and all shell segments are removed.

(e) Pieces: Each unit consists of a piece or a part of a shrimp, tail fins and all shell segments are removed.

(f) Composite units: each unit consists of two (2) or more whole shrimp or pieces of shrimp, or both, formed and pressed into composite units prior to coating; tail fins and all shell segments are removed; large composite units, prior to coating, may be cut into smaller units.

(4) The batter and breading ingredients referred to in subsection (1) of this section are the fluid constituents and the solid constituents of the coating around the shrimp. These ingredients consist of suitable substances which are not food additives. Batter and breading ingredients that perform a useful function are regarded as suitable, except that artificial flavorings, artificial sweeteners, artificial colors, and chemical preservatives, other than those provided for in this subsection are not suitable ingredients of frozen raw breaded shrimp. Chemical preservatives that are suitable are:

(a) Ascorbic acid, which may be used in a quantity sufficient to retard development of dark spots on the shrimp; and

(b) Antioxidant preservatives that may be used to retard development of rancidity of the fat content of the food.

(5) The label shall name the food, as prepared from each of the optional forms of shrimp specified in subsection (3)(a) through (f) of this section, and follow[ing] the numbered sequence of this [such] subsection as follows:

(a) "Breaded fantail shrimp." The word "butterfly" may be used in lieu of "fantail" in the name.

(b) "Breaded butterfly shrimp, tail off."

(c) "Breaded round shrimp."

(d) "Breaded round shrimp, tail off."

(e) "Breaded shrimp pieces."

(f) Composite units:

1. If the composite units are in a shape similar to that of breaded fish sticks the name shall be [is] "breaded shrimp sticks;" if they are in the shape of meat cutlets, the name shall be [is] "breaded shrimp cutlets."

2. If prepared in a shape other than that of sticks or cutlets, the name shall be [is] "Breaded shrimp _____" the blank to be filled in with the word or phrase that accurately describes the shape, and [but which] is not misleading.

3. In the case of the names specified in paragraphs (a) through (e) of this subsection, the words in each name may be arranged in any order, provided they are so arranged as to be accurately descriptive of the food.

4. The word "prawns" may be added in parentheses immediately after the word "shrimp" in the name of the food if the shrimp are of large size; for example, "fantail breaded shrimp (prawns)."

5. If the shrimp are from a single geographic area, the adjectival designation of that area may appear as part of the name; for example, "breaded Alaskan shrimp sticks."

(6) The names of the optional ingredients used, as provided for in subsection (4) of this section, shall be listed on the principal display panel or panels of the label with [such] prominence and conspicuousness as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase.

(a) If a spice that also imparts color is used, it shall be designated as "spice and coloring," unless the spice is designated by its specific name.

(b) If ascorbic acid is used to retard development of dark spots on the shrimp, it shall be designated "Ascorbic acid added as a preservative" or "Ascorbic acid added to retard discoloration of shrimp."

(c) If any other antioxidant preservative, as provided in subsection (4) of this section, is used, such preservative shall be designated by its common name followed by the statement "added as a preservative."

(7) The method for determining percentage of shrimp material for those forms specified in subsection (3)(a) through (e) of this section shall be [is] as follows:

(a) Equipment needed.

1. Two (2) gallon container, approximately nine (9) inches in diameter.

2. Two (2) vaned wooden paddle, each vane measuring approximately one and three-fourths (1 3/4) inches by three and three-fourths (3 3/4) inches.

3. Stirring device capable of rotating the wooden paddle at 120 rpm.

4. Balance accurate to 0.01 ounce (or one-tenth (0.1) gram).

5. U.S. Standard sieve No. 20, twelve (12) inch diameter.

6. U.S. Standard sieve, one-half (1/2) inch sieve opening, twelve (12) inch diameter. The sieves shall comply with the specifications as provided in Section 8(2) of this administrative regulation.

7. Forceps, blunt points.

8. Shallow baking pans.

9. Rubber-tipped glass stirring rod.

(b) Procedure.

1. Weigh the sample to be debreaded.

2. Fill the container three-fourths (3/4) full of water at seventy (70) to eighty (80) degrees Fahrenheit.

3. Suspend the paddle in the container, leaving a clearance of at least five (5) inches below the paddle vanes, and adjust speed to 120 rpm Add shrimp and stir for ten (10) minutes.

4. Stack the sieves, the one-half (1/2) inch mesh over the No. 20, and pour the contents of the container onto them.

5. Set the sieves under a faucet, preferably with spray attached, and rinse shrimp with no rubbing of flesh, being careful to keep all rinsings over the sieves and not having the stream of water hit the shrimp on the sieve directly.

6. Lay the shrimp out singly on the sieve as rinsed. Inspect each shrimp and use the rubber-tipped rod and spray to remove the breading material that may remain on any of them, being careful to avoid undue pressure or rubbing, and return each shrimp to the sieve.

7. Remove the top sieve and drain on a slope for two (2) minutes, then remove the shrimp to weighing pan.

8. Rinse contents of the No. 20 sieve onto a flat pan and collect any particles other than breading (i.e., flesh and tail fins) and add to shrimp on balance pan and weigh.

9. [2.] Calculate percent shrimp material: percent shrimp material equals weight of debreaded sample divided by weight of sample, times 100, plus two (2).

(8) The method for determining percentage of shrimp material for composite units, specified in subsection (3)(f) of this section, is as follows:

(a) Equipment needed.

1. Water bath (for example a three (3) liter to four (4) liter beaker.)
2. Balance accurate to one-tenth (0.1) gram.
3. Clip tongs of wire, plastic, or glass.
4. Stopwatch or regular watch readable to a second.
5. Paper towels.
6. Spatula four (4) inch blade with rounded tip.
7. Nut picker.
8. Thermometer (immersion type) accurate to plus or minus two (2) degrees Fahrenheit.
9. Copper sulfate crystals ($CuSO_4$ $5H_2O$).

(b) Procedure.

1. Weigh all composite units in the sample while they are still hard frozen.

2. Place each composite unit individually in a water bath that is maintained at sixty-three (63) to eighty-six (86) degrees Fahrenheit and allow to remain until the breading becomes soft and can easily be removed from the still frozen shrimp material (between ten (10) seconds to eighty (80) seconds for composite units held in storage at zero degrees Fahrenheit). If the composite units were prepared using batters that are difficult to remove after one (1) dipping, redip them for up to five (5) seconds after the initial debreading and remove residual batter materials.

3. Remove the unit from the bath; blot lightly with double thickness of paper toweling; and scrape off or pick out coating from the shrimp material with the spatula or nut picker.

4. Weigh all the "debreaded" shrimp material.

5. Calculate the percentage of shrimp material in the sample, using the following formula: percent shrimp materials equals weight of debreaded shrimp sample divided by weight of sample, times 100.

Section 21. [23.] Frozen raw lightly breaded shrimp[~~; Identity; Label Statement of Optional Ingredients. Frozen raw lightly breaded shrimp~~] complies with the provisions of Section 20 [22] of this administrative regulation except that it contains not less than sixty-five (65) percent of shrimp material, as determined by the method prescribed in Section 20 [~~22(7) or (8)~~] of this administrative regulation, as appropriate, and that in the name prescribed the word "lightly" immediately precedes the words "breaded shrimp."

Section 22. Enforcement Procedures. (1) The shellfish repacking plant permit shall be suspended immediately upon notice to the holder without a hearing when the local health department has reason to believe that an imminent health hazard exists. In such event, the permit holder may request a hearing. If requested a hearing shall be granted within seven (7) days of receipt of request.

(2) In all other instances of violation of the provisions of this administrative regulation the local health department shall serve the holder of the shellfish repacking plant permit a written notice specifying the violations and afford the license holder a reasonable opportunity to correct same.

(3) Whenever a shellfish repacking permit holder has failed to comply with any written notice issued under the provisions of this administrative regulation the local health department may suspend the permit.

(4) The holder of the shellfish repacking plant permit shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of notice unless a request for a hearing is made to the local health department within the ten (10) day period.

(5) Any person whose repacking permit has been suspended may make a request in writing for reinstatement of the permit.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 23, 1993
FILED WITH LRC: October 4, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 23, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 18, 1993, of their desire to appear and testify at the hearing: Masten Childers II, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dudley Conner

(1) Type and number of entities affected: Potentially affects 50 larger seafood retail facilities that handle and sell shellfish.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:
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 alternative methods were considered because the administrative process under KRS Chapter 13A is applicable.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. 0-5,000 square feet - $50; 5,001-30,000 square feet - $100; 30,001 or more square feet - $200.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Local health departments.

3. State the aspect or service of local government to which this administrative regulation relates. Permitting and inspection of shellfish repacking plants will continue to be conducted by local health departments.

4. How does this administrative regulation affect the local government or any service it provides? Continues mandate of annual permitting and surveillance activities of shellfish repacking plants.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Local Health
(Proposed Amendment)

902 KAR 45:040. Carbonated beverages.

RELATES TO: KRS Chapter 217 [~~217.005 to 217.215, 217.992~~]
STATUTORY AUTHORITY: KRS 194.050, 217.125[~~, 211.090~~]
NECESSITY AND FUNCTION: KRS Chapter 217 [~~The Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992~~] authorizes the Cabinet for Human Resources to protect the public against [~~regulate~~] the misbranding and adulteration of foods [~~in Kentucky~~]. The purpose of this administrative regulation is to establish uniform standards and definitions of identity for carbonated beverages (soda water) and uniform sanitary standards for carbonated beverage plants.

Section 1. [~~Citation of Regulation. This regulation may be cited as "State Carbonated Beverages (Soda Water) Regulation."~~

~~Section 2.~~] Definitions. (1) [~~The following definition shall apply in the interpretation and enforcement of this regulation:~~] "Carbonated beverage plant" means the premises, buildings, and installed equipment where carbonated beverages or syrups [~~therefore~~] are manufactured, bottled, canned, packaged, packed, stored or [~~otherwise~~] handled and processed for sale to the public. It does not include facilities used solely for finished product storage, [~~or for~~] distribution, or for establishments that prepare [~~such~~] beverages for sale to the [~~ultimate~~] consumer on the immediate premises.

(2) " [~~Section 3. Soda Water; Identity; Label Statement of Optional Ingredients. (1)~~] Soda water" means [~~is~~] the class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere and at a temperature of sixty (60) degrees Fahrenheit. It may contain buffering agents as provided in Section 2(1)(e) of this administrative regulation [~~subsection (2)(e) of this section~~]. It either contains no alcohol or only [~~such~~] alcohol (not in excess of five-tenths (0.5) percent by weight of the finished beverage) as is contributed by the flavoring ingredient used. Soda water designated by a name, including the [~~any~~] proprietary name [~~provided for in subsection (3) of this section, which includes the word~~] "cola" or a designation as a "pepper" beverage [~~that for years, has become well known as being~~] made with kola nut extract and other natural caffeine-containing extracts[~~, and thus as a caffeine-containing drink,~~] shall contain caffeine in a quantity not to exceed 0.02 percent by weight.

Section 2. Optional Ingredients. (1) [~~(2)~~] Soda water may contain optional ingredients, [~~but~~] if the optional [~~any such~~] ingredient is a food additive or a color additive within the meaning of KRS 217.145(1) and (3)[~~, it is used only in conformity with regulations established pursuant thereto~~]. The optional ingredients that may be used in soda water in such proportions as are reasonably required to accomplish their intended effects are:

(a) Nutritive sweeteners, consisting of the dry or liquid form of sugar, invert sugar, dextrose, fructose, corn syrup, glucose syrup sorbitol, or any combination of two (2) or more of these.

(b) One (1) or more of the following flavoring ingredients may be added, in a carrier consisting of ethyl alcohol, glycerin, propylene glycol, or edible vegetable oils:

1. Fruit juices (including concentrated fruit juices), natural flavoring derived from fruits, vegetables, bark, buds, roots, leaves, and similar plant materials.

2. Artificial flavorings.

(c) Natural and artificial color additives.

(d) One (1) or more of the acidifying agents acetic acid, adipic acid, citric acid, fumaric acid, gluconic acid, lactic acid, malic acid, phosphoric acid, or tartaric acid.

(e) One (1) or more of the buffering agents consisting of the acetate, bicarbonate, carbonate, chloride, citrate, gluconate, lactate, orthophosphate, or sulfate salts of calcium, magnesium, potassium, or sodium.

(f) One (1) or more of the emulsifying, stabilizing, or viscosity-producing agents brominated vegetable oils, carob bean gum (locust bean gum), glycerol ester of wood rosin, guar gum, gum acacia, gum tragacanth, hydroxylated lecithin, lecithin, methlcellulose, mono- and diglycerides of fat-forming fatty acids, pectin, polyglycerol esters of fatty acids, propylene glycol alignate, sodium alignate, sodium carboxymethylcellulose, sodium metaphosphate (sodium hexametaphosphate).

(g) One (1) or more edible vegetable oils as optional ingredients in cloud producing agents.

(h) If [~~When~~] one or more of the optional ingredients in paragraphs (b) and (g) of this subsection are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of five-tenths (0.5) percent by weight of [~~such~~] ingredients.

(i) One (1) or more of the foaming agents ammoniated glycyrrhizin, gum ghatti, licorice or glycyrrhiza, yucca (Joshua tree), yucca (Mohave), quillaia (soap-bark) (Quillaja saponaria Mol.), and enzyme-modified soy protein in a carrier of propylene glycol.

(j) Caffeine, in an amount not to exceed 0.02 percent by weight of the finished beverage.

(k) Quinine in an amount not to exceed eighty-three (83) parts per million by weight of the finished beverage.

(l) One (1) or more of the chemical preservatives ascorbic acid, benzoic acid, BHA, BHT, calcium disodium EDTA, erythorbic acid, glucose-oxidase-catalase enzyme, methylparaben or propylparaben, propyl gallate, potassium or sodium benzoate, potassium or sodium bisulfite, potassium or sodium metabisulfite, potassium or sodium sorbate, sorbic acid, sulfur dioxide or tocopherols; and in the case of canned soda water, stannous chloride in a quantity not to exceed a minimum level, as served, of 0.0015 percent or less [~~eleven (11) parts per million~~] calculated as tin (Sn), with or without one (1) or more of the other chemical preservatives listed in this subsection.

(m) The defoaming agent dimethylopolysiloxane in an amount not to exceed ten (10) parts per million.

(2) [~~(3)~~] The name of the beverage for which a definition and standard of identity is established by this section[~~, which is neither flavored nor sweetened,~~] is soda water, club soda, or plain soda.

(a) The name of each beverage containing flavoring and sweetening ingredients as provided for in [~~subsection (2) of~~] this section shall be [~~is~~] "_____ soda" or "_____ soda water" or "_____ carbonated beverage", the blank being filled in with the word or words that designate the characterizing flavor of the soda water; for example, "grape soda."

(b) If the soda water is one generally designated by a particular common name; for example, ginger ale, root beer, or sparkling water, that name may be used in lieu of the name prescribed in paragraph (a) of this subsection. [~~For the purpose of this section, a proprietary name that is commonly used by the public as the designation of a particular kind of soda water may likewise be used in lieu of the name prescribed in this subsection.~~]

(3) [~~(4)~~] Soda water that contains the optional ingredient caffeine as provided for in subsection (1)[~~(2)~~](j) of this section, artificial flavoring, artificial coloring, or any combination of these shall be labeled to show that fact by the label statement "with _____" or "_____ added," the blank being filled in with the word or words "caffeine," "artificial flavoring," "artificial coloring," or a combination of these words[~~, as appropriate~~]. If the soda water contains one (1) or more of the optional ingredients set forth in subsection (1)[~~(2)~~](l) of this section, which has or is intended to have a preservative effect in the finished beverage, it shall be labeled to show that fact by one of

the following statements: "_____ added as a preservative" or "preserved with _____," the blank being filled in with the common name of the preservative ingredient. If soda water contains quinine salts, the label shall bear a prominent declaration either by use of the word "quinine" in the name of the article or by separate declaration.

(4) [~~(5)~~] The label statements prescribed in subsection (3) [~~(4)~~] of this section for declaring the optional ingredients present shall appear on a labeling surface of the beverage in such a manner as to render the statement likely to be read by the ordinary individual under customary conditions of purchase or use [~~of such beverage~~]. These statements shall immediately and conspicuously precede or follow the name of the beverage, wherever such name is prominently displayed, without intervening, written, printed, or graphic matter; provided, that, where the [~~such~~] name is part of a trademark or brand, then other written, printed or graphic matter that is also a part of such trademark or brand may intervene if the label statements required by this section are [~~so~~] placed [~~as~~] to be conspicuously related to the name of the beverage.

Section 3. [~~4.~~] Carbonated Beverage Plant Permit. (1) No person, firm or corporation shall operate a carbonated beverage plant in Kentucky without first having obtained a permit from the cabinet.

(2) Any carbonated beverage plant in compliance with this administrative regulation [~~the public health laws of Kentucky and the rules and regulations of the cabinet~~] shall be eligible for a permit upon [~~proper~~] application supported by inspection records acceptable to the cabinet. Any person desiring to operate a carbonated beverage plant shall make written application on form DFS-200 provided by the cabinet which is inspected by reference and may be viewed or obtained at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m.

(3) [~~Any permit issued pursuant to this regulation may be revoked or suspended by the cabinet for violation of any public health law or regulation.~~

~~(4) The permit required by this section shall be in addition to, and not in lieu of, any permit required by local government bodies.~~

~~(5)~~] Permits issued pursuant to this administrative regulation [~~unless sooner suspended or revoked~~] shall expire on December 31, following the date of issuance.

(4) [~~(6)~~] Each permit issued pursuant to this administrative regulation shall be issued only for the premises and persons named in the application and shall not be transferable.

(5) [~~(7)~~] Permits issued pursuant to this administrative regulation shall be posted in a conspicuous place at the carbonated beverage plant.

Section 4. [~~5.~~] Submission and Approval of Plans. No person shall construct or extensively alter any building intended for use as a carbonated beverage plant without having [~~first complied with the provisions of the cabinet relating to the submission and approval of~~] plans approved by the local health department having jurisdiction.

Section 5. [~~6.~~] Ingredient and Packaging Materials. (1) All ingredients used in the preparation of syrups and carbonated beverages shall comply with all applicable provisions of the Kentucky Food, Drug and Cosmetic Act KRS Chapter 217 [~~and regulations relating thereto~~].

(2) Single service articles including bottles, cans, fiber cartons, crowns, caps or gaskets shall be provided in sanitary boxes, cartons, tubes, and [~~or otherwise~~] protected and handled in a sanitary manner.

Section 6. [~~7.~~] Construction of Buildings. (1) A separate room of solid wall construction shall be provided for:

(a) Compounding and mixing syrups;

(b) Bottling and filling operations; and

(c) Bottle washing, receiving, storage and shipping; provided, however, that a variance to paragraph (b) of this subsection and this paragraph may be permitted by the cabinet when [~~where deemed~~] necessary for existing plants and for new plants where it is demonstrated to the satisfaction of the cabinet that [~~such~~] separation is not necessary due to the design of the plant.

(2) The floors of rooms where ingredients are handled, compounded, mixed, or processed or where containers or equipment are washed shall be constructed of an impervious, smooth, easily cleaned material.

(a) Floors [~~They~~] shall be kept in good repair and graded to drain properly to trapped drains.

(b) Walls and ceilings in the syrup room shall have a smooth, washable, light-colored surface, in good repair.

(c) Walls in container filling area shall have a smooth, washable and light-colored surface up to the height reached by splash or water spray. The wall area above this height and including ceiling may be constructed of suitable sound retarding material.

(d) Interior walls of storage areas may be left unfinished or covered with standard construction materials.

(e) Exterior, hinged doors shall be outward opening and self-closing.

(f) The food processing areas shall be separated from any living quarters or toilet room.

Section 7. [~~8.~~] Lighting. Lighting (natural, artificial, or a combination of both) equal to thirty (30) foot candles shall be provided in all working areas. Storage areas shall be provided with ten (10) foot candles of light. Inspection areas shall be provided with artificial light sources which furnish at least 100 foot candles on the inspection surface. Lights in processing areas where their breakage may cause contamination of product or ingredients shall be equipped with protective shields.

Section 8. [~~9.~~] Ventilation. Natural or artificial ventilation shall be sufficient to prevent excessive condensation formation, mold or objectionable odors and maintain sanitary conditions in the processing or storage areas or rooms.

Section 9. [~~10.~~] Water Supply. (1) The water supply shall be ample[~~, clean~~] and potable, with adequate facilities for its distribution in the establishment and its protection against contamination and pollution, and shall meet the requirements of the Natural Resources and Environmental Protection Cabinet pursuant to administrative regulations 401 KAR Chapter 8.

(2) Hot water for cleaning rooms and equipment shall be delivered under pressure to sufficient convenient outlets and shall be of such temperature as to accomplish a thorough clean up.

Section 10. [~~11.~~] Sewage, Waste Disposal and Plumbing. (1) All sewage and water carried wastes from a carbonated beverage plant shall be disposed of in a public sewerage system whenever available. If [~~In the event~~] a public sewerage system is not available, all sewage and water carried wastes shall be disposed of in a private sewage disposal system, the construction and operation of which meets the requirements of 902 KAR 10:085 [~~is approved by the Department of Housing, Buildings and Construction~~].

(2) All wastes and accumulations of trash shall be disposed of in a manner approved by the Natural Resources and Environmental Protection Cabinet pursuant to KRS Chapter 224.

(3) All plumbing and plumbing fixtures shall be installed and operated pursuant to [~~in accordance with~~] the state plumbing code KRS Chapter 318.

Section 11. [~~12.~~] Toilets, Dressing Rooms and Hand-washing Facilities. (1) Toilets, dressing rooms, and hand-washing facilities shall be conveniently located and shall be kept clean and in good repair. Doors to toilets shall be tight-fitting and self-closing.

(2) Hand-washing facilities shall be located in or convenient to the syrup room, toilet rooms and the bottling room. Hand-washing facilities shall provide hot and cold running water, suitable cleaning agents and single-service towels or other acceptable drying devices.

Section 12. [~~13.~~] Construction and Repair of Equipment. (1) All equipment, containers and utensils used in the handling, processing, compounding, mixing, storage, or transporting of beverages or beverage ingredients shall be smooth, impervious, corrosion resistant, nontoxic, and in good repair and shall be constructed to permit adequate sanitation.

(2) Effective protection from contamination shall be maintained.

(3) Product-contact surfaces shall be self-draining. Piping shall be of sanitary design and installation.

(4) All temperature-control equipment and control devices used on bottle washers shall be accurate and adequately maintained.

(5) [~~(2)~~] If the washing, filling and crowning devices are not integral parts of one (1) machine, but are performed by separate units of equipment, they shall be arranged to exclude manual contact with the necks or tops of the bottles between filling and crowning.

(6) [~~(3)~~] Mixing and storage tanks, pipelines, filters and other apparatus employed in the preparation and distribution of syrups shall be constructed of stainless steel or other suitable noncorrosive materials.

(7) [~~(4)~~] All apparatus employed in syrup-making shall be free from recesses and so constructed that all parts may be easily cleaned and sanitized. All syrup tanks shall be self-draining and contents protected from contamination. Mixing shall be by mechanical means performed so as to prevent contamination of the syrup.

(8) [~~(5)~~] Carbonated water shall not be conveyed in pipelines of galvanized iron, lead, zinc, copper, or other deleterious materials.

Section 13. [~~14.~~] Cleaning and Bactericidal Treatment. (1) Multiple-service containers, equipment and utensils used in handling, processing, storing or transporting of beverages or beverage ingredients shall be thoroughly cleaned after use. They shall be [~~subjected~~] effectively sanitized [~~to an approved bactericidal process~~] prior to each usage.

(2) The cleaning and bactericidal treatment methods used shall not contaminate or adulterate [~~be such that~~] soft drinks or [~~and~~] their ingredients [~~shall not be contaminated or adulterated~~].

(3) Chemicals used for cleaning and bactericidal treatments shall have labels which identify the contents.

(4) All pipelines, apparatus, and containers used [~~in the manufacturing processes~~] shall be thoroughly cleaned and sanitized at least [~~adequate intervals, but never less frequently than~~] once weekly.

(5) Apparatus and containers shall be washed and rinsed before sanitization.

(6) Fillers shall be cleaned and sanitized at the end of each day's operation and flushed with potable water before beginning operations.

(7) Since accepted industry practice permits syrup to remain in the syrup tanks and lines between period of processing operations, the syrup tanks and lines shall be cleaned and sanitized when emptied, as scheduled by the plant.

(8) After scheduled cleaning and sanitizing the syrup tanks and lines shall be flushed with potable water before beginning processing operations. Hot water, chlorine, or equally effective bactericidal agents are permissible for sanitization.

Section 14. [~~15.~~] Bottle Washing, Filling and Crowning and other Requirements. (1) The operations of receiving, segregating, holding, compounding, mixing, packaging, and packing, storing, transporting and handling shall be conducted in a sanitary manner. There shall be no contamination, adulteration, or deterioration of the product or its ingredients. Every plant manufacturing bottled beverages shall be equipped with suitable mechanical bottle washing apparatus, and with approved machines for carbonating, filling and crowning. Plant operations shall be performed [~~in such a manner as~~] to prevent the operator or his clothing from coming in contact with the beverages or sanitized product contact surfaces.

(2) Reusable glass containers used in the manufacture of carbonated beverages shall, before being refilled, be sanitized by being washed in an automatic washing machine. An indicating thermometer and caustic solution test equipment shall be used to ascertain the temperature and caustic strength of the washing solution. The caustic soak [~~washing~~] solution shall consist of at least three (3) [~~two (2)~~] percent caustic with a minimum contact period of five (5) minutes and a temperature of 130 degrees Fahrenheit or an equivalent cleansing and sanitizing process. The bottles shall then be rinsed free of washing solution with potable water. Single-service containers shall be cleaned by air or water rinsing machines [~~or by other methods approved by the cabinet~~].

(3) Syrups shall be prepared in a sanitary manner. Every precaution shall be taken against contamination by filth or deleterious substances during the preparation and subsequent storage. Galvanized iron, lead, zinc, copper, or brass-lined containers, pipelines, or apparatus of other deleterious materials shall not be used in preparation, storage or conveyance of syrups.

(4) Bottles shall be filled and capped by means of automatic machinery. [~~, and neither~~] The operator or [~~nor~~] his clothes shall not come in contact with any part of the bottle or machinery that might result in contamination of the product. Removal of the crown of imperfectly crowned bottles and recrowning shall not be permitted. Crowns which have been touched on the inner side by the operator, as may occur while adjusting the crowner, shall be discarded. Returnable bottles shall be visually inspected for any abnormal conditions immediately before being filled. Unclean and abnormal bottles shall not be filled. Mechanical inspection devices may be used, but not in lieu of visual inspection.

Section 15. [~~16.~~] Sanitary Controls. Every plant manufacturing bottled carbonated beverages shall be adequately provided with apparatus for ascertaining the sanitizing strength of the soaker solution used in bottle washing. An indicating thermometer shall be used at the bottle washing machine. If pipelines and other equipment are sanitized by hot water, additional thermometers shall be available at convenient locations. A suitable caustic test or some other suitable index for determining the causticity of the soaker solution shall be available at all times. Daily caustic tests and temperature checks shall be made by the plant operators. A record of these tests results shall be kept on file at the plant for six (6) months.

Section 16. [~~17.~~] Control of Insects and Rodents [~~Animals~~]. The carbonated beverage plant shall be free of rodents, rodent harborages, insects, and insect-breeding places. [~~Effective measures shall be used to control and eliminate insects, birds, vermin, rodents and domesticated animals. Insecticides and rodenticides shall be properly identified, used and stored in a safe and acceptable manner.~~]

Section 17. [~~18.~~] Storage Facilities. Storage facilities shall be clean, in good repair, and shall be provided with ample space for the storage of food substances, container closures, gaskets, cleaned utensils, and equipment, so as to prevent contamination and deterioration. Conveyors and cases shall be maintained in a clean condition.

Section 18. [~~19.~~] Premises. The premises shall be [~~present a~~] clean, [~~and orderly appearance. They shall be~~] well-drained, and free of environmental conditions and materials that constitute a nuisance or sanitation hazard.

Section 19. [~~20.~~] Vehicles and Transportation. Vehicles used to transport carbonated beverages shall be maintained in a clean condition and aid in protecting the product from contamination.

Section 20. [21.] Health and Cleanliness of Employees. (1) No employer shall permit any person who has [is known or reasonably suspected to have] a communicable disease or is a carrier of a communicable disease to work in a bottling and filling room or syrup room of [and no person so affected shall work in] a carbonated beverage plant. No person with open cuts, lesions or sores shall be allowed to work in a bottling and filling room or syrup room.

(2) Personnel shall wear clean outer clothing. In addition, syrup room personnel shall wear head coverings. All personnel in the food processing areas of the plants shall [practice good sanitation and shall] not smoke, chew tobacco, expectorate, or eat in the processing areas.

Section 21. Enforcement Procedures. (1) The carbonated beverage plant permit shall be suspended immediately upon notice to the holder without a hearing when the local health department has reason to believe that an imminent health hazard exists. In such event, the permit holder may request a hearing. If requested, a hearing shall be granted within seven (7) days of receipt of request.

(2) In all other instances of violations of the provisions of this administrative regulation the local health department shall serve the holder of the carbonated beverage plant permit a written notice specifying the violations and afford the permit holder a reasonable opportunity to correct same.

(3) Whenever a permit holder has failed to comply with any written notice issued under the provisions of this administrative regulation the local health department may suspend the permit.

(4) The holder of the carbonated beverage plant permit shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of notice unless a request for hearing is made to the local health department within the ten (10) day period.

(5) Any person whose permit has been suspended may make a request in writing for reinstatement of the permit.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 23, 1993
FILED WITH LRC: October 1, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 23, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 18, 1993, of their desire to appear and testify at the hearing: Maten Childers II, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dudley J. Conner

(1) Type and number of entities affected: 25 carbonated beverage plants.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the administrative process under KRS Chapter is applicable.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. 0 - 5,000 square feet - $50, 5001 - 30,000 square feet - $100; 30,001 or more square feet - $200.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Local health departments.

3. State the aspect or service of local government to which this administrative regulation relates.Permitting and inspection of carbonated beverage plants will continue to be conducted by local health departments.

4. How does this administrative regulation affect the local government or any service it provides? Continues mandate of annual permitting and surveillance activities of carbonated beverage plants.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 47:040. Cellulose insulation.

RELATES TO: KRS 211.025, 211.090, 211.180, 217.700, 16 CFR 1209, 1404

STATUTORY AUTHORITY: KRS 194.050 [194.080], 211.090

NECESSITY AND FUNCTION: KRS 211.090 and 211.180 authorize [grant] the Cabinet for Human Resources [the authority] to adopt administrative [establish] regulations relating to all matters of public health for the prevention and control of health hazards. The purpose of this administrative regulation is to establish a standard for cellulose insulation; to prescribe testing requirements and procedures for the flame resistance and corrosiveness of cellulose insulation and to set forth the labeling requirements of all containers of cellulose insulation to which this administrative regulation applies. These requirements are intended to reduce or eliminate unreasonable risk of injury to consumers from flammable and corrosive insulation. This administrative regulation shall apply to cellulose insulation that is a consumer product[, that is, cellulose insulation] produced or distributed for sale to or for the personal use, consumption, or enjoyment of consumers in or around a permanent or temporary household or residence, a school, in recreation or otherwise. This administrative regulation applies to cellulose insulation [that is] produced or distributed for sale to consumers for their direct installation or use, as well as cellulose insulation [that is] produced or distributed for installation by professionals.

Section 1. Definitions. (1) [The term] "Cellulose insulation" means cellulosic fiber, loose fill, thermal insulation [that is] suitable for blowing or pouring applications. [The definition includes insulation installed using the "wet process" method of installation. The "wet process" insulation is blown into an area with a spray or mist of water applied at the nozzle during installation.]

(2) "Cabinet" means the Cabinet for Human Resources.

(3) "Risk of injury" means exposure to the chance of death,

personal injury, or serious or frequent illness.

(4) "Manufacturer" means any person who manufactures or imports consumer products.

(5) "Distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except the [~~that such~~] term does not include a manufacturer or retailer of the [~~such~~] product.

(6) "Retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by the [~~such~~] person to a consumer.

(7) "Private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(8) "Manufactured" means to manufacture, produce or assemble

(9) "To distribute in commerce" and "distribution in commerce" means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(10) "Commerce" means trade, traffic, commerce, or transportation.

Section 2. General Requirements. (1) All cellulose insulation to which this administrative regulation applies shall be noncorrosive; [~~shall~~] have a critical radiant flux at least [~~equal to or greater than~~] 0.12 W/CM^2 for each of the three (3) specimens collected; and, [~~shall~~] have no evidence of flaming combustion or weight loss above fifteen (15) percent of the initial weight, for each of three (3) specimens, if [~~when~~] tested in accordance with the procedures indicated in Section 3 of this administrative regulation. [~~prescribed by Section 1209.5 through Section 1209.7 of the Federal Interim Safety Standard for Cellulose Insulation, Part 1209, Section 35(e)(2), P.L. 95319,92 Stat. 388-389.~~]

(2) All manufacturers, importers and private labelers of cellulose insulation to which this administrative regulation applies shall [~~must~~] certify [~~that~~] their products comply with 16 CFR 1209 [~~the Amended Interim Standard for Cellulose Insulation (16 CFR Part 1209, Subpart A)~~] in accordance with requirements for conducting a reasonable testing program as indicated in Section 3(4) of this administrative regulation. [~~, certifying with labels and separate certificates, and record keeping as set forth in 16 CFR 1209, Subpart B.~~]

(3) All containers of cellulose insulation to which this administrative regulation applies, shall have the following compliance [~~a~~] labeling statement: " [~~in accordance with the labeling requirements prescribed by Section 1209.9 of the Federal Interim Safety Standard for Cellulose Insulation, Part 1209, filed herein by reference, which states: "(a) Manufacturers and private labelers of cellulose insulation shall place on all containers of cellulose insulation the following statement:~~] This product meets the amended CPSC standard [~~(effective October 16, 1979)~~] for flame resistance and corrosiveness of cellulose insulation."

[~~(4)~~] To meet this requirement:

(a) Manufacturers and private labelers may use any type of label, including one which is pressure sensitive or glued on, if [~~provided~~] the label is made in [~~such~~] a manner that it will remain attached to the container for the expected time interval between the manufacture of the product and its installation.

(b) The [~~(5) This~~] label shall appear prominently and conspicuously on the container in letters which are at least one-fourth (1/4) inch in height.

(c) [~~(6)~~] The labeling statement shall be printed with legible type in a color which contrasts with the background on which the statement is printed.

(4)(a) [~~In addition,~~] The following cautionary labeling shall also appear on all containers of cellulose insulation [~~as required by 16 CFR Section 1404.4, as amended, Part 1404, as follows: "(a) Manufacturers of cellulose insulation shall give notification of performance and technical data related to performance and safety (1) to prospective purchasers of such products at the time of original purchase and (2) to the first purchaser of such products for purposes other than resale in the following manner. Manufacturers of cellulose insulation shall label all containers of cellulose insulation with the following statement, using capital letters as indicated~~]: "CAUTION; POTENTIAL FIRE HAZARD: [~~"TO HELP AVOID FIRE:~~] Keep insulation at least three (3) inches away from the sides of recessed light fixtures. Do not place insulation over such fixtures so as to entrap heat.

Also keep this insulation away from exhaust flues of furnaces, water heaters, space heaters, or other heat-producing devices.

To be sure that insulation is kept away from light fixtures and flues, use a barrier to permanently maintain clearance around these areas [~~items~~]. Check with local building or fire officials for guidance on installation and barrier requirements.

REQUEST TO INSTALLER: Remove this label and give it to the consumer at completion of job."

(b) [~~(7)~~] The cautionary labeling statement required shall comply with the following conditions:

1. Appear prominently and conspicuously on the container.

2. The word "CAUTION" shall appear in capital letters at least one-fourth (1/4) inch in height.

3. The words "POTENTIAL FIRE HAZARD" [~~"TO HELP AVOID FIRE:"~~] and "REQUEST TO INSTALLER" shall appear in capital letters at least three-sixteenths (3/16) inch in height.

4. The remainder of the statement shall appear in capital letters at least three-sixteenths (3/16) inch in height, with lower case letters in corresponding proportion [~~but~~] at least one-eighth (1/8) inch in height.

5. The labeling statement shall be enclosed within a rectangle formed with lines at least one-sixteenth (1/16) inch in width and [~~. The labeling statement shall~~] be printed with legible type in a color which contrasts with the background on which the statement is printed.

6. [~~(8) To meet this requirement,~~] Manufacturers may use any type of label, including one which is pressure sensitive or glued on, if [~~provided~~] the label is made in [~~such~~] a manner that it will remain attached to the container for the expected time interval between the manufacture of the product and its installation.

(c) Manufacturers of cellulose insulation may substitute the phrase "TO HELP AVOID FIRE" for the phrase "POTENTIAL FIRE HAZARD" in the label described above. Manufacturers may also delete the word "cellulose" from the first sentence of the label and may delete the word "this" from the third sentence of the label. The remainder of the label statement shall appear exactly as described above.

Section 3. Cellulose Testing and Certification of Compliance. Cellulose insulation shall be certified for compliance and tested in accordance with the procedures prescribed in CFR 1209, July 6, 1979, Interim Safety Standard for Cellulose Insulation, as specified in this section. The following specifications are adopted without change:

(1) 16 CFR Part 1209, Section 1209.5 - Test procedures for corrosiveness.

(2) 16 CFR Part 1209, Section 1209.6 - Test procedures for critical radiant flux.

(3) 16 CFR Part 1209, Section 1209.7 - Test procedures for smoldering combustion.

(4) 16 CFR Part 1209, Section 1209.33 - Reasonable testing program.

(5) 16 CFR Part 1209, Section 1209.34 - Qualification testing. [~~Test Procedures for Cellulose Insulation. The test procedures prescribed in the U. S. Consumer Product Safety Act and regulations based thereon shall be applicable to all regulations adopted by the cabinet relating to cellulose insulation.~~]

Section 4. A copy of the referenced federal regulations indicated in this administrative regulation is on file in the Office of the Commissioner, Department of Health Services, 275 East Main Street,

Frankfort, Kentucky 40621, and is available for public inspection and copying, Monday through Friday, 8 a.m. to 4:30 p.m. Copies of these federal regulations are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. [4.] Cellulose Insulation Manufactured not in Compliance with this Administrative Regulation. Any cellulose insulation manufactured in the Commonwealth of Kentucky or distributed for sale to, or the personal use, consumption or permanent or temporary use in a household or residence, a school, in recreation, or otherwise in this Commonwealth, shall be deemed a prohibited product and prohibited from distribution in commerce if [when] found to be not in compliance with this administrative regulation.

Section 6. [5.] Compliance. Cellulose insulation, which is in compliance with applicable standards adopted by the U. S. Consumer Product Safety Commission, shall be considered to be in compliance with this administrative regulation. In the event of a variance between this administrative regulation and the regulations adopted by the U. S. Consumer Product Safety Commission relating to cellulose insulation, compliance with the federal regulations shall be deemed compliance with the provisions of this administrative regulation.

Section 7. [6.] Issuance and Service of Notice of Violation. (1) If [When] test procedures prescribed in Section 3 of this administrative regulation reveal the cellulose insulation is not in compliance with the established standards, the cabinet shall notify the owner of [such] violations by means of a written notice. The [Such] notification shall:

(a) Set forth the specific violations found.

(b) Establish a specific and reasonable period of time for the correction of [such] violations.

(c) State that an opportunity for appeal from any notice of inspectional findings will be provided if a written request for a hearing is filed with the cabinet within fifteen (15) days of receipt of the notice of inspectional findings.

(2) Notices provided for under this administrative regulation shall be deemed to have been properly served if [when] the written notification of findings has been delivered personally to the owner of the cellulose insulation manufacturing firm or person in charge, or if [when] such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge. A copy of such notice shall be filed in the records of the cabinet.

Section 8. [7.] Hearings. Upon timely receipt of a written request for an appeal of the findings of any inspection under the authority of this administrative regulation, the cabinet shall afford an aggrieved party the opportunity for a hearing. A hearing pursuant to this administrative regulation shall be conducted at a time and place designated by the cabinet. The cabinet shall make written findings of fact and conclusions of law upon the record. A transcription of the hearing shall be provided to any interested party who requests the [such] transcription and assumes the cost thereof.

Section 9. [8.] Quarantine. In the event cellulose insulation does not meet the applicable standards adopted by the U. S. Consumer Product Safety Commission as to flammability, corrosiveness, labeling requirements; [and] certification or other standards adopted by the commission after the effective date of this administrative regulation, the cabinet may, if it deems the [such] article to be dangerous to public health, quarantine the [such] article pursuant to KRS 217.700.

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: September 3, 1993
FILED WITH LRC: October 1, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 23, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 18, 1993, of their desire to appear and testify at the hearing: William K. Moore, General Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Terry M. Wescott

(1) Type and number of entities affected: These amendments will have no effect on the interstate and intrastate manufacturers or distributors of cellulose insulation, as these changes were made to comply with KRS Chapter 13A and to conform to Federal Consumer Product Safety Act regulations which have been in effect since 1979.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings, because there are no permit fees. No relabeling will be required, as manufacturing firms have been required to be in compliance with federal regulations which have been in effect since 1979.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: No direct or indirect savings or costs will result from these amendments:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No paperwork or reporting will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap or duplication with any statute, regulation or policy.

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because this regulation applies uniformly to all the regulated entities, and does not make distinction between classes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation is being amended to comply with rules specified in KRS Chapter 13A, which also conforms to the federal mandate under the Federal Consumer Product Safety Act (CPSA), and compliance standards set forth by federal regulation which have been in effect since 1979.

2. State compliance standards. Appropriate state compliance standards have been adopted, as a part of the state regulation, without change from federal regulations.

3. Minimum or uniform standards contained in the federal mandate. Federal standards concerning the testing and appropriate labeling are identified in CFR Part 1209.

4. Will this administrative regulation impose stricter requirements,

or additional or different responsibilities or requirements, than those required by the federal mandate? No stricter requirements will be imposed. This regulation conforms to the requirements of federal Consumer Product Safety Act (CPSA), and compliance standards are set forth by federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional responsibilities or requirements will be imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:060. Requirements for distribution of small amounts of controlled substances without manufacturer's or wholesaler's licenses.

RELATES TO: KRS 218A.010 to 218A.020, 218A.150 to 218A.200, 21 CFR 1304.03, 1305.03, 1307.11 [~~Chapter 218A~~]

STATUTORY AUTHORITY: KRS 194.050, 218A.250

NECESSITY AND FUNCTION: KRS 218A.250 directs the Cabinet for Human Resources to adopt rules and regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. KRS 218A.170(2) provides that all sales and distributions of controlled substances shall be in accordance with the federal controlled substances laws, including the requirements governing the use of order forms. The purpose of this administrative regulation is to provide for the distribution of small amounts of controlled substances by pharmacies to practitioners or other pharmacies, without the necessity of obtaining a state license as a manufacturer or a wholesaler, in accordance with applicable federal laws and regulations.

Section 1. Distribution of Controlled Substances by Pharmacy to Practitioner or other Pharmacy. (1) A pharmacy may distribute a quantity of a controlled substance to a practitioner or another pharmacy, without being licensed as a manufacturer or wholesaler in Kentucky if it:

(a) Is licensed in Kentucky;

(b) Is registered with the U.S. Drug Enforcement Administration; and

(c) Makes the distribution to a practitioner or pharmacy that is registered with the U.S. Drug Enforcement Administration. [~~licensed in Kentucky and registered with the U.S. Drug Enforcement Administration may distribute, without being licensed as a manufacturer or wholesaler in Kentucky, a quantity of a controlled substance to a practitioner or another pharmacy if:~~

~~(1) The practitioner or pharmacy to whom the controlled substance is to be distributed is registered with the U.S. Drug Enforcement Administration;~~]

(2) The distribution shall be [~~is~~] recorded by the distributing pharmacy and by the receiving practitioner or pharmacy in accordance with KRS 218A.200;

(3) A readily retrievable record of the distribution shall be maintained showing:

(a) Date of distribution;

(b) Name, form and quantity of the substance distributed; and

(c) Name, address and registration number of the purchaser. [~~If the substance is listed in Schedule II, DEA Order Form 222C shall be utilized and copy one shall be completed and maintained in a readily retrievable manner and copy two (2) shall be completed and forwarded to U.S. Drug Enforcement Administration;~~

~~(4) If the substance is listed in Schedule III, IV or V, a written record of the substance distributed shall be maintained in a readily retrievable manner showing: the date of the transaction, the name, form and quantity of the substance, the name, address and registration number of the purchaser;~~]

(4) [~~(5)~~] The total number of dosage units of all controlled substances distributed by a [~~the~~] pharmacy pursuant to this administrative regulation during a twelve (12) month period shall not exceed five (5) percent of the total number of dosage units of all controlled substances distributed and dispensed by the pharmacy during the twelve (12) month period. If [~~In the event~~] the five (5) percent limitation is expected to be exceeded, the pharmacy shall obtain a license to distribute controlled substances in accordance with KRS 218A.160 and 218A.170; and

(5) A [~~(6) No~~] prescription shall not be issued by a practitioner to obtain any controlled substance for the purpose of general dispensing, administering or office use[~~; and~~

~~(7) All distributions shall be in accordance with applicable federal and state laws and regulations~~].

RICE C. LEACH, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: September 3, 1993
FILED WITH LRC: October 1, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 23, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 18, 1993, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward Crews

(1) Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings to pharmacists because this amendment merely reorganizes a regulation that has been in effect for several years.

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 is no reporting or paperwork required by this regulation which is not already required by KRS 218A.200 and 21 CFR 1305.03.

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency because this amendment merely reorganizes a regulation that has been in effect for several years.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied because the list of substances in schedule II applies to all pharmacists or other dispensers regardless of speciality, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal regulations are 21 CFR 1305.03, 21 CFR 1307.11, and 21 CFR 1304.03.

2. State compliance standards. The requirement of licensure is set forth in KRS 218A.150.

3. Minimum or uniform standards contained in the federal mandate. The requirement for registration under federal regulation is 21 CFR 1301.21.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED BY NOON, OCTOBER 15, 1993

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

15 KAR 1:011. Repeal of 15 KAR 1:010.

RELATES TO: KRS 164A.060(1), (8)
STATUTORY AUTHORITY: KRS 13A.310(1)
NECESSITY AND FUNCTION: 15 KAR 1:010 is no longer required because the Kentucky Higher Education Student Loan Corporation has discontinued making direct loans under the federal Stafford, PLUS, and SLS programs.

Section 1. 15 KAR 1:010, Qualifications of applicants, is hereby repealed.

JIM D. PARIS, Chairman
APPROVED BY AGENCY: September 22, 1993
FILED WITH LRC: October 6, 1993 at 10 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 Student Loan Corporation, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden
(1) Type and number of entities affected: When the corporation last made direct PLUS/SLS loans in 1992, 1,288 loan applications were processed, with disbursement of $4,356,520 for the 1992-93 fall semester. Direct Stafford loans have not been made by the corporation since 1984.
(a) Direct and indirect costs or savings to those affected: None. This proposed administrative regulation repeals an administrative regulation which allowed the corporation to make direct PLUS/SLS and Stafford loans. Since direct lending under those programs by the agency has previously been discontinued, there is no cost or savings derived from repeal of the regulation.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): The agency operated a direct lending program for PLUS/SLS and Stafford Loans only as a last resort lender for students. When the volume of those loans made by private lenders increased to levels sufficient to ensure access for students, the agency discontinued its lending activity.
(b) Reporting and paperwork requirements: None. This administrative regulation merely repeals the administrative regulation which allowed the corporation to make direct PLUS/SLS and Stafford loans.
(2) Effects on the promulgating administrative body: None. This administrative regulation merely repeals the administrative regulation which allowed the corporation to make direct PLUS/SLS and Stafford loans.
(a) Direct and indirect costs or savings: Since direct lending under those programs by the agency has previously been discontinued, there is no cost or savings derived from repeal of the regulation.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None. This administrative regulation merely repeals the administrative regulation which allowed the corporation to make direct PLUS/SLS and Stafford loans.
(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 repeals the administrative regulation which allowed the corporation to make direct PLUS/SLS and Stafford loans. The agency operated a direct lending program for PLUS/SLS and Stafford Loans only as a last resort lender for students. When the volume of those loans made by private lenders increased to levels sufficient to ensure access for students, the agency discontinued its lending activity.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. This administrative regulation merely repeals the administrative regulation which allowed the corporation to make direct PLUS/SLS and Stafford loans.
(a) Necessity of proposed regulation if in conflict: This administrative regulation merely repeals the administrative regulation which allowed the corporation to make direct PLUS/SLS and Stafford loans.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 15 KAR 1:010 will be repealed by adoption of proposed administrative regulation 15 KAR 1:011.
(6) Any additional information or comments: None
Tiering: Was tiering applied? No. This administrative regulation merely repeals the administrative regulation which allowed the corporation to make direct PLUS/SLS and Stafford loans. The concept of tiering would not apply to repeal of a regulation.

DEPARTMENT OF MILITARY AFFAIRS

106 KAR 2:010. Kentucky Veterans' Program Trust Fund implementation of program.

RELATES TO: KRS 40.460(2)(b)
STATUTORY AUTHORITY: KRS 40.450(2)
NECESSITY AND FUNCTION: KRS 40.460(2)(b) establishes the Veterans' Program Trust Fund and authorizes the department to administer the fund and programs financed by the proceeds and interest derived from the fund. This administrative regulation establishes a Board of Directors to administer the fund and establishes criteria for programs financed by the fund.

Section 1. Definitions. "Fund" means the Kentucky Veterans' Program Trust Fund.

Section 2. Criteria for Programs. (1) Monies derived from the fund may be expended for approved programs that:
(a) Provide items for recreational use or service centers or for organizations providing services to veterans if the items are not provided by programs, centers, or organizations established by federal or state law or appropriation;

(b) Organize and foster programs that assist veterans including assistance in the use of existing resources that do not duplicate assistance available from programs established by federal or state law or appropriation;

(c) Encourage and assist veterans to volunteer for programs or services dealing with problems encountered by veterans;

(d) Work with the public and private sectors to honor and recognize the service and sacrifice of veterans;

(e) Provide services, supplies, programs, equipment or other expenditures deemed essential to the operation of the Kentucky Veterans Center and other Kentucky veterans nursing homes that would otherwise not be available; and

(f) Provide financial support to the construction or operation of state veterans cemeteries when such support would not otherwise be available.

(2) Fundraising.

(a) The fund may accept gifts, donations, and grants from an individual, a corporation, or government entity.

(b) Solicitations of funds or fundraising on behalf of the fund shall not be made unless approved by the Adjutant General.

Section 3. Board of Directors. (1) Board of Directors shall be appointed by the Adjutant General.

(2) The Board of Directors shall consist of:

(a) The Adjutant General, who shall serve as its chairman;

(b) The Deputy Adjutant General, who shall serve as its vice-chairman;

(c) The Director, Kentucky Center for Veterans Affairs;

(d) The executive director of the fund appointed by the Adjutant General;

(e) A member of each of the following:

1. Joint Executive Council of Veterans Organizations of Kentucky;
2. Governor's Advisory Board for Veterans Affairs; and
3. Special Subcommittee on Veterans' Affairs.

(3) Board members.

(a) The organizations specified in subsection (2)(e) of this section shall recommend two (2) members of their organizations to the Adjutant General for his final selection for appointment to the Board of Directors.

(b) A member of the Board of Directors shall be an honorably separated veteran, as defined by the provisions of KRS 36.310.

(4) Term of members. The members appointed pursuant to subsection (3)(e) of this section shall serve for a period of three (3) years.

(5) The Board of Directors shall:

(a) Meet at the call of the chairman;

(b) Inform organizations represented on the board of actions considered and taken by the board;

(c) Review projects and recommend approval or disapproval of projects to the Adjutant General;

(d) Prioritize projects for the Adjutant General's approval;

(e) At the request of the Adjutant General, investigate the need for specific projects or programs;

(f) Recommend guidelines for projects to the Adjutant General;

(g) Make recommendations to the Adjutant General for the utilization and control of funds in the Veterans' Program Trust Fund; and

(h) Prepare an annual report providing an accounting of the Veterans' Program Trust Fund assets and financial activity for each calendar year.

(6) The executive director of the fund shall:

(a) Administer approved projects;

(b) Maintain records of the fund that are required for the administration of the Veterans' Program Trust Fund and projects approved under the provisions of this administrative regulation; and

(c) Attend meetings of the following organizations as the representative of the fund:

1. Legislative Special Subcommittee on Veterans Affairs;
2. Joint Executive Council of Veterans Organizations;
3. Governor's Advisory Board for Veterans Affairs; and
4. Meetings of state veterans organizations.

MG ROBERT L. DeZARN, The Adjutant General

APPROVED BY AGENCY: October 15, 1993

FILED WITH LRC: October 15, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 30, 1993 at 1 PM (EST), EOC Building Conference Room, Boone National Guard Center, Frankfort, Kentucky. Individuals interested in attending or being heard at this hearing shall notify Department of Military Affairs in writing by November 25, 1993, (five (5) days prior to the hearing date) of their intent or be heard. If no notification of intent to attend or be heard at this hearing is received by that date, the hearing may be cancelled. Individuals attending the hearing who wish to be heard will be given a reasonable opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless Department of Military Affairs receives a written request for a transcript in which case the person requesting the transcript shall have the responsibility of paying for the transcript. If an individual does not wish to attend or be heard at the public hearing but has comments regarding the proposed administrative regulation, written comments may be submitted to Department of Military Affairs. Send written notification of intent to attend or be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: BG Julius Berthold, Dep. Adjutant General, Boone National Guard Center, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: BG Julius Berthold

(1) Type and number of entities affected: Kentucky veterans programs.

(a) Direct and indirect costs or savings to those affected:

1. First year: Cost associated with funding veteran activities.

2. Continuing costs or savings: Program does not allow for continuing costs.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The direct and indirect costs of reporting and paperwork requirements include the administrative costs associated with completing the program application and reporting on the use of all funding.

(2) Effects on the promulgating administrative body: The administering agency for the Kentucky Veteran's Program Trust Fund is the Department of Military Affairs.

(a) Direct and indirect costs or savings:

1. First year: Administrative costs associated with notifying appropriate agencies of funding, designing and reviewing applications, administering funding to eligible applicants and monitoring funded.

2. Continuing costs or savings: There will be some long-term direct costs associated with continued monitoring of funded programs to insure long-term affordability.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The direct and indirect costs of reporting and paperwork requirements include developing the application, promulgating administrative regulations and administering the financial systems necessary to administer the program dollars.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Administering the Kentucky Veteran's Program Trust Fund is laid out in the statute leaving no alternative method for the use of Kentucky Veteran's Trust Fund dollars.

(5) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy which is in conflict with, overlaps or duplicates these administrative regulations.

(6) Any additional information or comments: None

Tiering: Is tiering applied? The statute itself does include tiering and is not included.

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission

201 KAR 27:007. Powers and duties delegated to a commissioner or employee of the commission.

RELATES TO: KRS 229.171, 229.200

STATUTORY AUTHORITY: KRS 229.080

NECESSITY AND FUNCTION: KRS 229.171 gives the commission the sole direction, management, control and jurisdiction over all professional boxing, sparring, and wrestling shows to be held or conducted in the Commonwealth. In order to appropriately manage and control these activities, at the site of the show, it is necessary for the commission to delegate the powers granted pursuant to KRS Chapter 229 to a commissioner or an employee of the commission. This administrative regulation provides the delegation of these powers.

Section 1. The chairman shall assign himself, another commissioner, or an employee of the commission to monitor each boxing, elimination event, and kick boxing show taking place within the Commonwealth. He may assign himself, another commissioner, or an employee of the commission to monitor wrestling shows on a periodic basis.

Section 2. The person assigned by the chairman to monitor the show shall exercise immediate and full supervision, control, and administrative regulation of the show on behalf of the commission and shall be responsible directly to the commission. By way of illustration and without limiting thereby, the powers of the person assigned to monitor the show shall include:

(1) Authority over all contestants and matches, licensed or unlicensed, on the premises before, during, and after a show as to all matters relating to the show;

(2) To determine all questions, disputes, protests, complaints, or objections concerning the show and to enforce such determinations;

(3) To suspend the license of a contestant or other licensee, or eject or exclude from the premises or any part thereof, licensed or unlicensed persons upon reasonable belief that a violation of KRS Chapter 229 or the administrative regulations promulgated thereunder, has occurred;

(4) To interpret and enforce the statutes and administrative regulations and determine all questions relating to this show under the jurisdiction of the commission;

(5) To issue decisions or rulings on issues or questions relating to the show subject to the powers granted to the commission;

(6) To request and receive assistance from commissioners, employees of the commission, officials, licensees, local, or state law enforcement personnel in the investigation of possible statutory or regulatory infractions; and

(7) To conduct hearings on all questions, disputes, protests, complaints, or objections arising from the show.

Section 3. Any decision made pursuant to this administrative regulation may be appealed to the full commission in the manner prescribed in KRS 229.220.

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: Delegation of authority for shows.

(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

201 KAR 27:013. Scoring and conduct of boxing, kick boxing, and elimination events.

RELATES TO: KRS 229.101, 229.131, 229.171

STATUTORY AUTHORITY: KRS 229.180

NECESSITY AND FUNCTION: KRS 229.171 states that the commission is given the sole control, authority and jurisdiction over professional boxing, kick boxing, and elimination events and all

persons who participate therein. This administrative regulation sets forth the rules relative to the conduct of all forms of boxing matches. The following administrative regulation applies to boxing, kick boxing, and elimination events.

Section 1. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned by the commission.

Section 2. Decisions shall be rendered as follows:

(1) If a contest lasts the scheduled limit, the winner of such contest shall be decided by:

(a) A majority vote of the judges if three (3) are used; or

(b) A majority vote of the judges and the referee if two (2) judges are used.

(2) Decisions shall be based primarily on effectiveness, giving credit for:

(a) Clean, forceful hitting;

(b) Aggressiveness;

(c) Defensive work; and

(d) Ring generalship, and deducting points for an opposite showing.

Section 3. Scoring shall be as follows:

(1) Each round in boxing shall be accounted for on the score card, using the ten (10) point must system. Scoring shall be in ratio of merit and demerit, the difference displayed by the contestants.

(2) Score cards shall be:

(a) Signed;

(b) Handed to the referee in the ring; and

(c) Filed by him with the commissioner or employee of the commission in attendance.

(3) The decision shall then be announced from the ring.

Section 4. Rounds shall be as follows:

(1) Boxing or kick boxing rounds shall:

(a) Be of either two (2) or three (3) minutes duration; and

(b) Have not less than a one (1) minute rest period between rounds.

(2) Elimination rounds shall:

(a) Not exceed ninety (90) seconds duration; and

(b) Have not less than a one (1) minute rest period between rounds.

Section 5. Requirements for boxing gloves shall be as follows:

(1) For boxing, contestants shall wear boxing gloves which shall be:

(a) Clean and sanitary;

(b) Furnished by the promoter;

(c) Of equal weight;

(d) Not less than eight (8) ounces; and

(e) Thumbless or thumb-attached.

(2) For elimination events:

(a) Contestants shall wear boxing gloves and headgear which shall be:

1. Clean and sanitary;
2. Furnished by the promoter;
3. Clearly labeled with the promoter's name;
4. Of equal weight;
5. Not less than sixteen (16) ounces; and
6. Thumbless or thumb-attached.

(b) Contestants shall not be allowed to provide substitute gloves or headgear.

(3) For kick boxing:

(a) Contestants shall wear boxing gloves which shall be:

1. Clean and sanitary;
2. Furnished by the promoter;
3. Of equal weight;
4. Not less than eight (8) ounces; and
5. Thumbless or thumb-attached.

(b) Contestants shall also wear padded kick boxing boots on their feet approved by the commission.

(4) Gloves for all main matches shall be new and shall be put on in the ring subject to the discretion of the commissioner or employee of the commission.

(5) No breaking, roughing, or twisting of gloves shall be permitted.

(6) The laces on gloves shall be tied on the back of the wrist and taped.

Section 6. Requirements for bandages shall be as follows:

(1) For boxing and kick boxing 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 twelve (12) yards in length for each hand.

(2) For elimination events bandaging of the hands shall not be allowed.

(3) 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) layer 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 7. Requirements for knock downs shall be as follows:

(1) If a contestant is knocked to the floor by his opponent or falls from weakness or other causes, his opponent shall:

(a) Immediately retire to the farthest neutral corner of the ring; and

(b) Remain there until the referee completes his count or signals a resumption of action.

(2) The timekeeper shall commence counting off the seconds and indicating the count with a motion of the arm when the contestant is down. The referee shall pick up the count from the timekeeper.

(3) If a contestant fails to arise before the count of ten (10), the referee shall declare him the loser by waving both arms to indicate a knockout.

(4) If a contestant who is down arises during the count, the referee may, if he deems it necessary, step between the contestants long enough to assure himself that the contestant just arisen is in condition to continue the match.

(5) Should a contestant 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.

(6) At the discretion of the referee, a standing eight (8) count may be used.

(7) If a contestant is knocked down three (3) times during a round, the contest shall be stopped. The contestant scoring the knock downs shall be the winner by a technical knockout. This rule may be waived by the commission upon the request of both contestants. Any request for waiver shall be made prior to the beginning of the show.

(8) When a round, other than the last round, ends before a contestant who was knocked down rises, the bell shall ring and the count shall continue. If the contestant fails to arise before the count of ten (10), the referee shall declare him the loser by waving both arms to indicate a knockout.

Section 8. A failure to resume a match shall be as follows:

(1) If a contestant fails to resume the match for any reason after a rest period, or leaves the ring during the rest period and fails to be in the ring when the bell 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 contestant who has been knocked out of or has fallen out of the ring during a match 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 9. A contestant 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 10. (1) The following shall be considered 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 except for those backhand blows allowable in kick boxing;

(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 shall immediately do so if contestant commits a deliberate and willful foul which incapacitates his opponent.

(3) Any contestant committing a foul may be disciplined by the commissioner or employee of the commission.

(4) If a match 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 match. If in their opinion said contestant's chances have not been seriously jeopardized, as a result of the foul, he shall order the match resumed after a reasonable time, such time to be set by the referee, but not exceeding five (5) minutes.

(5) If a contestant is unable to continue as the result of an accidental foul and the match is in one (1) of the first three (3) rounds, the match shall be declared a technical draw. If the foul occurs after the third round, or if an injury sustained from an accidental foul in the first three (3) rounds causes the contest to be subsequently stopped, the contest shall be scored on the basis of the judges' scorecards.

Section 11. The following shall be prohibited:

(1) "Battle royal"; and

(2) Use of excessive grease or any other substance which may handicap an opponent.

Section 12. Boxer Repeatedly Knocked Out or Otherwise Defeated. (1) A boxer or kick boxer who has been repeatedly knocked out and severely beaten shall be retired and not permitted to box again if, after subjecting him to a thorough examination by a physician, the commission decides such action is necessary in order to protect the health and welfare of such boxer.

(2) A boxer or kick boxer who has suffered six (6) consecutive defeats by knockout shall not be allowed to box again until he has been investigated by the commission and examined by a physician.

(3) A contestant whose license is under suspension in any other jurisdiction may be allowed to participate in any boxing, kick boxing, or elimination match only after review and approval of the case 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 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: Scoring in boxing.

(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

201 KAR 27:081. Repeal of 201 KAR 27:016, 27:017, 27:018, 27:019, 27:025, 27:044, 27:065, and 27:080.

RELATES TO: KRS Chapter 229
STATUTORY AUTHORITY: KRS 229.180
NECESSITY AND FUNCTION: 201 KAR 27:016 is no longer required since the same provisions are located in KRS 229.051. 201 KAR 27:018 is no longer needed since the provisions of this administrative regulation have been included in another administrative regulation. 201 KAR 27:044 is no longer needed since the provisions of this administrative regulation have been included in another administrative regulation. 201 KAR 27:017, 27:019, 27:025, 27:065, and 27:080 are no longer needed because of changes made in KRS Chapter 229.

Section 1. 201 KAR 27:016, Bond required to cover compensation of officials, boxers, and wrestlers; 201 KAR 27:017, Promoters to tender compensation for officials prior to commencement of match or exhibition; 201 KAR 27:018, Referees and seconds to wear surgical gloves; 201 KAR 27:019, Boxer repeatedly knocked out or otherwise defeated; 201 KAR 27:025, Identification cards; 201 KAR 27:044, Appointment of officials; 201 KAR 27:065, Doormen; and 201 KAR 27:080, Miscellaneous provisions, are hereby repealed.

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: Repeal of various administrative regulations which are no longer needed.
(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.

KENTUCKY HOUSING CORPORATION

202 KAR 2:010. Affordable Housing Trust Fund.

RELATES TO: KRS Chapter 198A, 61.805 to 61.850
STATUTORY AUTHORITY: KRS 198A.720(11)
NECESSITY AND FUNCTION: KRS 198A.720 authorizes Kentucky Housing Corporation to administer the Affordable Housing Trust Fund by providing loans or grants for eligible activities, as established in KRS 198A.715(2), in order to create new sources of funding or to supplement existing sources of funding for the development of housing for very low income Kentuckians. This administrative regulation is necessary to establish additional criteria for qualifying for the loans and grants and to establish the procedures to be followed in applying for the loans and grants.

Section 1.Qualification Criteria. (1) Applications shall be prioritized based on the priorities established in KRS 198A.720(4).
(2) Applications shall be competitively ranked based on the following criteria, not excluding other considerations:
(a) Demonstrated need for proposed program;
(b) Combined effort of applicant and various agencies in developing and administering the program;
(c) Provision of housing and housing-related services;
(d) Willingness to serve those in greatest need;
(e) Amount of resources contributed from other sources;
(f) Geographic distribution; and
(g) Ability to provide long-term home ownership or rental affordability.
(3) Approval of applications shall be based on the numerical ranking received and the availability of funds.

Section 2. Notice of Funds Availability. (1) A public notice of funding availability shall be issued by Kentucky Housing Corporation to eligible applicants no later than January 1 and July 1 of each year.
(2) The deadline for application submission will be no sooner than thirty (30) days after the public notice of funding availability.

Section 3. Application Procedures. (1) To be considered for a loan or grant, eligible applicants shall complete and submit the Affordable Housing Trust Fund application dated September 7, 1993, which form is hereby incorporated by reference. The application may be obtained, inspected or copied at Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601 between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.
(2) Properly submitted and completed applications shall be approved or denied within sixty (60) days of their receipt by Kentucky Housing Corporation.

F. LYNN LUALLEN, Executive Director
APPROVED BY AGENCY: September 14, 1993
FILED WITH LRC: September 16, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, November 22, 1993 at 1 p.m. (EST), at Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky. Individuals interested in attending or being heard at this hearing shall notify Kentucky Housing Corporation in writing by November 17, 1993, (five (5) days prior to the hearing date) of their intent to attend or be heard. If no notification of intent to attend or be heard at this hearing is received by that date, the hearing may be cancelled. Individuals attending the hearing who wish to be heard will be given a reasonable opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless Kentucky Housing Corporation receives a written request for a transcript, in which case the person requesting the transcript shall have the responsibility of paying for the transcript. If an individual does not wish to attend or be heard at the public hearing but has comments regarding the proposed administrative regulation, written comments may be submitted to Kentucky Housing Corporation. Send written notification of intent to attend or be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Gregory E. Mayes, General Counsel, Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Natalie Hutcheson

(1) Type and number of entities affected: Organizations eligible for funding from the Affordable Housing Trust Fund include all local governments, local government housing authorities, nonprofit organizations and regional or statewide housing assistance organizations.

(a) Direct and indirect costs or savings to those affected:

1. First year: Administrative costs associated with overseeing program activities.

2. Continuing costs or savings: There will be some long-term indirect savings to communities as very low-income families stabilize in newly developed housing.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Organizations awarded funding can also use up to 5% of their Affordable Housing Trust Funds to cover administrative costs.

(b) Reporting and paperwork requirements: The direct and indirect costs of reporting and paperwork requirements include the administrative costs associated with completing the program application and reporting on the use of all funding.

(2) Effects on the promulgating administrative body: The administering agency for the Affordable Housing Trust Fund is Kentucky Housing Corporation.

(a) Direct and indirect costs or savings:

1. First year: Administrative costs associated with notifying appropriate agencies of funding, designing and reviewing applications, administering funding to eligible applicants and monitoring funded agencies.

2. Continuing costs or savings: There will be some long-term direct costs associated with continued monitoring of funded agencies to insure long-term affordability.

3. Additional factors increasing or decreasing costs: There are also direct legal and administrative costs associated with the administrative regulation process required to administer the Affordable Housing Trust Fund. The delay that this process causes additionally effects eligible applicants and very low-income families in need of housing assistance.

(b) Reporting and paperwork requirements: The direct and indirect costs of reporting and paperwork requirements include developing the application, promulgating administrative regulations and administering the financial systems necessary to administer the program dollars.

(3) Assessment of anticipated effect on state and local revenues: Kentucky Housing Corporation will contribute $100,000 and the Commonwealth of Kentucky has contributed $100,000 made available through reduced expenditures on activities related to the 1991-92 Kentucky Derby.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The process for administering the Affordable Housing Trust Fund is laid out in detail in the statute leaving no alternative method for the use of Affordable Housing Trust Fund dollars.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy which is in conflict with, overlaps or duplicates these administrative regulations.

(6) Any additional information or comments: None

Tiering: Is tiering applied? Tiering applied only in that the statute itself does include tiering. Tiering is included in the statute to insure that rural communities will receive a portion of the Affordable Housing Trust Funds.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. This administrative regulation could affect any of the Commonwealth's cities, counties or area development districts as all units of local government are eligible to apply for funding under the Affordable Housing Trust Fund.

(3) State the aspect or service of local government to which this administrative regulation relates. The provision of very low-income housing.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Revenues: $1,000 - $10,000; Expenditures: $2,000 - $12,000.

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

401 KAR 34:275. Air emission standards for process vents.

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 air emission standards for process vents.

Section 1. Definitions. As used in this administrative regulation, all terms not defined herein shall have the meaning given them in 401 KAR Chapters 30 through 36:

(1) "Air stripping operation" is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(2) "Bottoms receiver" means a container or tank used to receive and collect heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(3) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(4) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(5) "Connecter" means flanged, screwed, welded, or other joined fitting used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connecter means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(6) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(7) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (for example, a primary condenser on a solvent recovery unit) is not a control device.

(8) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(9) "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(10) "Distillation operation" means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(11) "Double block and bleed system" means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

(12) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this administrative regulation.

(13) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(14) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(15) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(16) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(17) "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four (24) hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(18) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(19) "In gas service" or "in vapor service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(20) "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(21) "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one (1) or more of the components in the stream is greater than three-tenths (0.3) kilopascals (kPa) at twenty (20) degrees Centigrade, the total concentration of the pure components having a vapor pressure greater than three-tenths (0.3) kPa at twenty (20) degrees Centigrade is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

(22) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(23) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(24) "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(25) "Open-ended valve or line" means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with process fluid and one (1) side open to the atmosphere, either directly or through open piping.

(26) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(27) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(28) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(29) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(30) "Sensor" means a device that measures a physical quantity or the change in a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(31) "Separator tank" means a device used for separation of two immiscible liquids.

(32) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two (2) being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

(33) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(34) "Steam stripping operation" means a distillation operation in which vaporization of a volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(35) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(36) "Thin-film evaporation operation" means a distillation operation that employees a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(37) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(38) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (work losses) or by natural means such as diurnal temperature changes.

Section 2. Applicability. (1) This administrative regulation applies to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in Section 1 of 401 KAR 34:010).

(2) Except for Sections 5(4) and 6(5) of this administrative regulation applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10-ppmw if these operations are conducted in:

(a) Units that are subject to the permitting requirements of 401 KAR Chapter 38; or

(b) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of 401 KAR Chapter 38.

(3) If the owner or operator of process vents subject to the requirements of Sections 3 to 7 of this administrative regulation has received a permit under KRS 224.46-520 or 224.46-530 prior to December 21, 1990, the requirements of Sections 3 to 7 of this administrative regulation shall be incorporated when the permit is reissued under Section 12 of 401 KAR 38:050 or reviewed under Section 5 of 401 KAR 38:040. The requirements of Sections 3 to 7 of this administrative regulation shall apply to process vents on hazardous waste recycling units previously exempt under Section 6(3)(a) of 401 KAR 31:010. Other exemptions under Section 4 of 401 KAR 31:010, Section 5 of 401 KAR 32:030, and Section 1 of 401 KAR 34:010 are not affected by these requirements.

Section 3. Standards: Process Vents. (1) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous wastes with organic concentrations of at least ten (10) ppmw shall either:

(a) Reduce total organic emissions from all affected process vents at the facility below one and four-tenths (1.4) kg/h (three (3) lb/h) and two and eight-tenths (2.8) Mg/yr (three and one-tenth (3.1) tons/yr); or

(b) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by ninety-five (95) weight percent.

(2) If the owner or operator installs a closed-vent system and control device to comply with the provisions of subsection (1) of this section the closed-vent system and control device shall meet the requirements of Section 4 of this administrative regulation.

(3) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests shall conform with the requirements of Section 5(3) of this administrative regulation.

(4) When an owner or operator and the cabinet do not agree on determinations of vent emissions or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in Section 5(3) of this administrative regulation shall be used to resolve the disagreement.

Section 4. Standards: Closed-vent Systems and Control Devices. (1)(a) Owners or operators of closed-vent systems and control devices used to comply with provisions of this administrative regulation shall comply with the provisions of this section.

(b) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this administrative regulation on the effective date that the facility becomes subject to the provisions of this administrative regulation shall prepare an implementation schedule that includes dates by which the closed-vent system and control device shall be installed and in operation. The controls shall be installed as soon as possible, but the implementation schedule may allow up to eighteen (18) months after the effective date that the facility becomes subject to this administrative regulation for installation and start-up. All units that begin operation after December 21, 1990, (that is, shall have control devices installed and operating on start-up of the affected unit and shall otherwise comply with this administrative regulation immediately); the two (2) year implementation schedule shall not apply to these units.

(2) A control device involving vapor recovery (a condenser or absorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of ninety-five (95) weight percent or greater unless the total organic emission limits of Section 3(1)(a) of this administrative regulation for all affected process vents can be attained at an efficiency less than ninety-five (95) weight percent.

(3) An enclosed combustion device (for example, a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by ninety-five (95) weight percent or greater, to achieve a total organic compound concentration of twenty (20) ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to three (3) percent oxygen; or to provide a minimum residence time of five-tenths (0.50) seconds at a minimum temperature of 760 degrees Centigrade. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(4)(a) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in subsection (5)(a) of this section, except for periods not to exceed a total of five (5) minutes during any two (2) consecutive hours.

(b) A flare shall be operated with a flame present at all times, as determined by the methods specified in subsection (6)(b)3 of this section.

(c) A flare shall be used only if the net heating value of the gas being combusted in eleven and two-tenths (11.2) MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted;or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in subsection (5)(b) of this section.

(d)1. A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in subsection (5)(c) of this section, less than eighteen and three-tenths (18.3) m/s (sixty (60) ft/s), except as provided in subparagraphs 2 and 3 of this paragraph.

2. A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (5)(c) of this section, equal to or greater than eighteen and three-tenths (18.3) m/s (sixty (60) ft/s) but less than 122 m/s (400 ft/s) shall be allowed if the net heating value of the gas being combusted is greater than thirty-seven and three-tenths (37.3) MJ/scm (1,000 Btu/scf).

3. A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (5)(c) of this section, less than the velocity, V_{max}, as determined in by the method specified in subsection (5)(d) of this section and less than 122 m/s (400 ft/s) shall be allowed.

(e) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in subsection (5)(d) of this section.

(f) A flare used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(5)(a) Reference Method 22 in 40 CFR Part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this administrative regulation. The observation period is

two (2) hours and shall be used according to Method 22.

(b) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T=K\left(\sum_{i=1}^{n} C_iH_i\right)$$

where:

1. H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of off gas is based on combustion at twenty-five (25) degrees Centigrade and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is twenty (20) degrees Centigrade;

2. K = Constant, $1.74X10^{-7}$ (1/ppm) (g/mol/scm) MJ/kcal) where standard temperature for (g/mol/scm) is twenty (20) degrees Centigrade;

3. C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR Part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946-82; and

4. H_i = Net beat of combustion of sample component i, kcal/9 mol at twenty-five (25) degrees Centigrade and 760 mm Hg. The beats of combustion may be determined using ASTM D 2382-83 if published values are not available or cannot be calculated.

(c) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate in units of standard temperature and pressure, as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR Part 60 as appropriate, by unobstructed (free) cross-sectional area of the flare tip.

(d) The maximum allowed velocity in m/s, V_{max} for a flare complying with paragraph (d)(4)(iii) of this section shall be determined by the following equation:

$$Log_{10}(V_{max})=(H_T+28.8)/31.7$$

where:

28.8 = Constant;

31.7=Constant;

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(e) The maximum allowed velocity in m/s, V_{maxT} for an air-assisted flare shall be determined by the following equation:

$$V_{max}=8.706+0.7084\ (H_T)$$

where:

8.706 = Constant;

0.7084 = Constant;

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(6) The owner or operator shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(a) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

(b) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

1. For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus or minus one (1) percent of the temperature being monitored in degrees Centigrade or plus or minus five-tenths (0.5) degrees Centigrade, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

2. For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two (2) locations and have an accuracy of plus or minus one (1) percent of the temperature being monitored in degrees Centigrade or plus or minus five-tenths (0.5) degrees Centigirade, whichever is greater. One (1) temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

3. For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

4. For a boiler or process heater having a design heat input capacity less than forty-four (44) MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus or minus one (1) percent of the temperature being monitored in degrees Centigrade or plus or minus five-tenths (0.5) degrees Centigrade, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

5. For a boiler or process heater having a design heat input capacity greater than or equal to forty-four (44) MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

6. For a condenser, either:

a. A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or

b. A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two (2) locations and have an accuracy of plus or minus one (1) percent of the temperature being monitored in degrees Centigrade or plus or minus five-tenths (0.5) degrees Centigrade, whichever is greater. One (1) temperature sensor shall be installed at a location in the exhaust vent stream from the condenser, and a second temperature sensor shall be installed at a location in the coolant fluid exiting the condenser.

7. For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon absorber, either:

a. A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed; or

b. A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular predetermined time cycle.

c. Inspect the readings from each monitoring device required by subsection (1)(a) and (b) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(7) An owner or operator using a carbon adsorption system such as a fixed-bed carbon absorber that regenerates the carbon bed directly on site in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of Section 6(2)(d)3f of this administrative regulation.

(8) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly on site in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one (1) of the following procedures:

(a) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than twenty (20) percent of the time required to consume the total carbon working capacity established as a requirement of Section 6(2)(d)3g of this administrative regulation, whichever is longer.

(b) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of Section 6(2)(d)3g of this administrative regulation.

(9) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(10) An owner or operator of an affected facility seeking to comply with the provisions of this administrative regulation by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(11)(a) Closed-vent systems shall be designed for and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the methods specified in Section 5(2) of this administrative regulation.

(b) Closed-vent systems shall be monitored to determine compliance with this administrative regulation during the initial leak detection monitoring, which shall be conducted by the date that the facility becomes subject to the provisions of this administrative regulation, annually, and at other times as required by the cabinet.

(c) Detectable emissions, as indicated by an instrument reading greater than 500 ppm and visual inspections, shall be controlled as soon as practicable, but not later than fifteen (15) calendar days after the emission is detected.

(d) A first attempt at repair shall be made no later than five (5) calendar days after the emission is detected.

(12) Closed-vent systems and control devices used to comply with provisions of this section shall be operated at all times when emissions may be vented to them.

Section 5. Test methods and procedures. (1) Each owner or operator subject to the provisions of this section shall comply with the test methods and procedures requirements provided in this administrative regulation.

(2) When a closed-vent system is tested for compliance with no detectable emissions, as required in Section 4(11) of this administrative regulation, the test shall comply with the following requirements:

(a) Monitoring shall comply with Reference Method 21 in 40 CFR Part 60.

(b) The detection instrument shall meet the performance criteria of Reference Method 21.

(c) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(d) Calibration gases shall be:

1. Zero air (less than ten (10) ppm of hydrocarbon in air).

2. A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(e) The background level shall be determined as set forth in Reference Method 21.

(f) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(g) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(3) Performance tests to determine compliance with Section 3(1) of this administrative regulation and with the total organic compound concentration limit of Section 4(3) of this administrative regulation shall comply with the following:

(a) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

1. Method 2 in 40 CFR Part 60 for velocity and Volumetric flow rate.

2. Method 18 in 40 CFR Part 60 for organic content.

3. Each performance test shall consist of three (3) separate runs; each run conducted for at least one (1) hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all run shall apply. The average shall be computed on a time-weighted basis.

4. Total organic mass flow rates shall be determined by the following equation:

$$E_b = Q_{2sd}\left(\sum_{i=1}^{n} C_i MW_i\right)(0.0416)(10^{-6})$$

where:

a. E_h = Total organic mass flow rate, kg/h;

b. Q_{sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2,dscm/h;

c. n = Number of organic compounds in the vent gas;

d. C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

e. MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

f. 0.0416 = Conversion factor for molar volume, kg-mol/m^3 (@ 293 K and 760 mm Hg);

g. 10^{-6} = Conversion from ppm, ppm^{-1}.

5. The annual total organic emission rate shall be determined by the following equation:

$$E_A = (E_h)(H)$$

where:

a. E_A = Total organic mass emission rate, kg/y;

b. E_h = Total organic mass flow rate for the process vent, kg/h;

c. H = Total annual hours of operations for the affected unit, h.

6. Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (E_h as determined in subparagraph 4 of this paragraph) and by summing the annual total organic mass emission rates (E_h, as determined in subparagraph 5 of this paragraph) for all affected process vents at the facility.

(b) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(c) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

1. Sampling ports adequate for test methods specified in paragraph (a) of this subsection;

2. Safe sampling platform(s);

3. Safe access to sampling platform(s); and

4. Utilities for sampling and testing equipment.

(d) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. If a sample is accidentally lost or conditions occur in which one (1) of

the three (3) runs shall be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the approval of the cabinet be determined using the average of the results of the two (2) other runs.

(4) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations is not subject to the requirements of this administrative regulation, the owner or operator shall make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one (1) of the following two (2) methods:

(a) Direct measurement of the organic concentration of the waste using the following procedures:

1. The owner or operator shall take a minimum of four (4) grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

2. For waste generated on site, the grab samples shall be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated off site, the grab samples shall be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

3. Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8240 of SW-846.

4. The arithmetic mean of the results of the analyses of the four (4) samples shall apply for each waste stream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average shall be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit.

(b) Using knowledge of the waste to determine that its total organic concentration is less than ten (10) ppmw. Documentation of the waste determination shall be required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than ten (10) ppmw, or prior specification analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(5) The determination that distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted, annual average total organic concentrations less than ten (10) ppmw shall be made as follows:

(a) By the effective date that the facility becomes subject to the provisions of this administrative regulation or by the date when the waste is first managed in a waste management unit, whichever is later; and

(b) For continuously generated waste, annually; or

(c) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(6) When an owner or operator and the cabinet do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least ten (10) ppmw based on knowledge of the waste, the procedures in Method 8240 may be used to resolve the dispute.

Section 6. Recordkeeping Requirements. (1)(a) Each owner or operator subject to the provisions of this administrative regulation shall comply with the recordkeeping requirements of this section.

(b) An owner or operator of more than one (1) hazardous waste management unit subject to the provisions of this administrative regulation may comply with the recordkeeping requirements for these hazardous waste management units in one (1) recordkeeping system if the system identifies each record by each hazardous waste management unit.

(2) Owners and operators shall record the following information in the facility operating record:

(a) For facilities that comply with the provisions of Section 4(1)(b) of this administrative regulation, an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule shall also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule shall be in the facility operating record by the effective date that the facility becomes subject to the provisions of this administrative regulation.

(b) Up-to-date documentation of compliance with the process vent standards in Section 3 of this administrative regulation, including:

1. Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (that is, the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (for example, identify the hazardous waste management units on a facility plot plan).

2. Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions shall be made using operating parameter values (temperatures, flow rates, or vent stream organic compounds and concentrations for example) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(c) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan shall include:

1. A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

2. A detailed engineering description of the closed-vent system and control device including:

a. Manufacturer's name and model number of control device.

b. Type of control device.

c. Dimensions of the control device.

d. Capacity.

e. Construction materials.

3. A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the

equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(d) Documentation of compliance with Section 4 of this administrative regulation shall include the following information:

1. A list of all information references and sources used in preparing the documentation.

2. Records including the dates of each compliance test required by Section 4(11) of this administrative regulation.

3. If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" or other engineering texts acceptable to the cabinet that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with clauses a to g of this subparagraph may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

a. For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

b. For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

c. For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

d. For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in Section 4(4) of this administrative regulation.

e. For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

f. For a carbon adsorption system such as a fixed-bed absorber that regenerates the carbon bed directly on site in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling and drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

g. For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly on site in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

4. A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

5. A statement signed and dated by the owner operator certifying that the control device is designed to operate at an efficiency of ninety-five (95) percent or greater unless the total organic emission limits of Section 3(1) of this administrative regulation is achieved at an efficiency less than ninety-five (95) weight percent or the total organic emission limits of Section 3(1) of this administrative regulation for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than ninety-five (95) weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

6. If performance tests are used to demonstrate compliance, all test results.

(3) Design documentation and monitoring, operation, and inspection information for each closed-vent system and control device required to comply with the provisions of this part shall be recorded and kept up-to-date in the facility operating record. The information shall include:

(a) Description and date of each modification that is made to the closed-vent system or control device design.

(b) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Section 4(6)(a) and (b) of this administrative regulation.

(c) Monitoring, operating, and inspection information required by Section 4(6) to (11) of this administrative regulation.

(d) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

1. For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760 degrees Centigrade period when the combustion temperature is below 760 degrees Centigrade.

2. For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of ninety-five (95) weight percent or greater period when the combustion zone temperature is more than twenty-eight (28) degrees Centigrade below the design average combustion zone temperature established as a requirement of subsection (2)(d)3a of this section.

3. For a catalytic vapor incinerator, period when:

a. Temperature of the vent stream at the catalyst bed inlet is more than twenty-eight (28) degrees Centigrade below the average temperature of the inlet vent stream established as a requirement of subsection (2)(d)3b of this section; or

b. Temperature difference across the catalyst bed is less than eighty (80) percent of the design average temperature difference established as a requirement of subsection (2)(d)3b of this section.

4. For a boiler or process heater, period when:

a. Flame zone temperature is more than twenty-eight (28) degrees Centigrade below the design average flame zone temperature established as a requirement of subsection (2)(d)3c of this section; or

b. Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of subsection (d)3c of this section.

5. For a flare, period when the pilot flame is not ignited.

6. For a condenser that complies with Section 4(6)(b)6a of this administrative regulation, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than twenty (20) percent

greater than the design outlet organic compound concentration level established as a requirement of subsection (2)(d)3e of this section.

7. For a condenser that complies with Section 4(6)(b)6b of this administrative regulation, period when:

a. Temperature of the exhaust vent stream from the condenser is more than six (6) degrees Centigrade above the design average exhaust vent stream temperature established as a requirement of subsection (2)(d)3e of this section; or

b. Temperature of the coolant fluid exiting the condenser is more than six (6) degrees Centigrade above the design average coolant fluid temperature at the condenser outlet established as a requirement of subsection (2)(d)3e of this section.

8. For a carbon adsorption system such as a fixed-bed carbon absorber that regenerates the carbon bed directly on site in the control device and complies with Section 4(6)(b)7a of this administrative regulation, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than twenty (20) percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of subsection (2)(d)3f of this section.

9. For a carbon adsorption system such as a fixed-bed carbon absorber that regenerates the carbon bed directly on site in the control device and complies with Section 4(6)(b)7b of this administrative regulation, period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of subsection (2)(d)3f of this section.

(e) Explanation for each period recorded under paragraph (d) of this subsection of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(f) For a carbon adsorption system operated subject to requirements specified in Section 4(8)(b) of this administrative regulation, date when existing carbon the control device is replaced with fresh carbon.

(g) For a carbon adsorption system operated subject to requirements specified in Section 4(8)(a) of this administrative regulation, a log that records:

1. The date and time when the control device is monitored for carbon breakthrough and the monitoring device reading.

2. The date when the existing carbon in the control device is replaced with fresh carbon.

(h) The date of each control device start-up and shutdown.

(5) Records of the monitoring, operating, and inspection information required by subsection (3)(c) to (h) of this section need to be kept only three (3) years.

(6) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the cabinet shall specify the appropriate recordkeeping requirements.

(7) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in Section 3 of this administrative regulation including supporting documentation as required by Section 5(4)(b) of this administrative regulation when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.

Section 7. Reporting Requirements. (1) A semiannual report shall be submitted by owners and operators subject to the requirements of this administrative regulation to the cabinet by dates specified by the cabinet. The report shall include the following information:

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

(b) For each month during the semiannual reporting period, the dates when the control device exceeded or operated outside of the design specifications as defined in Section 6(3)(d) of this administrative regulation and as indicated by the control device monitoring required by Section 4(6) of this administrative regulation and such exceedances were not corrected within twenty-four (24) hours, or that a flare operated with visible emissions as defined in Section 4(4) of this administrative regulation and as determined by Method 22 monitoring, the duration and cause of each exceedance or visible emissions, and any corrective measures taken.

(2) If, during the semiannual reporting period, the control device does not exceed or operate outside of the design specifications as defined in Section 6(3)(d) of this administrative regulation for more than twenty-four (24) hours or a flare does not operate with visible emissions as define in Section 4(4) of this administrative regulation, a report to the cabinet shall not be required.

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 sites or facilities that manage hazardous waste involving distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation since the provisions in this proposed administrative regulation already apply to Kentucky facilities through federal regulation. Federal regulations promulgated by the authority of the Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to the cost of complying with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous

waste program as mandated in KRS Chapter 224.

2. Continuing costs or savings: Not applicable

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Any reporting or paperwork requirements required from Kentucky facilities went into effect as a result of compliance with federal regulations. There are no additional requirement imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There may be minimal costs associated with complying with this administrative regulation since the provisions in this proposed administrative regulation federal regulations promulgated by the authority of the Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to the cost of complying with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224. When the state receives authorization for this activity, additional costs will be incurred for review of semiannual reports from facilities.

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 semiannual reports to the cabinet. The cabinet will maintain records and will make a determination as to whether the dript pad will be removed from service completely or partially until repairs and cleanup are complete. The cabinet will be required to notify the owner or operator of the determination and the rational in writing.

(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 264.570 through .575. However, there is no federal mandate to promulgate this administrative regulation. The provisions in this proposed administrative regulation federal regulations promulgated by the authority of the Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to compliance with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224. 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 264.570 through .575.

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

401 KAR 34:280. Air emission standards for equipment leaks.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.40-100, 224.46-520

NECESSITY AND FUNCTION: To implement provisions of KRS 224.46-520 and to establish air emission standards and equipment leaks.

Section 1. Definitions. As used in this administrative regulation, all terms shall have the meaning given them in 401 KAR Chapters 30 through 36.

Section 2. Applicability. (1) This administrative regulation applies to owners and operators of facilities that treat, store, or dispose of hazardous wastes except as provided in 401 KAR 34:010.

(2) Except as provided in Section 16 of this administrative regulation, this administrative regulation applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least ten (10) percent by weight that are managed in:

(a) Units that are subject to the permitting requirements of 401 KAR Chapter 38; or

(b) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of 401 KAR Chapter 38.

(3) If the owner or operator of equipment subject to the requirements of Sections 3 to 16 of this administrative regulation has received a permit under KRS 224.46-520 or 224.46-530 prior to December 21, 1990, the requirements of Sections 3 to 16 of this administrative regulation shall be incorporated when the permit is reissued under Section 12 of 401 KAR 38:050 or reviewed under Section 5 of 401 KAR 38:040.

(4) Each piece of equipment to which this administrative regulation applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(5) Equipment that is in vacuum service is excluded from the requirements of Sections 3 to 11 of this administrative regulation of it is identified as required in Section 16(7)(e) of this administrative regulation.

Section 3. Standards: Pumps in Light Liquid Service. (1)(a) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in Section 14(2) of this administrative regulation, except as provided in subsections (4), (5), and (6) of this section.

(b) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(2)(a) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(b) If there are indications of liquids dripping from the pump seal, a leak is detected.

(3)(a) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 10 of this administrative regulation.

(b) A first attempt at repair (tightening the packing gland for example) shall be made no later than five (5) calendar days after each leak is detected.

(4) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system that is exempt from the requirements of subsection (1) of this section, provided the following requirements are met:

(a) Each dual mechanical seal system shall be:

1. Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

2. Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of Section 11 of this administrative regulation; or

3. Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(b) The barrier fluid system shall not be a hazardous waste with organic concentrations ten (10) percent or greater by weight.

(c) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(d) Each pump shall be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(e)1. Each sensor as described in paragraph (c) of this subsection shall be checked daily or be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly.

2. The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f)1. If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (e)2 of this sibsection, a leak is detected.

2. When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 10 of this administrative regulation.

3. A first attempt at repair (relapping the seal for example) shall be made no later than five (5) calendar days after each leak is detected.

(5) Any pump that is designated, as described in Section 15(7)(b) of this administrative regulation, for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsections (1), (3), and (4) of this section if the pump meets the following requirements:

(a) Shall have no externally actuated shaft penetrating the pump housing.

(b) Shall operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in Section 14(3) of this administrative regulation.

(c) Shall be tested for compliance with paragraph (b) of this subsection initially upon designating, annually, and at other times as requested by the cabinet.

(6) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of Section 11 of this administrative regulation, it is exempt from the requirements of subsections (1) to (5) of this section.

Section 4. Standards: Compressors. (1) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in subsections (8) and (9) of this section.

(2) Each compressor seal system as required in subsection (1) of this section shall be:

(a) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure; or

(b) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of Section 11 of this administrative regulation; or

(c) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.

(3) The barrier fluid shall not be a hazardous waste with organic concentrations ten (10) percent or greater by weight.

(4) Each barrier fluid system as described in subsection (1) through (3) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(5)(a) Each sensor as required in subsection (4) of this section shall be checked daily or shall be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor shall be checked daily.

(b) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under subsection (5)(b) of this section, a leak is detected.

(7)(a) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 10 of this administrative regulation.

(b) A first attempt at repair (tightening the packing gland for example) shall be made no later than five (5) calendar days after each leak is detected.

(8) A compressor is exempt from the requirements of subsections (1) and (2) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of Section 11 of this administrative regulation, except as provided in subsection (9) of this section.

(9) Any compressor that is designated, as described in Section 15(7)(b) of this administrative regulation, for no detectable emissions as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of subsections (1) to (8) of this section if the compressor:

(a) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 14(3) of this administrative regulation.

(b) Is tested for compliance with paragraph (a) of this subsection initially upon designation, annually, and at other times as requested by the cabinet.

Section 5. Standards: Pressure Relief Devices in Gas/Vapor Service. (1) Except during pressure releases, each pressure relief

device in gas and vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 14(3) of this administrative regulation.

(2)(a) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than five (5) calendar days after each pressure release, except as provided in Section 10 of this administrative regulation.

(b) No later than five (5) calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 14(3) of this administrative regulation.

(3) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Section 11 of this administrative regulation is exempt from the requirements of subsections (1) and (2) of this section.

Section 6. Standards: Sampling Connecting Systems. (1) Each sampling connection system shall be equipped with a closed purge system or closed-vent system.

(2) Each closed-purge system or closed-vent system as required in subsection (1) of this section shall:

(a) Return the purged hazardous waste stream directly to the hazardous waste stream directly to the hazardous waste management process line with no detectable emissions to atmosphere; or

(b) Collect and recycle the purged hazardous waste stream with no detectable emissions to atmosphere; or

(c) Be designed and operated to capture and transport all the purged hazardous waste stream to a control device that complies with the requirements of Section 11 of this administrative regulation.

(3) In situ sampling systems are exempt from the requirements of subsections (1) and (2) of this section.

Section 7. Standards: Open-ended Valves or Lines. (1)(a) Each open-ended valve or line shall be equipped with a cap, blind, flange, plug, or a second valve.

(b) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous waste stream end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with subsection (1) of this section at all other times.

Section 8. Standards: Valves in Gas and Vapor Service or in Light Liquid Service. (1) Each valve in gas and vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in Section 14(2) of this administrative regulation and shall comply with subsections (2) to (5) of this section, except as provided in subsections (6), (7), and (8) of this section, and Sections 12 and 13 of this administrative regulation.

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3)(a) Any valve for which a leak is not detected for two (2) successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(b) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two (2) successive months.

(4)(a) When a leak is detected, it shall be repaired as soon as practicable, but no later than fifteen (15) calendar days after each leak is detected, except as provided in Section 10 of this administrative regulation.

(b) A first attempt at repair shall be made no later than five (5) calendar days after each leak is detected.

(5) First attempts at repair include, but are not limited to, the following best practices where practicable:

(a) Tightening of bonnet bolts.

(b) Replacement of bonnet bolts.

(c) Tightening of packing gland nuts.

(d) Injection of lubricant into lubricated packing.

(7) Any valve that is designated, as described in Section 15(7)(b) of this administrative regulation, for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsection (1) of this section if the valve:

(a) Has no external actuating mechanism in contact with the hazardous waste stream.

(b) Is operated with emissions less than 500 ppm above background as determined by the method specified in Section 14(3) of this administrative regulation.

(c) Is tested for compliance with subsection (6)(b) of this section initially upon designation, annually, and at other times as requested by the cabinet.

(8) Any valve that is designated, as described in Section 15(8)(a) of this administrative regulation, as an unsafe-to-monitor valve is exempt from the requirements of subsection (1) of this section if:

(a) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection (1) of this section.

(b) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(9) Any valve that is designated, as described in Section 15(8)(b) of this administrative regulation, as a difficult-to-monitor valve is exempt from the requirements of subsection (1) of this section if:

(a) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than two (2) meters above a support surface.

(b) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990.

(c) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

Section 9. Standards: Pumps and Valves in Heavy Liquid Service, Pressure Relief Devices in Light Liquid or Heavy Liquid Service, and Flanges and Other Connectors. (1) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within five (5) days by the method specified in Section 14(2) of this administrative regulation if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3)(a) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 10 of this administrative regulation.

(b) The first attempt at repair shall be made no later than five (5) calendar days after each leak is detected.

(c) First attempts at repair include, but are not limited to, the best practices described under Section 8(5) of this administrative regulation.

Section 10. Standards: Delay of Repair. (1) Delay of repair of equipment for which leaks have been detected shall be allowed if the

repair is technically infeasible without a hazardous waste management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous waste management unit shutdown.

(2) Delay of repair of equipment for which leaks have been detected shall be allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least ten (10) percent by weight.

(3) Delay of repair for valves shall be allowed if:

(a) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(b) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with Section 13 of this administrative regulation.

(4) Delay of repair for pumps shall be allowed if:

(a) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(b) Repair is completed as soon as practicable, but not later than six (6) months after the leak was detected.

(5) Delay of repair beyond a hazardous waste management unit shutdown shall be allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assemblies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous waste management unit shutdown shall not be allowed unless the next hazardous waste management unit shutdown occurs sooner than six (6) months after the first hazardous waste management unit shutdown.

Section 11. Standards: Closed-vent Systems and Control Devices. Owners or operators of closed-vent systems and control devices shall comply with the provisions of Section 4 of 401 KAR 34:240.

Section 12. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service; Percentage of Valves Allowed to Leak. (1) An owner or operator subject to the requirements of Section 8 of this administrative regulation may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than two (2) percent of the valves to leak.

(2) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing two (2) percent of valves to leak;

(a) An owner or operator shall notify the cabinet that the owner or operator has elected to comply with the requirements of this administrative regulation.

(b) A performance test as specified in subsection (3) of this section shall be conducted initially upon designation, annually, and at other times as requested by the cabinet.

(c) If a valve leak is detected, it shall be repaired in accordance with Section 8(4) and (5) of this administrative regulation.

(3) Performance tests shall be conducted in the following manner:

(a) All valves subject to the requirements in Section 8 of this administrative regulation within the hazardous waste management unit shall be monitored within one (1) week by the methods specified in Section 14(2) of this administrative regulation.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c) The leak percentage shall be determined by dividing the number of valves subject to the requirements in Section 8 of this administrative regulation for which leaks are detected by the total number of valves subject to the requirements in Section 8 of this administrative regulation within the hazardous waste management unit.

(4) If an owner or operator decides to comply with this section no longer, the owner or operator shall notify the cabinet in writing that the work practice standard described in Section 8(1) to (5) of this administrative regulation shall be followed.

Section 13. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service; Skip Period Leak Detection and Repair. (1)(a) An owner or operator subject to the requirements of Section 8 of this administrative regulation may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in subsections (2)(b) and (c) of this section.

(b) An owner or operator shall notify the cabinet before implementing one (1) of the alternative work practices.

(2)(a) An owner or operator shall comply with the requirements for valves, as described in Section 8 of this administrative regulation, except as described in paragraphs (b) and (c) of this subsection.

(b) After two (2) consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two (2) percent, an owner or operator may begin to skip one (1) of the quarterly leak detection periods for the valves subject to the requirements in Section 8 of this administrative regulation.

(c) After five (5) consecutive quarterly leak detection period with the percentage of valves leaking equal to or less than two (2) percent, an owner or operator may begin to skip three (3) of the quarterly leak detection periods for the valves subject to the requirements in Section 8 of this administrative regulation.

(d) If the percentage of valves leaking is greater than two (2) percent, the owner or operator shall monitor monthly in compliance with the requirements in Section 8 of this administrative regulation, but may again elect to use this section after meeting the requirements of Section 8(3)(a) of this administrative regulation.

Section 14. Test Methods and Procedures. (1) Each owner or operator subject to the provisions of this administrative regulation shall comply with the test methods and procedures requirements of this section.

(2) Leak detection monitoring, as required in Sections 3 to 13 of this administrative regulation, shall comply with the following requirements:

(a) Monitoring shall comply with Reference Method 21 in 40 CFR Part 60.

(b) The detection instrument shall meet the performance criteria of Reference Method 21.

(c) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(d) Calibration gases shall be:

1. Zero air (less than ten (10) ppm of hydrocarbon in air).

2. A mixture of methane or n-hexene and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexene.

(e) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(3) When equipment is tested for compliance with no detectable emissions, as required in Sections 3(5), 4(10), 5, 8(6) of this administrative regulation, the test shall comply with the following requirements:

(a) The requirements of subsections (2)(a) to (d) of this section shall apply.

(b) The background level shall be determined as set forth in Reference Method 21.

(c) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(d) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(4) In accordance with the waste analysis plan required by Section 4(2) of 401 KAR 34:020, an owner or operator of a facility shall determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds ten (10) percent by weight using the following:

(a) Methods described in ASTM Methods D 2267-88, E 169-87, E-168-88, E 260-85;

(b) Method 9060 or 8240 of SW-846; or

(c) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than ten (10) percent, or prior specification analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(5) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least ten (10) percent by weight, the determination can be revised only after following the procedures in subsection (4)(a) or (b) of this section.

(6) When an owner or operator and the cabinet do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least ten (10) percent by weight, the procedures in subsection (4)(a) or (b) of this section can be used to resolve the dispute.

(7) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

(8) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D-2879-86.

(9) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of Section 5(3)(a) to (d) of 401 KAR 34:275.

Section 15. Recordkeeping Requirements. (1)(a) Each owner or operator subject to the provisions of this administrative regulation shall comply with the recordkeeping requirements of this section.

(b) An owner or operator of more than one (1) hazardous waste management unit subject to the provisions of this administrative regulation may comply with the recordkeeping requirements for these hazardous waste management units in one (1) recordkeeping system if the system identifies each record by each hazardous waste management unit.

(2) Owners and operators shall record the following information in the facility operating record:

(a) For each piece of equipment to which this administrative regulation applies:

1. Equipment identification number and hazardous waste management unit identification.

2. Approximate locations within the facility (for example, identify the hazardous waste management unit on a facility plot plan).

3. Type of equipment (a pump or pipeline valve for example).

4. Percent-by-weight total organics in the hazardous waste stream at the equipment.

5. Hazardous waste state at the equipment (gas and vapor or liquid for example).

6. Method of compliance with the standard (for example "monthly leak detection and repair" or "equipped with dual mechanical seals").

(b) An implementation schedule as specified in Section 4(2) of 401 KAR 34:275 for facilities that comply with the provisions of Section 4(2) of 401 KAR 34:275.

(c) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in Section 6(2)(c) of 401 KAR 34:275.

(d) Documentation of compliance with Section 11 of this administrative regulation, including the detailed design documentation or performance test result specified in Section 6(2)(d) of 401 KAR 34:275.

(3) When each leak is detected as specified in Sections 3, 4, 8, and 9 of this administrative regulation, the following requirements apply:

(a) A weatherproof and readily visible identification marked with the equipment identification number, the date evidence of a potential leak was found in accordance with Section 9(1) of this administrative regulation, and the date the leak was detected, shall be attached to the leaking equipment.

(b) The identification on equipment except on a valve, may be removed after it has been repaired.

(c) The identification on a valve may be removed after it has been monitored for two (2) successive months as specified in Section 8(3) of this administrative regulation and no leak has been detected during those two (2) months.

(4) When each leak is detected as specified in Sections 4, 8, and 9 of this administrative regulation, the following information shall be recorded in an inspection log and shall be kept in the facility operating record:

(a) The instrument and operator identification numbers and the equipment identification number.

(b) The date evidence of a potential leak was found in accordance with Section 9(1) of this administrative regulation;

(c) The date the leak was detected and the dates of each attempt to repair the leak;

(d) Repair methods applied in each attempt to repair the leak;

(e) "Above 10,000" if the maximum instrument reading measured by the methods specified in Section 14(2) of this administrative regulation after each repair attempt is equal to or greater than 10,000 ppm;

(f) "Repair delayed" and the reason for the delay if a leak is not repaired within fifteen (15) calendar days after discovery of the leak.

(g) Documentation supporting the delay of repair of a valve in compliance with Section 10(3) of this administrative regulation;

(h) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without hazardous waste management unit shutdown;

(i) The expected date of successful repair of the leak if a leak is not repaired within fifteen (15) calendar days; and

(j) The date of successful repair of the leak.

(5) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Section 11 of this administrative regulation shall be recorded and kept up-to-date in the facility operating record as specified in Section 6(3) of 401 KAR 34:275. Design documentation is specified in Section 6(3)(a) and (b) of 401 KAR 34:275 and monitoring, operating, and inspection information in Section 6(3)(c) to (h) of 401 KAR 34:275.

(6) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the cabinet shall specify the appropriate recordkeeping requirements.

(7) The following information pertaining to all equipment subject to the requirements in Sections 3 to 11 of this administrative regulation shall be recorded in a log that is kept in the facility operating record:

(a) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this administrative regulation.

(b)1. A list of identification numbers for equipment that the owner

or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of Sections 3(5), 4(9), and 8(6) of this administrative regulation.

2. The designation of this equipment as subject to the requirements of Sections 3(5), 4(9), and 8(6) of this administrative regulation shall be signed by the owner or operator.

(c) A list of equipment identification numbers for pressure relief devices required to comply with Section 5(1) of this administrative regulation.

(d)1. The dates of each compliance test required in Sections 3(5), 4(9), 5, and 8(6) of this administrative regulation.

2. The background level measured during each compliance test.

3. The maximum instrument reading measured at the equipment during each compliance test.

(e) A list of identification numbers for equipment in vacuum service.

(8) The following information pertaining to all valves subject to the requirements of Section 8(7) and (8) of this administrative regulation shall be recorded in a log that is kept in the facility operating record:

(a) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(b) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(9) The following information shall be recorded in the facility operating record for valves complying with Section 13 of this administrative regulation:

(a) A schedule of monitoring;

(b) The percent of valves found leaking during each monitoring period.

(10) The following information shall be recorded in a log that is kept in the facility operating record:

(a) Criteria required in Sections 3(4)(e)2 and 4(5)(b) of this administrative regulation and an explanation of the design criteria.

(b) Any changes to these criteria and the reasons for the changes.

(11) The following information shall be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in Section 2 of this administrative regulation.

(a) An analysis determining the design capacity of the hazardous waste management unit.

(b) A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in Sections 3 to 11 of this administrative regulation and an analysis determining whether these hazardous wastes are heavy liquids.

(c) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in Sections 3 to 11 of this administrative regulation. The record shall include supporting documentation as required by Section 14(4)(c) of this administrative regulation when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action (changing the process that produced the waste for example) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in Sections 3 to 11 of this administrative regulation, than a new determination is required.

(12) Records of the equipment leak information required by subsection (4) of this section and the operating information required by subsection (5) of this section need be kept only three (3) years.

(13) The owner or operator of any facility that is subject to this administrative regulation and to regulations at 40 CFR 60 Subpart VV or 40 CFR 61 Subpart V, may elect to determine compliance with this subpart, or pursuant to Section 16 of this administrative regulation, or pursuant to those provisions of 40 CFR 60 or 40 CFR 61 to the extent that the documentation required under this section. The documentation under the regulation at 40 CFR 60 or 40 CFR 61 duplicates the documentation required under this section. The documentation under 40 CFR 60 or 40 CFR 61 shall be kept with or made readily available with the facility operating record.

Section 16. Reporting Requirements. (1) A semiannual report shall be submitted by owners and operators subject to the requirements of this subpart to the cabinet by dates specified by the cabinet. The report shall include the following information:

(a) The U.S. EPA identification number, name, and address of the facility.

(b) For each month during the semiannual reporting period:

1. The equipment identification number of each valve for which a leak was not repaired as required in Section 4(7) of this administrative regulation.

2. The equipment identification number of each compressor for which a leak was not repaired in Section 4(7) of 401 KAR 35:280.

3. The equipment identification number of each compressor for which a leak was not repaired as required in Section 4(7) of this administrative regulation.

(c) Dates of hazardous waste management unit shutdowns that occurred within the semiannual reporting period.

(d) For each month during the semiannual reporting period, dates when the control device installed as required by Sections 3 to 6 of this administrative regulation exceeded or operated outside of the design specifications as defined in Section 15(5) of this administrative regulation and as indicated by the control device monitoring required by Section 11 of this administrative regulation and was not corrected within twenty-four (24) hours, the duration and cause of each exceedance, and any corrective measures taken.

(2) If, during the semiannual reporting period, leaks from valves, pumps, and compressors are repaired as required in Sections 3(3), (4)(f), 4(7), and 8(4) of this administrative regulation, respectively, and the control device does not exceed or operate outside of the design specifications as defined in Section 15(5) of this administrative regulation for more than twenty-four (24) hours, a report to the cabinet shall not be required.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 13, 1993
FILED WITH LRC: October 14, 1993 at 3p.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 proposed administrative regulation affects owners or operators of equipment that comes in contact with hazardous waste.

(a) Direct and indirect costs or savings to those affected:

1. First year: This proposed administrative regulation 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 implementing and monitoring this proposed 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: The cabinet will have an increased amount of paperwork associated with this proposed administrative regulation.

(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 administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

Tiering: Was tiering applied? Yes. 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 264.250 to .259, however, there is no actual federal mandate to adopt this administrative regulation. 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 proposed administrative regulation 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 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: Not applicable.

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

401 KAR 34:285. Drip pads.

RELATES TO: KRS 224.10-224.40, 224.46, 224.70, 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 224.46-520 and to establish standards for drip pads.

Section 1. Applicability. (1) The requirements of this administrative regulation apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and surface water run-on to an associated collection system. Existing drip pads are those constructed before the effective date of this administrative regulation and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to the effective date of this administrative regulation. All other drip pads are new drip pads. The requirements at Section 4(2)(c) of this administrative regulation to install a leak collection system applies only to those drip pads that are constructed after the effective date of this administrative regulation except for those constructed after the effective date of this administrative regulation for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to the effective date of this administrative regulation.

(2) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under Section 4(5) or (6) of this administrative regulation as appropriate.

(3) The requirements of this administrative regulation are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(a) The owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage.

(b) At a minimum, the contingency plan shall describe how the owner or operator will do the following:

1. Clean up the drippage;

2. Document the cleanup of the drippage;

3. Retain documents regarding cleanup for three (3) years; and

4. Manage the contaminated media in a manner consistent with 401 KAR Chapters 31 to 38.

Section 2. Assessment of Existing Drip Pad Integrity. (1) For each

existing drip pad as defined in Section 1 of this administrative regulation, the owner or operator shall evaluate the drip pad and determine that it meets all of the requirements of this administrative regulation, except the requirements for liners and leak detection systems of Section 4(2) of this administrative regulation. The owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an engineer that attests to the results of the evaluation. The assessment shall be reviewed, updated and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of Section 4 of this administrative regulation are complete. The evaluation shall document the extent to which the drip pad meets each of the design and operating standards of Section 4 of this administrative regulation, except the standards for liners and leak detection systems, specified in Section 4(2) of this administrative regulation.

(2) The owner or operator shall develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of Section 4(2) of this administrative regulation, and submit the plan to the cabinet no later than two (2) years before the date that all repairs, upgrades, and modifications shall be complete. This written plan shall describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of Section 4 of this administrative regulation. The plan shall be reviewed and certified by an engineer.

(3) Upon completion of all upgrades, repairs, and modifications, the owner or operator shall submit to the cabinet the as-built drawings for the drip pad together with a certification by an engineer attesting that the drip pad conforms to the drawings.

(4) If the drip pad is found to be leaking or unfit for use, the owner or operator shall comply with the provisions of Section 4(13) of this administrative regulation or close the drip pad in accordance with Section 6 of this administrative regulation.

Section 3. Design and Installation of New Drip Pads. Owners and operators of drip pads shall ensure that the pads are designed, installed, and operated in accordance with one (1) of the following:

(1) All of the requirements of Sections 4 (except Section 4(1)(d)), 5, and 6 of this administrative regulation; or

(2) All of the requirements of Sections 4 (except Section 4(2)), 5, and 6 of this administrative regulation.

Section 4. Design and Operating Requirements. (1) Drip pads shall:

(a) Be constructed of noneartherm materials, excluding wood and nonstructurally supported asphalt;

(b) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(c) Have a curb or berm around the perimeter;

(d) Be impermeable (concrete pads shall be sealed, coated, or covered with an impermeable material for example) such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system; and

1. Have a hydraulic conductivity of less than or equal to $1x10^{-7}$ centimeters per second; (for example, existing concrete drip pads shall be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to $1x10^{-7}$ centimeters per second) such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material shall be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material shall be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with Section 3(1) of this administrative regulation instead of Section 3(2) of this administrative regulation.

2. The owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an engineer that attests to the results of the evaluation. The assessment shall be reviewed, updated, and recertified annually. The evaluation shall document the extent to which the drip pad meets the design and operating standards of this section, except for subsection (2) of this section.

(e) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of daily operations, (for example, variable and moving loads such as vehicle traffic, movement of wood).

(2) A new drip pad or an existing drip pad, after the deadline established in Section 2(2) of this administrative regulation, shall have:

(a) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner shall be constructed of materials that shall prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or groundwater or surface water 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 drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

2. 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 or uplift; and

3. Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(b) A leakage detection system immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system shall be:

1. Constructed of materials that are:

a. Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

b. Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad;

2. Designed and operated to function without clogging through the scheduled closure of the drip pad; and

3. Designed so that it shall detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

(c) A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed shall be documented in the operating log.

1. The drip pad surface shall be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other material on the drip pad.

2. The owner or operator shall document the date and time of each cleaning and the cleaning procedure used in the facility's

operating log. The owner or operator shall determine if the residues are hazardous under Section 3 of 401 KAR 32:030 and, if so, shall manage them under 401 KAR Chapters 31 to 38 and Section 3010 of RCRA.

(3) Drip pads shall be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

(4) The drip pad and associated collection system shall be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(5) Unless protected by a structure, as described in Section 1(2) of this administrative regulation, the owner or operator shall design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a twenty-four (24) hour, twenty-five (25) year storm, unless the system has sufficient excess capacity to contain any run-off that might enter the system.

(6) Unless protected by a structure or cover as described in Section 1(2) of this administrative regulation, 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.

(7) The drip pad shall be evaluated to determine that it meets the requirements of subsections (1) to (6) of this section and the owner or operator shall obtain a statement from an engineer certifying that the drip pad design meets the requirements of this section.

(8) Drippage and accumulated precipitation shall be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(9) The drip pad surface shall be cleaned thoroughly at least once every seven (7) days such that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator shall document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

(10) Drip pads shall be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(11) After being removed from the treatment vessel, treated wood from pressure and nonpressure processes shall be held on the drip pad until drippage has ceased. The owner or operator shall maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(12) Collection and holding units associated with run-on and run-off control systems shall be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(13) Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition shall be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(a) Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage in the leak detection system), the owner or operator shall:

1. Enter a record of the discovery in the facility operating log;

2. Immediately remove the portion of the drip pad affected by the condition from service;

3. Determine what steps shall be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs;

4. Within twenty-four (24) hours after discovery of the condition, notify the cabinet of the condition and, within ten (10) working days, provide written notice to the cabinet with a description of the steps that shall be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

(b) The cabinet shall review the information submitted, make a determination regarding whether the pad shall be removed from service completely or partially until repairs and clean up are complete and notify the owner or operator of the determination and the underlying rationale in writing.

(c) Upon completing all repairs and clean up, the owner or operator shall notify the cabinet in writing and provide a certification signed by an engineer that the repairs and clean up have been completed according to the written plan submitted in accordance with paragraph (a)4 of this subsection.

(14) If a permit is necessary, 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.

(15) The owner or operator shall maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This shall include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

Section 5. Inspections. (1) During construction or installation, liners and cover systems (membranes, sheets, or coatings for example) shall be inspected for uniformity, damage and imperfections (examples are, holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners shall be inspected and certified as meeting the requirements of Section 4 of this administrative regulation by an engineer. This certification shall be maintained at the facility as part of the facility operating record. After installation, liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(2) While a drip pad 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) The presence of leakage in and proper functioning of leak detection system.

(c) Deterioration or cracking of the drip pad surface.

Section 6. Closure. (1) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (examples are, pad, liners), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(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 close the facility and perform postclosure care in accordance with closure and postclosure care requirements that apply to landfills (Section 6 of 401 KAR 34:230). For permitted units, the requirement to have a permit continues throughout the postclosure period. In addition, for the purpose of closure, postclosure, and financial responsibility, such a drip pad 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 and 34:080.

(3)(a) The owner or operator of an existing drip pad, as defined in Section 1 of this administrative regulation, that does not comply with the liner requirements of Section 4(2)(a) of this administrative regulation shall:

1. Include in the closure plan for the drip pad 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 in case not all contaminated subsoils can be practicably removed at closure; and

2. Prepare a contingent postclosure plan under of 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.

(b) The cost estimates calculated under Section 3 of 401 KAR 34:070 and Section 1 of 401 KAR 34:100 for closure and postclosure care of a drip pad subject to this section shall include the cost of complying with the contingent closure plan and the contingent postclosure plan, but are not required to include the cost of expected closure under subsection (1) of this section.

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 facilities that use drip pads to convey treated wood drippage, precipitation, and surface water run-on to an associated collection system.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation since the provisions in this proposed administrative regulation already apply to Kentucky facilities through federal regulation. Federal regulations promulgated by the authority of the hazardous and solid waste amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state regulation. Kentucky facilities are already subject to the cost of complying with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Any reporting or paperwork requirements required from Kentucky facilities went into effect in December 1990, December 1992 or June 1993 as a result of compliance with federal regulations. There are no additional requirement imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There may be minimal costs associated with complying with this administrative regulation since the provisions in this proposed administrative regulation and federal regulations promulgated by the authority of the hazardous and solid waste amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state regulation. Kentucky facilities are already subject to the cost of complying with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224. When the state receives authorization for this activity, additional costs will be incurred for review of notices from facilities where a release of hazardous waste has occurred.

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 report to the cabinet when a release of a hazardous waste has occurred. The cabinet will maintain records and will make a determination as to whether the dript pad will be removed from service completely or partially until repairs and cleanup are complete. The cabinet will be required to notify the owner or operator of the determination and the rational in writing.

(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 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 administrative regulation is taken from 40 CFR 264.570 through .575. However, there is no federal mandate to promulgate this administrative regulation. The provisions in this proposed administrative regulation and federal regulations promulgated by the authority of the hazardous and solid waste amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state regulation. Kentucky facilities are already subject to compliance with this administrative

regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224. 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 264.570 through .575.

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

401 KAR 35:275. Air emission standards for process vents (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 standards for air emissions for process vents.

Section 1. Definitions. As used in this administrative regulation, all terms have the meaning given them in KRS Chapter 224 and 401 KAR Chapters 30 to 36.

Section 2. Applicability. (1) This administrative regulation applies to owners and operators of facilities that treat, store, or dispose of hazardous wastes, except as provided in Section 1 of 401 KAR 35:010.

(2) Except for Section 5(4) and (5) of this administrative regulation, this administrative regulation applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least ten (10) ppmw, if these operations are conducted in:

(a) Units that are subject to the permitting requirements of part 270; or

(b) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of 401 KAR Chapter 38.

Section 3. Standards: Process Vents. (1) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous wastes with organic concentrations at least ten (10) ppmw shall either:

(a) Reduce total organic emissions from all affected process vents at the facility below one and four-tenths (1.4) kg/h (three (3) lb/h) and two and eight-tenths (2.8) Mg/yr (three and one-tenth (3.1) tons/yr); or

(b) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by ninety-five (95) weight percent.

(2) If the owner or operator installs a closed-vent system and control device to comply with the provisions of subsection (1) of this section, the closed-vent system and control device shall meet the requirements of Section 4 of this administrative regulation.

(3) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests shall conform with the requirements of Section 5(3) of this administrative regulation.

(4) When an owner or operator and the cabinet do not agree on determinations of vent emissions or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the test methods in Section 5(3) of this administrative regulation shall be used to resolve the disagreement.

Section 4. Standards: Closed-vent Systems and Control Devices. (1)(a) Owners or operators of closed-vent systems and control devices used to comply with provisions of this part shall comply with this section.

(b) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with this administrative regulation on December 21, 1990 shall prepare an implementation schedule that includes dates by which the closed-vent system and control device shall be installed and in operation. The controls shall be installed as soon as possible, but the implementation schedule may allow up to eighteen (18) months after December 21, 1990 for installation and start-up. All units that begin operation after December 21, 1990 shall comply with this administrative regulation immediately (that is, shall have control devices installed and operating on start-up of the affected unit); the two (2) year implementation schedule does not apply to these units.

(2) A control device involving vapor recovery (for example, a condenser or absorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of ninety-five (95) weight percent or greater unless the total organic emission limits of Section 3(1)(a) of this administrative regulation for all affected process vents can be attained at an efficiency less than ninety-five (95) weight percent.

(3) An enclosed combustion device (for example, a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by ninety-five (95) weight percent or greater; to achieve a total organic compound concentration of twenty (20) ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to three (3) percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame combustion zone of the boiler or process heater.

(4)(a) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in subsection (5)(a) of this section, except for periods not to exceed a total of five (5) minutes during any two (2) consecutive hours.

(b) A flare shall be operated with a flame present at all times, as determined by the methods specified in subsection (6)(b)3 of this section.

(c) A flare shall be used only if the net heating value of the gas being combusted is eleven and two-tenths (11.2) MJ/scm (300 Btu/scf) or greater, if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in subsection (5)(b) of this section.

(d)1. A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in subsection (5)(c) of this section, of less than eighteen and three-tenths (18.3) m/s (sixty (60) ft/s), except as provided in

subparagraphs 2 and 3 of this paragraph.

2. A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (5)(c) of this section, equal to or greater than eighteen and three-tenths (18.3) m/s (sixty (60) ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than thirty-seven and three-tenths (37.3) MJ/scm (1,000 Btu/scf).

3. A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subsection (5)(c) of this section, less than the velocity, V_{max}, as determined by the method specified in subsection (5)(d) of this section, and less than 122 m/s (400 ft/s) is allowed.

(e) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in subsection (5)(e) of this section.

(f) A flare used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(5)(a) Reference Method 22 in 40 CFR Part 60 (July 1, 1992) shall be used to determine the compliance of a flare with the visible emission provisions of this administrative regulation. The observation period is two (2) hours and shall be used according to Method 22.

(b) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K \left[\sum_{i=1}^{n} C_i H_i\right]$$

where:

1. H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at twenty-five (25) degrees Centigrade and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol istwenty (20) degrees Centigrade;

2. K = Constant, $1.74X10^{-7}$ (one (1)/ppm) (g mol/scm) (MJ/kcal); where standard temperature for (g mol/scm) is twenty (20) degrees Centigrade;

3. C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR Part 60 (July 1, 1992) and measured for hydrogen and carbon monoxide by ASTM D 1946-82 (incorporated by reference as specified in Section 3 of 401 KAR 30:010); and

4. H_i = Net heat of combustion of sample component i, kcal/g mol at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83 (incorporated by reference as specified in Section 3 of 401 KAR 30:010) if published values are not available or cannot be calculated.

(c) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR Part 60 (July 1, 1992) as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(d) The maximum allowed velocity in m/s, V_{max}, for a flare complying with subsection (4)(d)3. of this section shall be determined by the following equation:

$$\text{Log}_{10}(V_{max})=(H_T+28.8)/31.7$$

where:

1. H_T=The net heating value as determined in paragraph (e)(2) of this section.

2. 28.8=Constant,

3. 31.7=Constant.

(e) The maximum allowed velocity in m/s, V_{max}, for an air-assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084 (H_T)$$

where:

1. 8.706 = Constant.

2. 0.7084 = Constant.

3. H_T = The net heating value as determined in paragraph (b) of this subsection.

(6) The owner or operator shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(a) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet, but before being combined with other vent streams;

(b) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

1. For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus or minus one (1) percent of the temperature being monitored in degrees Centigrade or plus or minus five-tenths (0.5) degrees Centigrade, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone;

2. For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two (2) locations and have an accuracy of plus or minus one (1) percent of the temperature being monitored in degrees Centigrade or plus or minus five-tenths (0.5) degrees Cengirade, whichever is greater. One (1) temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet;

3. For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame;

4. For a boiler or process heater having a design heat input capacity less than forty-four (44) MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus or minues one (1) percent of the temperature being monitored in degrees Centigrade or plus or minus five-tenths (0.5) degrees Centigrade, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone;

5. For a boiler or process heater having a design heat input capacity greater than or equal to forty-four (44) MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used;

6. For a condenser, either:

a. A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or

b. A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two (2) locations and have an accuracy of plus or minus one (1) percent of the temperature being monitored in degrees Centigrade or plus or minus five-tenths (0.5) degrees Centigrade, whichever is greater. One (1) temperature sensor shall be installed at a location in the exhaust vent stream from the condenser, and a second temperature sensor shall be installed at a location in the coolant fluid exiting the condenser;

7. For a carbon adsorption system such as a fixed-bed carbon

absorber that regenerates the carbon bed directly in the control device, either:

a. A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed; or

b. A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle; and

(c) Inspect the readings from each monitoring device required by paragraphs (a) and (b) of this subsection at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this administrative regulation.

(7) An owner or operator using a carbon adsorption system, such as a fixed-bed carbon absorber that regenerates the carbon bed directly onsite in the control device, shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life required by Section 6(2)(d)3f of this administrative regulation.

(8) An owner or operator using a carbon adsorption system, such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one (1) of the following procedures:

(a) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than twenty (20) percent of the time required to consume the total carbon working capacity established as a requirement of Section 6(2)(d)3g of this administrative regulation, whichever is longer; or

(b) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval required by Section 6(2)(d)3g of this administrative regulation.

(9) An owner or operator of an affected facility seeking to comply with the provisions of this administrative regulation by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system shall develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(10)(a) Closed-vent systems shall be designed for and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the methods specified as Section 5(2) of this administrative regulation.

(b) Closed-vent systems shall be monitored to determine compliance with this section during the initial leak detection monitoring, which shall be conducted by the date that the facility becomes subject to the provisions of this section, annually, and at other times as requested by the cabinet.

(c) Detectable emissions, as indicated by an instrument reading greater than 500 ppm and visual inspections, shall be controlled as soon as practicable, but not later than fifteen (15) calendar days after the emission is detected.

(d) A first attempt at repair shall be made no later than five (5) calendar days after the emission is detected.

(11) Closed-vent systems and control devices used to comply with provisions of this administrative regulation shall be operated at all times when emissions may be vented to them.

Section 5. Test Methods and Procedures. (1) Each owner or operator subject to this administrative regulation shall comply with the test methods and procedures requirements provided in this section.

(2) When a closed-vent system is tested for compliance with no detectable emissions, as required in Section 4(10) of this administrative regulation, the test shall comply with the following requirements:

(a) Monitoring shall comply with Reference Method 21 in 40 CFR Part 60 (July 1, 1992).

(b) The detection instrument shall meet the performance criteria of Reference Method 21.

(c) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(d) Calibration gases shall be:

1. Zero air (less than ten (10) ppm of hydrocarbon in air); and

2. A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(e) The background level shall be determined as set forth in Reference Method 21.

(f) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(g) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(3) Performance tests to determine compliance with Section 3(1) of this administrative regulation and with the total organic compound concentration limit of Section 4(3) shall comply with the following:

(a) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

1. Method 2 in 40 CFR Part 60 (July 1, 1992) for velocity and volumetric flow rate.

2. Method 18 in 40 CFR Part 60 (July 1, 1992) for organic content.

3. Each performance test shall consist of three (3) separate runs; each run conducted for at least one (1) hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

4. Total organic mass flow rates shall be determined by the following equation:

$$E_h = Q_{sd} \left[\sum_{i=1}^{n} C_i MW_i\right] [0.0416] [10^{-6}]$$

where:

a. E_h = Total organic mass flow rate, kg/h;

b. Q_{sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

c. n = Number of organic compounds in the vent gas;

d. C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

e. MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

f. 0.0416 = Conversion factor for molar volume, kg-mol/m^3 (@ 293 K and 760 mm Hg); and

g. 10^{-6} = Conversion from ppm, ppm^{-1}.

5. The annual total organic emission rate shall be determined by the following equation:

$$E_A = (E_h)(H)$$

where:

a. E_A=Total organic mass emission rate, kg/y; and

b. E_h=Total organic mass flow rate for the process vent, kg/h; and

c. H=Total annual hours of operations for the affected unit, h.

6. Total organic emissions from all affected process vents at the

facility shall be determined by summing the hourly total organic mass emission rates (E_h, as determined in paragraph (a)4 of this subsection) and by summing the annual total organic mass emission rates (E_A, as determined in paragraph (a)5 of this subsection) for all affected process vents at the facility.

(b) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(c) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

1. Sampling ports adequate for the test methods specified in of this section; and

2 Safe sampling platform(s); and

3. Safe access to sampling platform(s); and

4. Utilities for sampling and testing equipment.

(d) For the purpose of making compliance determinations, the time-weighted average of the results of the three (3) runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one (1) of the three runs shall be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the cabinet's approval, be determined using the average of the results of the two (2) other runs.

(4) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this administrative regulation, the owner or operator shall make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than ten (10) ppmw using one (1) of the following two (2) methods:

(a) Direct measurement of the organic concentration of the waste using the following procedures:

1. The owner or operator shall take a minimum of four (4) grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

2. For waste generated onsite, the grab samples shall be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated off-site, the grab samples shall be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

3. Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8240 of SW-846 (incorporated by reference under in Section 3 of 401 KAR 30:010).

4. The arithmetic mean of the results of the analyses of the four (4) samples shall apply for each waste stream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit; or

(b) Using knowledge of the waste to determine that its total organic concentration is less than ten (10) ppmw. Documentation of the waste determination shall be required. Examples of documentation that may be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than ten (10) ppmw, or prior specification analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(5) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted annual average total organic concentrations less than ten (10) ppmw shall be made as follows:

(a) By December 21, 1990 or by the date when the waste is first managed in a waste management unit, whichever is later; and

(b) For continuously generated waste, annually; and

(c) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(6) When an owner or operator and the cabinet do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least ten (10) ppmw based on knowledge of the waste, the procedures in Method 8240 may be used to resolve the dispute.

Section 6. Recordkeeping Requirements. (1)(a) Each owner or operator subject to this administrative regulation shall comply with the recordkeeping requirements of this section.

(b) An owner or operator of more than one (1) hazardous waste management unit subject to the provisions of this administrative regulation may comply with the recordkeeping requirements for these hazardous waste management units in one (1) recordkeeping system if the system identifies each record by each hazardous waste management unit.

(2) Owners and operators shall record the following information in the facility operating record:

(a) For facilities that comply with the provisions of Section 4(1)(b) of this administrative regulation, an implementation schedule that includes dates by which the closed-vent system and control device shall be installed and in operation. The schedule shall also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule shall be in the facility operating record by December 21, 1990; and

(b) Up-to-date documentation of compliance with the process vent standards in Section 3 of this administrative regulation, including:

1. Information and data identifying all affected process vents, annual throughput, and operating hours of each affected unit; estimated emission rates for each affected vent and for the overall facility (that is, the total emissions for all affected vents at the facility); and the approximate location within the facility of each affected unit (for example, by identifying the hazardous waste management units on a facility plot plan); and

2. Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions shall be made using operating parameter values (for example, temperatures, flow rates or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (for example, managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination shall be required; and

(c) Where an owner or operator chooses to use test data to

determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan shall include:

1. A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

2. A detailed engineering description of the closed-vent system and control device including:

a. Manufacturer's name and model number of control device; b. Type of control device

c. Dimensions of the control device;

d. Capacity; and

e. Construction materials.

3. A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(d) Documentation of compliance with Section 4 of this administrative regulation shall include the following information:

1. A list of all information references and sources used in preparing the documentation.

2. Records, including the dates, of each compliance test required by Section 4(10) of this administrative regulation.

3. If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference in Section 3 of 401 KAR 30:010) or other engineering texts acceptable to the cabinet that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with clauses a to g of this subparagraph may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

a. For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

b. For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

c. For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

d. For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in Section 4(4) of this administrative regulation.

e. For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

f. For a carbon adsorption system such as a fixed-bed absorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling and drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

g. For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

4. A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

5. A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of ninety-five (95) percent or greater unless the total organic concentration limit of Section 3(1) of this administrative regulation is achieved at an efficiency less than ninety-five (95) weight percent or the total organic emission limits of Section 3(1) of this administrative regulation for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than ninety-five (95) weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

6. If performance tests are used to demonstrate compliance, all test results.

(3) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of this administrative regulation shall be recorded and kept up-to-date in the facility operating record. The information shall include:

(a) Description and date of each modification that is made to the closed-vent system or control device design.

(b) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Section 4(6)(a) and (b) of this administrative regulation.

(c) Monitoring, operating, and inspection information required by Section 4(6) to (10) of this administrative regulation.

(d) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

1. For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 seconds at a minimum temperature of 760 degrees Centigrade, period when the combustion temperature is below 760 degrees Centigrade;

2. For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of ninety-five (95) percent or greater, period when the combustion zone temperature is more than twenty-eight (28) degrees Centigrade below the design average combustion zone temperature established as a requirement of subsection (2)(d)3a of this section;

3. For a catalytic vapor incinerator, period when:

a. Temperature of the vent stream at the catalyst bed inlet is

more thantwenty-eight (28) degrees Centigrade below the average temperature of the inlet vent stream established as a requirement of subsection (2)(d)3b of this section; or

b. Temperature difference across the catalyst bed is less than eighty (80) percent of the design average temperature difference established as a requirement of subsection (2)(d)3b of this section;

4. For a boiler or process heater, period when:

a. Flame zone temperature is more than twenty-eight (28) degrees Centigrade below the design average flame zone temperature established as a requirement of subsection (2)(d)3c of this section; or

b. Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of subsection (2)(d)3c of this section;

5. For a flare, period when the pilot flame is not ignited;

6. For a condenser that complies with Section 4(6)(b)6a of this administrative regulation, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than twenty (20) percent greater than the design outlet organic compound concentration level established as a requirement of subsection (2)(d)3e of this section;

7. For a condenser that complies with Section 4(6)(b)6b of this administrative regulation, period when:

a. Temperature of the exhaust vent stream from the condenser is more than six (6) degrees Centigrade above the design average exhaust vent stream temperature established as a requirement of subsection (2)(d)3e of this section; or

b. Temperature of the coolant fluid exiting the condenser is more than six (6) degrees Centigrade above the design average coolant fluid temperature at the condenser outlet established as a requirement of subsection (2)(d)3e of this section;

8. For a carbon adsorption system such as a fixed-bed carbon absorber that regenerates the carbon bed directly onsite in the control device and complies with Section 4(6)(b)7a of this administrative regulation, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than twenty (20) percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of subsection (2)(d)3f of this section;

9. For a carbon adsorption system such as a fixed-bed carbon absorber that regenerates the carbon bed directly onsite in the control device and complies with Section 4(6)(b)7b period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of subsection (2)(d)3f of this section.

(e) Explanation for each period recorded under paragraph (d) of this subsection of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(f) For carbon adsorption systems operated subject to Section 4(7) or (8)(b) of this administrative regulation, date when existing carbon in the control device is replaced with fresh carbon.

(g) For carbon adsorption systems operated subject to Section 4(8)(a) of this administrative regulation, a log that records:

1. Date and time when control device is monitored for carbon breakthrough and the monitoring device reading; and

2. Date when existing carbon in the control device is replaced with fresh carbon.

(h) Date of each control device start-up and shutdown.

(4) Records of the monitoring, operating, and inspection information required by subsections (3)(c) to (h) of this section need be kept only three (3) years.

(5) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device shall be recorded in the facility operating record.

(6) Up-to-date information and data used to determine whether or not a process vent is subject to Section 3 of this administrative regulation including supporting documentation as required by Section 5(4)(b) of this administrative regulation when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.

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 sites or facilities that manage hazardous waste involving distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation since the provisions in this proposed administrative regulation already apply to Kentucky facilities through federal regulation. Federal regulations promulgated by the authority of the hazardous and solid waste amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to the cost of complying with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Any reporting or

paperwork requirements required from Kentucky facilities went into effect as a result of compliance with federal regulations. There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There may be minimal costs associated with complying with this administrative regulation since the provisions in this proposed administrative regulation already apply to Kentucky facilities through federal regulation. Federal regulations promulgated by the authority of the hazardous and solid waste amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to the cost of complying with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224. When the state receives authorization for this activity, additional costs will be incurred for review of semiannual reports from facilities.

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 semiannual reports to the cabinet. The cabinet will maintain records and will make a determination as to whether the dript pad will be removed from service completely or partially until repairs and cleanup are complete. The cabinet will be required to notify the owner or operator of the determination and the rationale in writing.

(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 265 Subpart AA. However, there is no federal mandate to promulgate this administrative regulation. The provisions in this proposed administrative regulation federal regulations promulgated by the authority of the hazardous and solid waste amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to compliance with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224. 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 265, Subpart AA.

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

401 KAR 35:280. Air emission standards for equipment leaks (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 and to establish standards for air emission and equipment leaks.

Section 1. Definitions. As used in this administrative regulation, all terms shall have the meaning given them in KRS Chapter 224 and 401 KAR Chapters 30 to 36.

Section 2. Applicability. (1) This administrative regulation applies to owners and operators of facilities that treat, store, or dispose of hazardous wastes, except as provided in Section 1 of 401 KAR 35:010.

(2) Except as provided in Section 10(10) of this administrative regulation, this administrative regulation applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least ten (10) percent by weight that are managed in:

(a) Units that are subject to the permitting requirements of 401 KAR Chapter 38; or

(b) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of 401 KAR Chapter 38.

(3) Each piece of equipment to which this administrative regulation applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(4) Equipment that is in vacuum service is excluded from the requirements of this section and Sections 3 to 11 of this administrative regulation if it is identified as required in Section 15(7)(e) of this administrative regulation.

Section 3. Standards: Pumps in Light Liquid Service. (1)(a) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in Section 14(2) of this administrative regulation, except as provided in subsections (4) to (6) of this section.

(b) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(2)(a) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(b) If there are indications of liquids dripping from the pump seal, a leak is detected.

(3)(a) When a leak is detected, it shall be repaired as soon as

practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 10 of this administrative regulation.

(b) A first attempt at repair (for example, tightening the packing gland) shall be made no later than five (5) calendar days after each leak is detected.

(4) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of subsection (1) of this section, provided the following requirements are met:

(a) Each dual mechanical seal system shall be:

1. Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

2. Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of Section 11 of this administrative regulation; or

3. Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(b) The barrier fluid system shall not be a hazardous waste with organic concentrations ten (10) percent or greater by weight.

(c) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(d) Each pump shall be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(e)1. Each sensor, as described in paragraph (c) of this subsection, shall be checked daily or be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly.

2. The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f)1. If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (e)2 of this subsection, a leak is detected.

2. When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 10 of this administrative regulation.

3. A first attempt at repair (for example, relapping the seal) shall be made no later than five (5) calendar days after each leak is detected.

(5) Any pump that is designated, as described in Section 15(7)(b) of this administrative regulation, for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsections (1), (3), and (4) of this section if the pump meets the following requirements:

(a) It shall have no externally actuated shaft penetrating the pump housing;

(b) It shall operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in Section 14(3) of this administrative regulation; and

(c) It shall be tested for compliance with paragraph (c) of this subsection initially upon designation, annually, and at other times as requested by the cabinet.

(6) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of Section 11 of this administrative regulation, it is exempt from the requirements of subsections (1) to (5) of this section.

Section 4. Standards: Compressors. (1) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in subsections (8) and (9) of this section.

(2) Each compressor seal system, as required in subsection (1) of this section, shall be:

(a) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure; or

(b) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of Section 11 of this administrative regulation; or

(c) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.

(3) The barrier fluid shall not be a hazardous waste with organic concentrations ten (10) percent or greater by weight.

(4) Each barrier fluid system as described in subsections (1) to (3) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(5)(a) Each sensor as required in subsection (4) of this section shall be checked daily or shall be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor shall be checked daily.

(b) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under subsection (5)(b) of this section, a leak is detected.

(7)(a) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 10 of this administrative regulation.

(b) A first attempt at repair (for example, tightening the packing gland) shall be made no later than five (5) calendar days after each leak is detected.

(8) A compressor is exempt from the requirements of subsections (1) and (2) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of Section 11 of this administrative regulation, except as provided in subsection (9) of this section.

(9) Any compressor that is designated, as described in Section 15(8)(b), for no detectable emission as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of subsections (1) to (8) of this section if the compressor:

(a) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 14(3) of this administrative regulation; and

(b) Is tested for compliance with paragraph (a) of this subsection initially upon designation, annually, and at other times as requested by the cabinet.

Section 5. Standards: Pressure Relief Devices in Gas and Vapor Service. (1) Except during pressure releases, each pressure relief device in gas and vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 14(3) of this administrative regulation.

(2)(a) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than five (5) calendar days after each pressure release, except as provided in Section 10 of this administrative regulation.

(b) No later than five (5) calendar days after the pressure release the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method

specified in Section 14(3) of this administrative regulation.

(3) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Section 11 of this administrative regulation is exempt from the requirements of subsections (1) and (2) of this section.

Section 6. Standards: Sampling Connecting Systems. (1) Each sampling connection system shall be equipped with a closed-purge system or closed-vent system.

(2) Each closed-purge system or closed-vent system as required in subsection (1) of this section shall:

(a) Return the purged hazardous waste stream directly to the hazardous waste management process line with no detectable emissions to atmosphere; or

(b) Collect and recycle the purged hazardous waste stream with no detectable emissions to atmosphere; or

(c) Be designed and operated to capture and transport all the purged hazardous waste stream to a control device that complies with the requirements of Section 11 of this administrative regulation.

(3) In situ sampling systems are exempt from the requirements of subsections (1) and (2) of this section.

Section 7. Standards: Open-ended Valves or Lines. (1)(a) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(b) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous waste stream end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves, but shall comply with subsection (1) of this section at all other times.

Section 8. Standards: Valves in Gas and Vapor Service or in Light Liquid Service. (1) Each valve in gas and vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in Section 14(2) of this administrative regulation and shall comply with subsections (2) to (5) of this section, except as provided in subsections (6), (7), and (8) of this section and Sections 12 and 13 of this administrative regulation.

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3)(a) Any valve for which a leak is not detected for two (2) successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(b) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two (2) successive months.

(4)(a) When a leak is detected, it shall be repaired as soon as practicable, but no later than fifteen (15) calendar days after the leak is detected, except as provided in Section 10 of this administrative regulation.

(b) A first attempt at repair shall be made no later than five (5) calendar days after each leak is detected.

(5) First attempts at repair include, but are not limited to, the following best practices where practicable:

(a) Tightening of bonnet bolts;

(b) Replacement of bonnet bolts;

(c) Tightening of packing gland nuts;

(d) Injection of lubricant into lubricated packing.

(6) Any valve that is designated, as described in Section 15(7)(b) of this administrative regulation, for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of subsection (1) of this section if the valve:

(a) Has no external actuating mechanism in contact with the hazardous waste stream;

(b) Is operated with emissions less than 500 ppm above background as determined by the method specified in Section 14(3) of this administrative regulation; and

(c) Is tested for compliance with paragraph (b) of this subsection initially upon designation, annually, and at other times as requested by the cabinet.

(7) Any valve that is designated, as described in Section 15(8)(a) of this administrative regulation, as an unsafe-to-monitor valve is exempt from the requirements of subsection (1) of this section if:

(a) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection (1) of this section; and

(b) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(8) Any valve that is designated, as described in Section 15(8)(b) of this administrative regulation, as a difficult-to-monitor valve is exempt from the requirements of subsection (1) of this section if:

(a) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than two (2) meters above a support surface; and

(b) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990;

(c) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

Section 9. Standards: Pumps and Valves in Heavy Liquid Service, Pressure Relief Devices in Light Liquid or Heavy Liquid Service, and Flanges and Other Connectors. (1) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within five (5) days by the method specified in Section 14(2) of this administrative regulation if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3)(a) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in Section 10 of this administrative regulation.

(b) The first attempt at repair shall be made no later than five (5) calendar days after each leak is detected.

(4) First attempts at repair include, but are not limited to, the best practices described under Section 8(5) of this administrative regulation.

Section 10. Standards: Delay of Repair. (1) Delay of repair of equipment for which leaks have been detected may be allowed if the repair is technically infeasible without a hazardous waste management unit shutdown. In this case, repair of this equipment shall occur before the end of the next hazardous waste management unit shutdown.

(2) Delay of repair of equipment for which leaks have been detected may be allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least ten (10) percent by weight.

(3) Delay of repair for valves may be allowed if:

(a) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair; and

(b) When repair procedures are effected, the purged material is

collected and destroyed or recovered in a control device complying with Section 11 of this administrative regulation.

(4) Delay of repair for pumps may be allowed if:

(a) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system; and

(b) Repair is completed as soon as practicable, but not later than six (6) months after the leak was detected.

(5) Delay of repair beyond a hazardous waste management unit shutdown may be allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous waste management unit shutdown shall not be allowed unless the next hazardous waste management unit shutdown occurs sooner than six (6) months after the first hazardous waste management unit shutdown.

Section 11. Standards: Closed-vent Systems and Control Devices. Owners or operators of closed-vent systems and control devices shall comply with the provisions of Section 4 of 401 KAR 35:275.

Section 12. Alternative Standards for Valves in Gas and Vapor Service or in Light Liquid Service: Percentage of Valves Allowed to Leak. (1) An owner or operator subject to the requirements of Section 8 of this administrative regulation may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than two (2) percent of the valves to leak.

(2) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing two (2) percent of valves to leak:

(a) The owner or operator shall notify the cabinet that the owner or operator has elected to comply with the requirements of this section;

(b) A performance test as specified in subsection (3) of this section shall be conducted initially upon designation, annually, and at other times requested by the cabinet; and

(c) If a valve leak is detected, it shall be repaired in accordance with Section 8(4) and (5) of this administrative regulation.

(3) Performance tests shall be conducted in the following manner:

(a) All valves subject to the requirements in Section 8 of this administrative regulation within the hazardous waste management unit shall be monitored within one (1) week by the methods specified in Section 14(2) of this administrative regulation;

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected; and

(c) The leak percentage shall be determined by dividing the number of valves subject to the requirements in Section 8 of this administrative regulation for which leaks are detected by the total number of valves subject to the requirements in Section 8 of this administrative regulation within the hazardous waste management unit.

(4) If an owner or operator decides no longer to comply with this section, the owner or operator shall notify the cabinet in writing that the work practice standard described in Section 8(1) to (5) of this administrative regulation will be followed.

Section 13. Alternative Standards for Valves in Gas and Vapor Service or in Light Liquid Service: Skip Period Leak Detection and Repair. (1)(a) An owner or operator subject to the requirements of Section 8 of this administrative regulation may elect for all valves within a hazardous waste management unit to comply with one (1) of the alternative work practices specified in subsections (2)(b) and (c) of this section.

(b) An owner or operator shall notify the cabinet before implementing one (1) of the alternative work practices.

(2)(a) An owner or operator shall comply with the requirements for valves, as described in Section 8 of this administrative regulation, except as described in paragraphs (b) and (c) of this subsection.

(b) After two (2) consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two (2) percent, an owner or operator may begin to skip one (1) of the quarterly leak detection periods for the valves subject to the requirements in Section 8 of this administrative regulation.

(c) After five (5) consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two (2) percent, an owner or operator may begin to skip three (3) of the quarterly leak detection periods for the valves subject to the requirements in Section 8 of this administrative regulation.

(d) If the percentage of valves leaking is greater than two (2) percent, the owner or operators shall monitor monthly in compliance with the requirements in Section 8 of this administrative regulation, but may again elect to use this section after meeting the requirements of Section 8(3)(a) of this administrative regulation.

Section 14. Test Methods and Procedures. (1) Each owner or operator subject to the provisions of this administrative regulation shall comply with the test methods and procedures requirements provided in this section.

(2) Leak detection monitoring, as required in Sections 3 to 13 of this administrative regulation, shall comply with the following requirements:

(a) Monitoring shall comply with Reference Method 21 in 40 CFR Part 60 (July 1, 1992).

(b) The detection instrument shall meet the performance criteria of Reference Method 21.

(c) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(d) Calibration gases shall be:

1. Zero air (less than ten (10) ppm of hydrocarbon in air); and

2. A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(e) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(3) When equipment is tested for compliance with no detectable emissions, as required in Sections 3(5), 4(9), 5, and 8(6) of this administrative regulation, the test shall comply with the following requirements:

(a) The requirements of subsections (2)(a) to (d) of this section shall apply;

(b) The background level shall be determined, as set forth in Reference Method 21;

(c) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21; and

(d) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(4) In accordance with the waste analysis plan required by Section 4(2) of 401 KAR 35:020, an owner or operator of a facility shall determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds ten (10) percent by weight using the following:

(a) Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85 (incorporated by reference under Section 3 of 401 KAR 30:010); or

(b) Method 9060 or 8240 of SW-846 (incorporated by reference in Section 3 of 401 KAR 30:010); or

(c) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that shall be used to support a determination under

this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than ten (10) percent, or prior specification analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(5) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least ten (10) percent by weight, the determination can be revised only after following the procedures in subsection (4)(a) or (b) of this section.

(6) When an owner or operator and the cabinet do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least ten (10) percent by weight, the procedures in subsection (4)(a) or (b) of this section may be used to resolve the dispute.

(7) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

(8) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D-2879-86 (incorporated by reference under Section 3 of 401 KAR 30:010).

(9) Performance tests to determine if a control device achieves ninety-five (95) weight percent organic emission reduction shall comply with the procedures of Section 5(3)(a) to (d) of 401 KAR 35:275.

Section 15. Recordkeeping Requirements. (1)(a) Each owner or operator subject to this administrative regulation shall comply with the recordkeeping requirements of this section.

(b) An owner or operator of more than one (1) hazardous waste management unit subject to this administrative regulation may comply with the recordkeeping requirements for these hazardous waste management units in one (1) recordkeeping system if the system identifies each record by each hazardous waste management unit.

(2) Owners and operators shall record the following information in the facility operating record:

(a) For each piece of equipment to which this administrative regulation applies:

1. Equipment identification number and hazardous waste management unit identification;

2. Approximate locations within the facility (for example, identify the hazardous waste management unit on a facility plot plan);

3. Type of equipment (for example, a pump or pipeline valve);

4. Percent-by-weight total organics in the hazardous waste stream at the equipment;

5. Hazardous waste state at the equipment (for example, gas and vapor or liquid); and

6. Method of compliance with the standard (for example, "monthly leak detection and repair" or "equipped with dual mechanical seals").

(b) For facilities that comply with the provisions of Section 4(1)(b) of 401 KAR 35:275, an implementation schedule as specified in Section 4(1)(b) of 401 KAR 35:275; and

(c) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in Section 6(2)(c) of 401 KAR 35:275.

(d) Documentation of compliance with Section 11 of this administrative regulation, including the detailed design documentation or performance test results specified in Section 6(2)(d) of 401 KAR 35:275.

(3) When each leak is detected as specified in Sections 3, 4, 8, and 9 of this administrative regulation the following requirements apply:

(a) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with Section 9(1) of this administrative regulation and the date the leak was detected, shall be attached to the leaking equipment.

(b) The identification on equipment, except on a valve, may be removed after it has been repaired.

(c) The identification on a valve may be removed after it has been monitored for two (2) successive months as specified in Section 8(3) of this administrative regulation and no leak has been detected during those two (2) months.

(4) When each leak is detected as specified in Sections 3, 4, 8, and 9 of this administrative regulation, the following information shall be recorded in an inspection log and shall be kept in the facility operating record:

(a) The instrument and operator identification numbers and the equipment identification number;

(b) The date evidence of a potential leak was found in accordance with Section 9(1) of this administrative regulation;

(c) The date the leak was detected and the dates of each attempt to repair the leak;

(d) Repair methods applied in each attempt to repair the leak;

(e) "Above 10,000" if the maximum instrument reading measured by the methods specified in Section 14(2) of this administrative regulation after each repair attempt is equal to or greater than 10,000 ppm;

(f) "Repair delayed" and the reason for the delay if a leak is not repaired within fifteen (15) calendar days after discovery of the leak;

(g) Documentation supporting the delay of repair of a valve in compliance with Section 10(3) of this administrative regulation;

(h) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown;

(i) The expected date of successful repair of the leak if a leak is not repaired within fifteen (15) calendar days; and

(j) The date of successful repair of the leak.

(5) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Section 11 of this administrative regulation shall be recorded and kept up-to-date in the facility operating record as specified in Section 6(3) of 401 KAR 35:275. Design documentation is specified in Section 6(3)(a) and (b) of 401 KAR 35:275 and monitoring, operating, and inspection information in Section 6(3)(c) to (h) of 401 KAR 35:275.

(6) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device shall be recorded in the facility operating record.

(7) The following information pertaining to all equipment subject to the requirements in Sections 3 to 11 of this administrative regulation shall be recorded in a log that is kept in the facility operating record:

(a) A list of identification numbers for equipment (except welded fittings) subject to this administrative regulation;

(b)1. A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of Sections 3(5), 4(9), and 8(6) of this administrative regulation;

2. The designation of this equipment as subject to the requirements of Sections 3(5), 4(9), or 8(6) of this administrative regulation shall be signed by the owner or operator;

(c) A list of equipment identification numbers for pressure relief devices required to comply with Section 5(1) of this administrative regulation;

(d)1. The dates of each compliance test required in Sections 3(5), 4(9), 5, and 8(6) of this administrative regulation;

2. The background level measured during each compliance test;

3. The maximum instrument reading measured at the equipment during each compliance test; and

(e) A list of identification numbers for equipment in vacuum service.

(8) The following information pertaining to all valves subject to the requirements of Section 8(7) and (8) of this administrative regulation shall be recorded in a log that is kept in the facility operating record:

(a) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve; and

(b) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(9) The following information shall be recorded in the facility operating record for valves complying with Section 13 of this administrative regulation:

(a) A schedule of monitoring; and

(b) The percent of valves found leaking during each monitoring period.

(10) The following information shall be recorded in a log that is kept in the facility operating record:

(a) Criteria required in Sections 3(4)(e)2 and 4(5)(b) of this administrative regulation and an explanation of the criteria; and

(b) Any changes to these criteria and the reasons for the changes.

(11) The following information shall be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in the Section 2 of this administrative regulation and other specific regulations:

(a) An analysis determining the design capacity of the hazardous waste management unit.

(b) A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in Sections 3 to 11 of this administrative regulation and an analysis determining whether these hazardous wastes are heavy liquids.

(c) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in Sections 3 to 11 of this administrative regulation. The record shall include supporting documentation as required by Section 14(4)(c) of this administrative regulation when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action (for example, changing the process that produced the waste) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in Sections 3 to 11 of this administrative regulation, then a new determination shall be required.

(12) Records of the equipment leak information required by subsection (4) of this section and the operating information required by subsection (5) of this section shall only be required to be kept for three (3) years.

(13) The owner or operator of any facility that is subject to this administrative regulation and to regulations at 40 CFR Part 60 subpart VV or 40 CFR Part 61 subpart V (July 1, 1992) may elect to determine compliance with this subpart by documentation either pursuant to this section or pursuant to those provisions of 40 CFR Part 60 or 61 to the extent that the documentation under the regulation at 40 CFR Part 60 or 61 duplicates the documentation required under this administrative regulation. The documentation under the regulation at 40 CFR Part 60 or 61 shall be kept with or made readily available with the facility operating record.

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 or operators of equipment that comes in contact with hazardous waste.

(a) Direct and indirect costs or savings to those affected:

1. First year: This proposed administrative regulation 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 implementing and monitoring this proposed 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: The cabinet will have an increased amount of paperwork associated with this proposed administrative regulation.

(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 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 265 Subpart BB, however, there is no actual federal mandate to adopt this administrative regulation. 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 proposed administrative regulation 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 Part 265 Subpart AA.

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

401 KAR 35:285. Drip pads (IS).

RELATES TO: KRS 224.10, 224.40, 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 minimum standards for drip pads qualifying for interim status.

Section 1. Applicability. (1) The requirements of this administrative regulation apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, or surface water run-off to an associated collection system. Existing drip pads are those constructed before the effective date of this administrative regulation, and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to the effective date of this administrative regulation.. All other drip pads are new drip pads. The requirement at Section 4(2)(c) of this administrative regulation to install a leak collection system applies only to those drip pads that are constructed after the effective date of this administrative regulation, except for those constructed after the effective date of this administrative regulation for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to the effective date of this administrative regulation.

(2) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to Section 4(5) or (6) of this administrative regulation, as appropriate.

(3) This administrative regulation is not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(a) The owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of infrequent and incidental drippage; and

(b) At a minimum, the contingency plan shall describe how the facility will do the following:

1. Clean up the drippage; and
2. Document the cleanup of the drippage; and
3. Retain documents regarding cleanup for three (3) years; and
4. Manage the contaminated media in a manner consistent with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

Section 2. Assessment of Existing Drip Pad Integrity. (1) For each existing drip pad as defined in Section 1 of this administrative regulation, the owner or operator shall evaluate the drip pad and determine that it meets all of the requirements of this administrative regulation, except the requirements for liners and leak detection systems of Section 4(2) of this administrative regulation. The owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an engineer, that attests to the results of the evaluation. This assessment shall be obtained no later than December 21, 1992 for F032 wastes, and no later than the effective date of this administrative regulation for F034 and F035 wastes. The assessment shall be reviewed, updated and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of Section 4 of this administrative regulation are complete. The evaluation shall document the extent to which the drip pad meets each of the design and operating standards of Section 4 of this administrative regulation, except the standards for liners and leak detection systems, specified in Section 4(2) of this administrative regulation.

(2) The owner or operator shall develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of Section 4(2) of this administrative regulation and submit the plan to the cabinet no later than two (2) years before the date that all repairs, upgrades, and modifications will be complete. This written plan shall describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of Section 4 of this administrative regulation. The plan shall be reviewed and certified by an engineer.

(3) Upon completion of all repairs and modifications, the owner or operator shall submit to the cabinet the as-built drawings for the drip pad together with a certification by an engineer attesting that the drip pad conforms to the drawings.

(4) If the drip pad is found to be leaking or unfit for use, the owner or operator shall comply with the provisions of Section 4(13) of this administrative regulation or close the drip pad in accordance with Section 6 of this administrative regulation.

Section 3. Design and Installation of New Drip Pads. Owners and operators of new drip pads shall ensure that the pads are designed, installed, and operated in accordance with one (1) of the following:

(1) All of the applicable requirements of Sections 4 (except Section 4(1)(d)), 5, and 6 of this administrative regulation; or

(2) All of the applicable requirements of Sections 4 (except Section 4(2)), 5, and 6 of this administrative regulation.

Section 4. Design and Operating Requirements. (1) Drip pads shall:

(a) Be constructed of nonearthen materials, excluding wood and nonstructurally supported asphalt;

(b) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(c) Have a curb or berm around the perimeter; and

(d) Be impermeable (for example, concrete pads shall be sealed, coated, or covered with an impermeable material) so that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system.

1. Have a hydraulic conductivity of less than or equal to $1x10^{-7}$ centimeters per second. Existing concrete drip pads shall be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to $1x10^{-7}$ centimeters per second so that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material shall be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material shall be chemically compatible with the preservatives that contact the drip pad. The requirements of this subparagraph apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with Section 3(1) instead of 3(2) of this administrative regulation.

2. The owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an engineer, that attests to the results of the evaluation. The evaluation shall be reviewed, updated, and recertified annually. The evaluation shall document the extent to which the drip pad meets the design and operating standards of this section, except for subsection (b) of this section.

(e) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations (for example, variable and moving loads such as vehicle traffic and movement of wood). (The cabinet will generally consider applicable standards established by professional organizations generally recognized by industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirement of this paragraph.)

(2) If an owner or operator elects to comply with Section 3(1) instead of Section 3(2) of this administrative regulation, the drip pad shall have:

(a) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner shall be constructed of materials that shall prevent waste from being absorbed into the liner and prevent releases into the adjacent subsurface soil or ground water or surface water 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 drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

2. 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 or uplift; and

3. Installed to cover all surrounding earth that could come in contact with the waste or leakage.

(b) A leakage detection system immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system shall be:

1. Constructed of materials that are:

a. Chemically resistant to the waste managed in the drip pad and the leakage that might be generated.

b. Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad.

2. Designed and operated to function without clogging through the scheduled closure of the drip pad; and

3. Designed so that it shall detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

(c) A leakage collection system immediately above the liner that is designed, constructed, maintained, and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed shall be documented in the operating log.

(3) Drip pads shall be maintained so that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad. (Refer to subsection (13) of this section for remedial action required if deterioration or leakage is detected.)

(4) The drip pad and associated collection system shall be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(5) Unless protected by a structure, as described in Section 1(2) of this administrative regulation, the owner or operator shall design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a twenty-four (24) hour, twenty-five (25) year storm unless the system has sufficient excess capacity to contain any run-on that might enter the system, or the drip pad is protected by a structure or cover, as described in Section 1(2) of this administrative regulation.

(6) Unless protected by a structure or cover, as described in Section 1(2) of this administrative regulation, the owner or operator shall design, construct, operate, and maintain a runoff management system to collect and control at least the water volume resulting from a twenty-four (24) hour, twenty-five (25) year storm.

(7) The drip pad shall be evaluated to determine that it meets the requirements of subsections (1) to (6) of this section and the owner or operator shall obtain a statement from an engineer certifying that the drip pad design meets the requirements of this section.

(8) Drippage and accumulated precipitation shall be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(9)(a) The drip pad surface shall be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad.

(b) The owner or operator shall document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

(10) Drip pads shall be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(11) After being removed from the treatment vessel, treated wood from pressure and nonpressure processes shall be held on the drip pad until drippage has ceased. The owner or operator shall maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(12) Collection and holding units associated with run-on and runoff control systems shall be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(13) Throughout the active life of the drip pad, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition shall be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(a) Upon detection of a condition that may have caused or has caused a release of hazardous waste (upon detection of leakage by the leak detection system), the owner or operator shall:

1. Enter a record of the discovery in the facility operating log;

2. Immediately remove the portion of the drip pad affected by the condition from service;

3. Determine what steps must be taken to repair the drip pad, remove any leakage from below the drip pad, and establish a schedule for accomplishing the cleanup and repairs; and

4. Within twenty-four (24) hours after discovery of the condition (or immediately if required by KRS 224.01-400), notify the cabinet of the condition and, within ten (10) working days, provide a written notice to the cabinet with a description of the steps that will be taken to repair the drip pad, and clean up any leakage, and the schedule for accomplishing this work.

(b) The cabinet shall review the information submitted, make a determination regarding whether the pad shall be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(c) Upon completing all repairs and cleanup, the owner or operator shall notify the cabinet in writing and provide a certification, signed by an engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (a)4 of this subsection.

(d) The owner or operator shall comply with all applicable requirements of KRS 224.01-400. However, compliance with KRS 224.01-400 shall not exempt the owner or operator from compliance with this administrative regulation.

(14) The owner or operator shall maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This shall include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

Section 5. Inspections. (1) During construction or installation, liners and cover systems (for example, membranes, sheets, or coatings) shall be inspected for uniformity, damage, and imperfections (for example, holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners shall be inspected and certified as meeting the requirements of Section 4 of this administrative regulation by an engineer. The certification shall be maintained at the facility as part of the facility operating record. After installation, liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(2) While a drip pad is in operation, it shall be inspected weekly and after storms to detect evidence of the following:

(a) Deterioration, malfunctions or improper operation of run-on and run-off control systems; or

(b) The presence of leakage in and proper functioning of leakage detection system; or

(c) Deterioration or cracking of the drip pad surface.

Section 6. Closure. (1) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (for example, pad and liners), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(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 practically removed or decontaminated, he shall close the facility and perform postclosure care in accordance with closure and postclosure care requirements that apply to landfills (Section 4 of 401 KAR 35:230). For permitted units, the requirement to have a permit continues throughout the postclosure period.

(3)(a) The owner or operator of an existing drip pad, as defined in Section 1 of this administrative regulation, that does not comply with the liner requirements of Section 4(2)(a) shall:

1. Include in the closure plan for the drip pad under Section 3 of 401 KAR 35:080 both a plan for complying with subsection (1) of this section and a contingent plan for complying with subsection (2) of this section 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 35:070 for complying with subsection (2) of this section in case not all contaminated subsoils can be practicably removed at closure.

(b) The cost estimates calculated under Section 3 of 401 KAR 35:070 and Section 1 of 401 KAR 35:100 for closure and postclosure care of a drip pad subject to this subsection shall include the cost of complying with the contingent closure plan and the contingent postclosure plan, but are not required to include the cost of expected closure under subsection (1) of this section.

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 facilities that use drip pads to convey treated wood drippage, precipitation, and surface water run-on to an associated collection system.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation since the provisions in this proposed administrative regulation already apply to Kentucky facilities through federal regulation. Federal regulations promulgated by the authority of the hazardous and solid waste amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to the cost of complying with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224.

2. Continuing costs or savings: Not applicable

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Any reporting or paperwork requirements required from Kentucky facilities went into effect in December 1990, December, 1992 or June 1993 as a result of compliance with federal regulations. There are no additional requirement imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There may be minimal costs associated with complying with this administrative regulation since the provisions in this proposed administrative regulation Federal regulations promulgated by the authority of the hazardous and solid waste amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to the cost of complying with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224. When the state receives authorization for this activity, additional costs will be incurred for review of notices from facilities where a release of hazardous waste has occurred.

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 report to the cabinet when a release of a hazardous waste has occurred. The cabinet will maintain records and will make a determination as to whether the dript pad will be removed from service completely or partially until repairs and cleanup are complete. The cabinet will be required to notify the owner or operator of the determination and the rational in writing.

(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 265 Subpart W. However, there is no federal mandate to promulgate this administrative regulation. The provisions in this proposed administrative regulation Federal regulations promulgated by the authority of the hazardous and solid waste amendments to the Resource Conservation and Recovery Act take effect and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to compliance with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224. 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 265 Subpart W.

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

401 KAR 36:020. Hazardous waste burned in boilers and industrial furnaces.

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 standards for persons who burn hazardous waste in boilers and industrial furnaces. This administrative regulation supersedes and replaces 401 KAR 36:040, Hazardous waste burned for energy recovery.

Section 1. Applicability. (1) This administrative regulation applies to hazardous waste burned or processed in a boiler or industrial furnace (as defined in 401 KAR 30:010) irrespective of the purpose of burning or processing, except as provided by subsections (2), (3), and (4) of this section. In this administrative regulation, the term "burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of Sections 5 to 8 of this administrative regulation apply to

hazardous waste sites or facilities operating under interim status or under a RCRA operating permit as specified in Sections 3 and 4 of this administrative regulation.

(2) The following hazardous wastes and facilities are not subject to this administrative regulation:

(a) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 401 KAR 31:030. Such used oil is subject to 401 KAR 36:050 rather than this administrative regulation;

(b) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;

(c) Hazardous wastes that are exempt from administative regulation under Section 4 and 6(1)(c) of 401 KAR 31:010, and hazardous wastes that are subject to the special requirements for limited quantity generators under Section 5 of 401 KAR 31:010; and

(d) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

(3) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces, but not including cement kilns, aggregate kilns, or halogen acid furnaces burning hazardous waste) that process hazardous waste solely for metal recovery are conditionally exempt from regulation under this administrative regulation, except for Sections 2 and 13 of this administrative regulation.

(a) To be exempt from Sections 3 to 12 of this administrative regulation, an owner or operator of a metal recovery furnace shall comply with the following requirements, except that an owner or operator of a leak or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, shall comply with the requirements of paragraph (c) of this subsection:

1. Provide a one (1) time written notice to the cabinet indicating the following:

a. The owner or operator claims exemption under this subsection;

b. The hazardous waste is burned solely for metal recovery consistent with the provisions of paragraph (b) of this subsection;

c. The hazardous waste contains recoverable levels of metals; and

d. The owner or operator shall comply with the sampling and analysis and recordkeeping requirements of this administrative regulation;

2. Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this paragraph under procedures specified by test methods for evaluating solid waste, physical/chemical methods, SW-846, or alternative methods that meet or exceed the SW-846 method performance capabilities. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

3. Maintain at the facility for at least three (3) years records to document compliance with the provisions of this subsection including limits on levels of toxic organic constituents and Btu value of the waste, and levels of recoverable metals in the hazardous waste compared to normal nonhazardous waste feedstocks.

(b) A hazardous waste meeting either of the following criteria is not processed solely for metal recovery:

1. The hazardous waste has a total concentration of organic compounds listed in 401 KAR 31:170 exceeding 500 ppm by weight, as fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the 500 ppm limit by authentic treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited, and documentation that the waste has not been impermissibly diluted shall be retained in the records required by paragraph (a)2 of this subsection; or

2. The hazardous waste has a heating value of 5,000 Btu/lb or more, as fired, and so is considered to be burned as fuel. The heating value of a waste as generated may be reduced to below the 5,000 Btu/lb limit by authentic treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited, and documentation that the waste has not been impermissibly diluted shall be retained in the records required by paragraph (a)2 of this subsection.

(c) To be exempt from Sections 3 through 12 of this administrative regulation, an owner or operator of a lead or nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one (1) time written notice to the cabinet identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this paragraph or paragraph (a) of this subsection. The owner or operator shall comply with the requirements of paragraph (a) of this subsection for those wastes claimed to be exempt under that paragraph and shall comply with the requirements of this paragraph for those wastes claimed to be exempt under this paragraph.

1. The hazardous wastes listed in Section 9(1)(c) and (d) of 401 KAR 36:025, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of paragraph (a) of this subsection provided that:

a. A waste listed in Section 9(1)(c) of 401 KAR 36:025 must contain recoverable levels of lead, a waste listed in Section 9(1)(d) of 401 KAR 36:025 must contain recoverable levels of nickel or chromium, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal; and

b. The waste does not exhibit the toxicity characteristic of Section 5 of 401 KAR 31:030 for an organic constituent; and

c. The waste is not a hazardous waste listed in 401 KAR 31:040 because it is listed for an organic constituent as identified in 401 KAR 31:160; and

d. The owner or operator certifies in the one (1) time notice that hazardous waste is burned under the provisions of this paragraph and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to paragraph (a)2 of this subsection and records to document compliance with this paragraph shall be kept for at least three (3) years.

2. The cabinet may decide on a case-by-case basis that the toxic organic constituents in a material listed in Section 9(1)(c) or (d) of 401 KAR 36:025 that contains a total concentration of more than 500 ppm toxic organic compounds listed in 401 KAR 31:170, may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this administrative regulation. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace shall become subject to the requirements of this administrative regulation when burning that material. In making the hazard determination, the cabinet shall consider the following factors:

a. The concentration and toxicity of organic constituents in the material; and

b. The level of destruction of toxic organic constituents provided by the furnace; and

c. Whether the acceptable ambient levels established in Section 4 or 5 of 401 KAR 36:025 may be exceeded for any toxic organic compound that may be emitted based on dispersion modeling to predict the maximum annual average off-site ground level concentration.

(4) The standards for direct transfer operations under Section 12 of this administrative regulation apply only to facilities subject to the permit standards of Section 3 of this administrative regulation or the interim status standards of Section 4 of this administrative regulation.

(5) The management standards for residues under Section 13 of this administrative regulation apply to any boiler or industrial furnace burning hazardous waste.

(6) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold, silver, platinum, paladium, irridium, osmium, rhodium, or ruthenium, or any combination of these are conditionally exempt from regulation under this administrative regulation, except for Section 13 of this administrative regulation. To be exempt from Sections 2 through 12 of this administrative regulation, an owner or operator shall:

(a) Provide a one (1) time written notice to the cabinet indicating the following:

1. The owner or operator claims exemption under this paragraph; and

2. The hazardous waste is burned for legitimate recovery of precious metal; and

3. The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this subsection; and

(b) Sample and analyze the hazardous waste as necessary to document that the waste is burned for recovery of economically significant amounts of precious metal using procedures specified by test methods for evaluating solid waste, physical/chemical methods, SW-846, or alternative methods that meet or exceed the SW-846 method performance capabilities. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method; and

(c) Maintain at the facility for at least three (3) years records to document that all hazardous wastes burned are burned for recovery of economically significant amounts of precious metal.

Section 2. Management Prior to Burning. (1) Generators. Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to 401 KAR Chapter 32.

(2) Transporters. Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to 401 KAR Chapter 33.

(3) Storage facilities.

(a) Owners and operators of facilities that store hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of 401 KAR Chapters 34, 35, and 38, except as provided by paragraph (b) of this subsection. These standards apply to storage by the burner as well as to storage facilities operated by intermediaries (for example, processors, blenders, and distributors) between the generator and the burner.

(b) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulation under the small quantity burner provisions of Section 9 of this administrative regulation, hazardous waste that they generate are exempt from regulation under 401 KAR Chapters 34, 35 and 38 with respect to the storage of mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (a) of this subsection.

Section 3. Permit Standards for Burners. (1) Applicability.

(a) General. Owners and operators of boilers and industrial furnaces burning hazardous waste and not operating under interim status shall comply with the requirements of this section, Section 7 of 401 KAR 38:060, and 401 KAR 38:270, unless exempt under the small quantity burner exemption of Section 9 of this administrative regulation.

(b) Applicability of 401 KAR Chapter 34 standards. Owners and operators of boilers and industrial furnaces that burn hazardous waste are subject to the following provisions of 401 KAR Chapter 34, except as provided otherwise by this paragraph:

1. Section 3 of 401 KAR 34:010; and

2. Sections 2 to 9 of 401 KAR 34:020; and

3. Sections 2 to 7 of 401 KAR 34:030; and

4. Sections 2 to 7 of 401 KAR 34:040; and

5. Sections 2 to 8 of 401 KAR 34:050; and

6. 401 KAR 34:060; and

7. Sections 2 to 6 of 401 KAR 34:070; and

8. 401 KAR 34:080, 401 KAR 34:090, and 401 KAR 34:120 to 401 KAR 34:176, except that states and the federal government are exempt from the requirements of 401 KAR 34:080; and

9. 401 KAR 34:280, except for Section 2(1).

(2) Hazardous waste analysis.

(a) The owner or operator shall provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in 401 KAR 31:170 that may reasonably be expected to be in the waste. These constituents shall be identified and quantified if present, at levels detectable by analytical procedures prescribed by test methods for evaluating solid waste, physical/chemical methods. Alternative methods that meet or exceed the method performance capabilities of SW-846 methods may be used. If SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method. The 401 KAR 31:170 constituents excluded from this analysis shall be identified and the basis for their exclusion explained. This analysis shall be used to provide all information required by this administrative regulation, and Section 7 of 401 KAR 38:060, and 401 KAR 38:270 and to enable the permit writer to prescribe such permit conditions as necessary to protect human health and the environment. This analysis shall be included as a portion of the Part B permit application, or, for facilities operating under the interim status standards of this administrative regulation, as a portion of the trial burn plan that may be submitted before the Part B application under provisions of Section 7(7) of 401 KAR 38:060 as well as any other analysis required by the permit authority in preparing the permit. Owners and operators of boilers and industrial furnaces not operating under the interim status standards shall provide the information required by Section 7(3) of 401 KAR 38:060 or 401 KAR 38:270 in the Part B application to the greatest extent possible.

(b) Throughout normal operation, the owner or operator shall conduct sampling and analysis as necessary to ensure that the hazardous waste, other fuels, and industrial furnace feedstocks fired into the boiler or industrial furnace are within the physical and chemical composition limits specified in the permit.

(3) Emissions standards. Owners and operators shall comply with emissions standards provided by Sections 5 to 8 of this administrative regulation.

(4) Permits.

(a) The owner or operator may burn only hazardous wastes specified in the facility permit and only under the operating conditions specified under subsection (5)(e) of this section, except in approved trial burns under the conditions specified in Section 7 of 401 KAR 38:060.

(b) Hazardous wastes not specified in the permit may not be burned until operating conditions have been specified under a new permit or 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 38:270.

(c) Boilers and industrial furnaces operating under the interim status standards of Section 4 of this administrative regulation are permitted under procedures provided by Section 7(7) of 401 KAR 38:060.

(d) A permit for a new boiler or industrial furnace (those boilers and industrial furnaces not operating under the interim status standards) shall establish appropriate conditions for each of the applicable requirements of this section, including but not limited to, allowable hazardous waste firing rates and operating conditions necessary to meet the requirements of subsection (5) of this section, in order to comply with the following standards:

1. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the device to a point of operational readiness to conduct a trial burn, not to exceed a duration of 720 hours operating time when burning hazardous waste, the operating requirements shall be those most likely to ensure compliance with the emission standards of Sections 5 to 8 of this administrative regulation, based on the cabinet's engineering judgment. If the applicant is seeking a waiver from a trial burn to demonstrate conformance with a particular emission standard, the operating requirements during this initial period of operation shall include those specified by the applicable provisions of Sections 5, 6, 7, or 8 of this administrative regulation. The cabinet may extend the duration of this period for up to 720 additional hours when good cause for the extension is demonstrated by the applicant.

2. For the duration of the trial burn, the operating requirements shall be sufficient to demonstrate compliance with the emissions standards of Sections 5 to 8 of this administrative regulation and shall be in accordance with the approved trial burn plan;

3. For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, submission of the trial burn results by the applicant, review of the trial burn results and modification of the facility permit by the cabinet to reflect the trial burn results, the operating requirements shall be those most likely to ensure compliance with the emission standards Sections 5 to 8 of this administrative regulation based on the cabinet's engineering judgment.

4. For the remaining duration of the permit, the operating requirements shall be those demonstrated in a trial burn or by alternative data specified in 401 KAR 38:270, as sufficient to ensure compliance with the emissions standards of Sections 5 to 8 of this administrative regulation.

(5) Operating requirements.

(a) General. A boiler or industrial furnace burning hazardous waste shall be operated in accordance with the operating requirements specified in the permit at all times where there is hazardous waste in the unit.

(b) Requirements to ensure compliance with the organic emissions standards.

1. DRE standards. Operating conditions shall be specified either on a case-by-case basis for each hazardous waste burned as those demonstrated (in a trial burn or by alternative data as specified in 401 KAR 38:270) to be sufficient to comply with the destruction and removal efficiency (DRE) performance standard of Section 5(1) of this administrative regulation or as those special operating requirements provided by Section 5(1)(d) of this administrative regulation for the waiver of the DRE trial burn. When the DRE trial burn is not waived under Section 5(1)(d) of this administrative regulation, each set of operating requirements shall specify the composition of the hazardous waste (including acceptable variations in the physical and chemical properties of the hazardous waste which shall not affect compliance with the DRE performance standard) to which the operating requirements apply. For each such hazardous waste, the permit shall specify acceptable operating limits including, but not limited to, the following conditions as appropriate:

a. Feed rate of hazardous waste and other fuels measured and specified as prescribed in paragraph (f) of this subsection;

b. Minimum and maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in paragraph (f) of this subsection;

c. Appropriate controls of the hazardous waste firing system;

d. Allowable variation in boiler and industrial furnace system design or operating procedures;

e. Minimum combustion gas temperature measured at a location indicative of combustion chamber temperature, measured and specified as prescribed in paragraph (f) of this subsection;

f. An appropriate indicator of combustion gas velocity, measured and specified as prescribed in paragraph (f) of this subsection, unless documentation is provided under Section 7 of 401 KAR 38:060 demonstrating adequate combustion gas residence time; and

g. Such other operating requirements as are necessary to ensure that the DRE performance standard of Section 5(1) of this administrative regulation is met.

2. Carbon monoxide and hydrocarbon standard. The permit shall incorporate a carbon monoxide (CO) limit and, as appropriate, a hydrocarbon (HC) limit as provided by Section 5(2), (3), (4), (5), and (16) of this administrative regulation. The permit limits shall be specified as follows:

a. When complying with the CO standard of Section 5(2)(a) of this administrative regulation, the permit limit is 100 ppmv;

b. When complying with the alternative CO standard under Section 5(3) of this administrative regulation, the permit limit for CO is based on the trial burn and is established as the average over all valid runs of the highest hourly rolling average CO level of each run, and the permit limit for HC is twenty (20) ppmv (as defined in Section 5(3)(a) of this administrative regulation), except as provided in Section 5(6) of this administrative regulation.

c. When complying with the alternative HC limit for industrial furnaces under Section 5(6) of this administrative regulation, the permit limit for HC and CO is the baseline level when hazardous waste is not burned as specified by that Section 5(6) of this administrative regulation.

3. Start-up and shut-down. During start-up and shut-down of the boiler or industrial furnace, hazardous waste (except waste fed solely as an ingredient under the Tier I (or adjusted Tier I) feed rate screening limits for metals and chloride/chlorine, and except low risk waste exempt from the trial burn requirements under Sections 5(1)(e), 6, 7, and 8 of this administrative regulation) shall not be fed into the device unless the device is operating within the conditions of operation specified in the permit.

(c) Requirements to ensure conformance with the particulate standard.

1. Except as provided in subparagraphs 2 and 3 of this paragraph, the permit shall specify the following operating requirements to ensure conformance with the particulate standard specified in Section 6 of this administrative regulation:

a. Total ash feed rate to the device from hazardous waste, other fuels, and industrial furnace feedstocks, measured and specified as prescribed in paragraph (f) of this subsection;

b. Maximum device production rate when producing normal product expressed in appropriate units, and measured and specified as prescribed in paragraph (f) of this subsection;

c. Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

d. Allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and

e. Any other operating requirements that are necessary to ensure that the particulate standard in Section 6(1) of this administrative regulation is met.

2. Permit conditions to ensure conformance with the particulate matter standard shall not be provided for facilities exempt from the particulate matter standard under Section 6(2) of this administrative regulation;

3. For cement kilns and light-weight aggregate kilns, permit conditions to ensure compliance with the particulate standard shall not limit the ash content of hazardous waste or other feed materials.

(d) Requirements to ensure conformance with the metals emissions standard.

1. For conformance with the Tier I (or adjusted Tier I) metals feed rate screening limits of Section 7(2) or (5) of this administrative regulation, the permit shall specify the following operating requirements:

a. Total feed rate of each metal in hazardous waste, other fuels,

and industrial furnace feedstocks measured and specified under provisions of paragraph (f) of this subsection;

b. Total feed rate of hazardous waste measured and specified as prescribed in paragraph (f) of this subsection; and

c. A sampling and metals analysis program for the hazardous waste, other fuels, and industrial furnace feedstocks.

2. For conformance with the Tier II metals emission rate screening limits under Section 7(3) of this administrative regulation and the Tier III metals controls under Section 7(4) of this administrative regulation, the permit shall specify the following operating requirements:

a. Maximum emission rate for each metal specified as the average emission rate during the trial burn;

b. Feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in paragraph (f)1 of this subsection; and

c. Feed rate of each metal in the following feedstreams, measured and specified as prescribed in paragraph (f) of this subsection:

(i) Total feed streams;

(ii) Total hazardous waste feed; and

(iii) Total pumpable hazardous waste feed;

d. Total feed rate of chlorine and chloride in total feed streams measured and specified as prescribed in paragraph (f) of this subsection;

e. Maximum combustion gas temperature measured at a location indicative of combustion chamber temperature, and measured and specified as prescribed in paragraph (f) of this subsection;

f. Maximum flue gas temperature at the inlet to the particulate matter air pollution control system measured and specified as prescribed in paragraph (f) of this subsection;

g. Maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in paragraph (f) of this subsection;

h. Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

i. Allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and

j. Such other operating requirements as are necessary to ensure that the metals standards under Section 7(3) or (4) of this administrative regulation are met.

3. For conformance with an alternative implementation approach approved by the cabinet under Section 7(6) of this administrative regulation, the permit shall specify the following operating requirements:

a. Maximum emission rate for each metal specified as the average emission rate during the trial burn;

b. Feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in paragraph (f)1 of this subsection;

c. Feed rate of each metal in the following feedstreams, measured and specified as prescribed in paragraph (f) of this subsection:

(i) Total hazardous waste feed; and

(ii) Total pumpable hazardous waste feed;

d. Total feed rate of chlorine and chloride in total feed streams measured and specified prescribed in paragraph (f) of this subsection;

e. Maximum combustion gas temperature measured at a location indicative of combustion chamber temperature, and measured and specified as prescribed in paragraph (f) of this subsection;

f. Maximum flue gas temperature at the inlet to the particulate matter air pollution control system measured and specified as prescribed in paragraph (f) of this subsection;

g. Maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in paragraph (f) of this subsection;

h. Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

i. Allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and

j. Such other operating requirements as are necessary to ensure that the metals standards under Section 7(3) or (4) of this administrative regulation are met.

(e) Requirements to ensure conformance with the hydrogen chloride and chlorine gas standards.

1. For conformance with the Tier I total chloride and chlorine feed rate screening limits of Section 8(2)(a) of this administrative regulation, the permit shall specify the following operating requirements:

a. Feed rate of total chloride and chlorine in hazardous waste, other fuels, and industrial furnace feedstocks measured and specified as prescribed in paragraph (f) of this subsection;

b. Feed rate of total hazardous waste measured and specified as prescribed in paragraph (f) of this subsection; and

c. A sampling and analysis program for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks;

2. For conformance with the Tier II HCl and Cl_2 emission rate screening limits under Section 8(2)(b) of this administrative regulation and the Tier III HCl and Cl_2 controls under Section 8(3) of this administrative regulation, the permit shall specify the following operating requirements:

a. Maximum emission rate for HCl and for Cl_2 specified as the average emission rate during the trial burn;

b. Feed rate of total hazardous waste measured and specified as prescribed in paragraph (f) of this subsection;

c. Total feed rate of chlorine and chloride in total feed streams, measured and specified as prescribed in paragraph (f) of this subsection;

d. Maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in paragraph (f) of this subsection;

e. Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;

f. Allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and

g. Any other operating requirements that are necessary to ensure that the HCl and Cl_2 standards under Section 8(2)(b) or (3) of this administrative regulation are met.

(f) Measuring parameters and establishing limits based on trial burn data.

1. General requirements. As specified in paragraphs (b) to (e) of this subsection, each operating parameter shall be measured, and permit limits on the parameter shall be established, according to either of the following procedures:

a. Instantaneous limits. A parameter may be measured and recorded on an instantaneous basis (that is, the value that occurs at any time) and the permit limit specified as the time-weighted average during all valid runs of the trial burn; or

b. Hourly rolling average.

(i) The limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:

i. A continuous monitor is one (1) which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen (15) seconds, and computes and records the average value at least every sixty (60) seconds.

ii. An hourly rolling average is the arithmetic mean of the sixty (60) most recent one (1) minute average values recorded by the continuous monitoring system.

(ii) The permit limit for the parameter shall be established based on trial burn data as the average over all valid test runs of the highest hourly rolling average value for each run.

2. Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (that is, arsenic, beryllium,

cadmium and chromium) and lead may be established either on an hourly rolling average basis as prescribed by subparagraph 1 of this paragraph or on up to a twenty-four (24) hour rolling average basis. If the owner or operator elects to use an average period from two (2) to twenty-four (24) hours:

a. The feed rate of each metal shall be limited at any time to ten (10) times the feed rate that would be allowed on an hourly rolling average basis; and

b. The continuous monitor shall meet the following specifications:

(i) A continuous monitor is one (1) which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen (15) seconds, and computes and records the average value at least every sixty (60) seconds.

(ii) The rolling average for the selected averaging period is defined as the arithmetic mean of one (1) hour block averages for the averaging period. A one (1) hour block average is the arithmetic mean of the one (1) minute averages recorded during the sixty (60) minute period beginning at one (1) minute after the beginning of preceding clock hour; and

c. The permit limit for the feed rate of each metal shall be established based on trial burn data as the average over all valid test runs of the highest hourly rolling average feed rate for each run.

3. Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (that is, metals, chloride, chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream shall be monitored under the continuous monitoring requirements of subparagraphs 1 and 2 of this paragraph.

4. Conduct of a trial burn testing.

a. If compliance with all applicable emissions standards of Sections 5 to 8 of this administrative regulation is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards shall be as close as possible to the original operating conditions.

b. Prior to obtaining test data for purposes of demonstrating compliance with the emissions standards of Sections 5 to 8 of this administrative regulation or establishing limits on operating parameters under this section, the site or facility shall operate under trial burn conditions for a sufficient period to reach steady-state operations. The cabinet may determine, however, that industrial furnaces that recycle collected particulate matter back into the furnace and that comply with an alternative implementation approach for metals under Section 7(6) of this administrative regulation need not reach steady state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals emissions.

c. Trial burn data on the level of an operating parameter for which a limit shall be established in the permit shall be obtained during emissions sampling for the pollutant (that is, metals, PM, HCl/Cl_2, organic compounds) for which the parameter shall be established as specified by paragraph (e) of this subsection.

(g) General requirements.

1. Fugitive emissions. Fugitive emissions shall be controlled by:

a. Keeping the combustion zone totally sealed against fugitive emissions; or

b. Maintaining the 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.

2. Automatic waste feed cutoff. A boiler or industrial furnace shall be operated with a functioning system that automatically cuts off the hazardous waste feed when operating conditions deviate from those established under this section. The cabinet may limit the number of cutoffs per an operating period on a case-by-case basis. In addition:

a. The permit limit for (the indicator of) minimum combustion chamber temperature shall be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber;

b. Exhaust gases shall be ducted to the air pollution control system operated in accordance with the permit requirements while hazardous waste or hazardous waste residues remain in the combustion chamber; and

c. Operating parameters for which permit limits are established shall continue to be monitored during the cutoff, and the hazardous waste feed shall not be restarted until the levels of those parameters comply with the permit limits. For parameters that may be monitored on an instantaneous basis, the cabinet shall establish a minimum period of time after a waste feed cutoff during which the parameter shall not exceed the permit limit before the hazardous waste feed may be restarted.

3. Changes. A boiler or industrial furnace shall cease burning hazardous waste when changes in combustion properties, or feed rates of the hazardous waste, other fuels, or industrial furnace feedstocks, or changes in the boiler or industrial furnace design or operating conditions deviate from the limits as specified in the permit.

(h) Monitoring and inspections.

1. The owner or operator shall monitor and record the following, at a minimum, while burning hazardous waste:

a. If specified by the permit, feed rates and composition of hazardous waste, other fuels, and industrial furnace feedstocks, and feed rates of ash, metals, and total chloride and chlorine;

b. If specified by the permit, carbon monoxide (CO), hydrocarbons (HC), and oxygen on a continuous basis at a common point in the boiler or industrial furnace downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with operating requirements specified in paragraph (b)2 of this subsection. CO, HC, and oxygen monitors shall be installed, operated, and maintained in accordance with methods specified in Section 9(1)(a) of 401 KAR 36:025.

c. Upon the request of the cabinet, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feedstocks as appropriate), residues, and exhaust emissions shall be conducted to verify that the operating requirements established in the permit achieve the applicable standards of Sections 5, 6, 7, and 8 of this administrative regulation.

2. All monitors shall record data in units corresponding to the permit limit unless otherwise specified in the permit.

3. The boiler or industrial furnace and associated equipment (for example, pumps, values, pipes, and fuel storage tanks) shall be subjected to thorough visual inspection when it contains hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.

4. The automatic hazardous waste feed cutoff system and associated alarms shall be tested at least once every seven (7) days when hazardous waste is burned to verify operability, unless the applicant demonstrates to the cabinet weekly inspections shall unduly restrict or upset operations and that less frequent inspections shall be adequate. At a minimum, operational testing shall be conducted at least once every thirty (30) days.

5. These monitoring and inspection data shall be recorded and the records shall be placed in the operating record required by Section 4 of 401 KAR 34:050.

(i) Direct transfer to the burner. If hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit, the owner and operator shall comply with Section 12 of this administrative regulation.

(j) Recordkeeping. The owner or operator shall keep in the operating record of the facility all information and data required by this section until closure of the facility.

(k) Closure. At closure, the owner or operator shall remove all

hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the boiler or industrial furnace.

Section 4. Interim Status Standards for Burners. (1) Purpose, scope, applicability.

(a) General.

1. The purpose of this section is to establish minimum national standards for owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste where such standards define the acceptable management of hazardous waste during the period of interim status. The standards of this section apply to owners and operators of existing facilities until either a permit is issued under Section 3(4) of this administrative regulation or until closure responsibilities identified in this section are fulfilled.

2. "Existing" or "in existence" indicates a boiler or industrial furnace that on or before August 21, 1991 is either in operation burning, or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced. A facility has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction; and either:

a. A continuous on-site, physical construction program has begun; or

b. 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.

3. If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the facility shall comply with the applicable administrative regulations dealing with permit modifications at the request of the permittee under 401 KAR 38:040 or changes in interim status in Section 3 of 401 KAR 38:020.

(b) Exemptions. The requirements of this section do not apply to hazardous waste and facilities exempt under Section 1(2) or Section 9 of this administrative regulation.

(c) Prohibition on burning dioxin-listed wastes. The following hazardous waste listed for dioxin and hazardous waste derived from any of these wastes shall not be burned in a boiler or industrial furnace operating under interim status: EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, and F027.

(d) Applicability of 401 KAR Chapter 35 standards. Owners and operators of boilers and industrial furnaces that burn hazardous waste and are operating under interim status are subject to the following provisions of 401 KAR Chapter 35, except as provided otherwise by this section:

1. Section 2 of 35:010; and

2. Sections 2 to 8 of 401 KAR 35:020; and

3. Sections 2 to 7 of 401 KAR 35:030; and

4. Sections 2 to 7 of 401 KAR 35:040; and

5. Sections 2 to 8 of 401 KAR 35:050, except that Sections 2, 3, and 7 shall not apply to owners or operators of on-site facilities that do not receive any hazardous waste from off-site sources; and

6. Sections 2 to 6 of 401 KAR 35:070; and

7. 401 KAR 35:080, 401 KAR 35:090, 401 KAR 35:120, and 401 KAR 35:130, except that states and the federal government are exempt from the requirements of 401 KAR 35:080; and

8. 401 KAR 35:280, except Section 2(1).

(e) Special requirements for furnaces. The following controls apply during interim status to industrial furnaces (for example, kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see subparagraph 2 of this paragraph) at any location other than the hot end where products are normally discharged and where fuels are normally fired:

1. Controls.

a. The hazardous waste shall be fed at a location where combustion gas temperatures are at least 1800 degrees Fahrenheit;

b. The owner or operator shall determine that adequate oxygen is present in combustion gases to combust organic constituents in the waste and retain documentation of such determination in the facility record;

c. For cement kiln systems, the hazardous waste shall be fed into the kiln; and

d. The hydrocarbon controls of Section 5(3) of this administrative regulation or subsection (3)(g)2 of this section apply upon certification of compliance under subsection (3) of this section irrespective of the CO level achieved during the compliance test.

2. Burning hazardous waste solely as an ingredient. A hazardous waste is burned for a purpose other than solely as an ingredient if it meets either of these criteria:

a. The hazardous waste has a total concentration of nonmetal compounds listed in 401 KAR 31:170 exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of nonmetal compounds in a waste as-generated may be reduced to the 500 ppm limit by authentic treatment that removes or destroys nonmetal constituents. Blending for dilution to meet the 500 ppm limit is prohibited, and documentation that the waste has not been impermissibly diluted shall be retained in the facility record; or

b. The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by authentic treatment that removes or destroys organic constituents. Blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited, and documentation that the waste has not been impermissibly blended shall be retained in the facility record.

(f) Restrictions on burning hazardous waste that is not a fuel. Prior to certification of compliance under subsection (3) of this section, owners and operators shall not feed hazardous waste that has a heating value less than 5,000 Btu/lb, as-generated, (except that the heating value of a waste as-generated may be increased to above the 5,000 Btu/lb limit by authentic treatment; however, blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited and records shall be kept to document that impermissible blending has not occurred) in a boiler or industrial furnace, except that:

1. Hazardous waste may be burned solely as an ingredient; or

2. Hazardous waste may be burned for purposes of compliance testing (or testing prior to compliance testing) for a total period of time not to exceed 720 hours; or

3. This waste may be burned if the cabinet has documentation to show that, prior to August 21, 1991:

a. The boiler or industrial furnace is operating under the interim status standards for incinerators provided by 401 KAR 35:240, or the interim status standards for thermal treatment units provided by 401 KAR 35:250; and

b. Hazardous waste with a heating value less than 5,000 Btu/lb was burned prior to that date; or

4. This waste may be burned in a halogen acid furnace if the waste was burned as an excluded ingredient under Section 2(5) of 401 KAR 31:010 prior to February 21, 1991 and documentation is kept on file supporting this claim.

(g) Direct transfer to the burner. If hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit, the owner and operator shall comply with Section 12 of this administrative regulation.

(2) Certification of precompliance.

(a) General. The owner or operator shall provide complete and accurate information specified in paragraph (b) of this subsection to the cabinet on or before August 21, 1991, and shall establish limits for the operating parameters specified in paragraph (c) of this subsection. This information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in paragraph (c) of this subsection, the owner or operator believes that, using best engineering judgment, emissions of

particulate matter, metals, and HCl and Cl_2 are not likely to exceed the limits provided by Sections 6, 7, and 8 of this administrative regulation. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under paragraph (c) of this subsection until the owner or operator submits a revised certification of precompliance under paragraph (h) of this subsection or a certification of compliance under subsection (3) of this section, or until a permit is issued.

(b) Information required. The following information shall be submitted with the certification of precompliance to support the determination that the limits established for the operating parameters identified in paragraph (c) of this subsection are not likely to result in an exceedance of the allowable emission rates for particulate matter, metals, and HCl and Cl_2:

1. General facility information:

a. EPA facility ID number;

b. Facility name, contact person, telephone number, and address;

c. Description of boilers and industrial furnaces burning hazardous waste, including type and capacity of device;

d. A scaled plot plan showing the entire facility and location of the boilers and industrial furnaces burning hazardous waste; and

e. A description of the air pollution control system on each device burning hazardous waste, including the temperature of the flue gas at the inlet to the particulate matter control system.

2. Except for facilities complying with the Tier I feed rate screening limits for metals or total chlorine and chloride provided by Sections 7(2) or (5) and 8(2)(a) or (5) of this administrative regulation respectively, the estimated uncontrolled (at the inlet to the air pollution control system) emissions of particulate matter, each metal controlled by Section 7 of this administrative regulation, and hydrogen chloride and chlorine, and the following information to support such determinations:

a. The feed rate (lb/hr) of ash, chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feedstream (hazardous waste, other fuels, industrial furnace feedstocks);

b. The estimated partitioning factor to the combustion gas for the materials identified in clause a of this subparagraph and the basis for the estimate and an estimate of the partitioning to HCl and Cl_2 of total chloride and chlorine in feed materials. To estimate the partitioning factor, the owner or operator shall use either best engineering judgment or the procedures specified in Section 9(1)(a) of 401 KAR 36:025;

c. For industrial furnaces that recycle collected particulate matter (PM) back into the furnace and that shall certify compliance with the metals emissions standards under subsection (3)(c)2a of this section, the estimated enrichment factor for each metal. To estimate the enrichment factor, the owner or operator shall use either best engineering judgment or the procedures specified in "Alternative Methodology for Implementing Metals Controls" in Section 9(1)(a) of 401 KAR 36:025;

d. If best engineering judgment is used to estimate partitioning factors or enrichment factors under clause b or c of this subparagraph respectively, the basis for the judgment. When best engineering judgment is used to develop or evaluate data or information and make determinations under this section, the determinations shall be made by an engineer and a certification of his determinations in accordance with Section 7(4) of 401 KAR 38:070 shall be provided in the certification of precompliance;

3. For facilities complying with the Tier I feed rate screening limits for metals or total chlorine and chloride provided by Sections 7(2) or (5) and 8(2)(a) or (5) of this administrative regulation, the feed rate (lb/hr) of total chloride and chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feedstream (hazardous waste, other fuels, industrial furnace feedstocks);

4. For facilities complying with the Tier II or Tier III emission limits for metals or HCl and Cl_2 (under Sections 7(3) or (4) and 8(2)(b) or (3) of this administrative regulation), the estimated controlled (outlet of the air pollution control system) emissions rates of particulate matter, each metal controlled by Section 7 of this administrative regulation, and HCl and Cl_2, and the following information to support such determinations:

a. The estimated air pollution control system (APCS) removal efficiency for particulate matter, HCl, Cl_2, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium;

b. To estimate APCS removal efficiency, the owner or operator shall use either best engineering judgment or the procedures prescribed in Section 9(1)(a) of 401 KAR 36:025;

c. If best engineering judgment is used to estimate APCS removal efficiency, the basis for the judgment. Use of best engineering judgment shall be in conformance with provisions of subparagraph 2d of this paragraph;

5. Determination of allowable emissions rates for HCl, Cl_2, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium, and the following information to support such determinations:

a. For all facilities:

(i) Physical stack height;

(ii) Good engineering practice stack height as defined by 40 CFR 51.100(ii);

(iii) Maximum flue gas flow rate;

(iv) Maximum flue gas temperature;

(v) Attach a USGS topographic map (or equivalent) showing the facility location and surrounding land within five (5) km of the facility;

(vi) Identify terrain type: complex or noncomplex; and

(vii) Identify land use: urban or rural;

b. For owners and operators using Tier III site specific dispersion modeling to determine allowable levels under Section 7(4) or 8(3) of this administrative regulation, or adjusted Tier I feed rate screening limits under Section 7(5) or 8(5) of this administrative regulation:

(i) Dispersion model and version used;

(ii) Source of meteorological data;

(iii) The dilution factor in micrograms per cubic meter per gram per second of emissions for the maximum annual average off-site (unless on-site is required) ground level concentration (MEI location); and

(iv) Indicate the MEI location on the map required under clause a(v) of this subparagraph;

6. For facilities complying with the Tier II or III emissions rate controls for metals or HCl and Cl_2, a comparison of the estimated controlled emissions rates determined under subparagraph 4 of this paragraph with the allowable emission rates determined under subparagraph 5 of this paragraph;

7. For facilities complying with the Tier I (or adjusted Tier I) feed rate screening limits for metals or total chloride and chlorine, a comparison of actual feed rates of each metal and total chlorine and chloride determined under subparagraph 3 of this paragraph to the Tier I allowable feed rates;

8. For industrial furnaces that feed hazardous waste for any purpose other than solely as an ingredient (as defined at subsection (1)(e)2 of this section) at any location other than the product discharge end of the device, documentation of compliance with the requirements of subsection (1)(e)1a to c of this section; and

9. For industrial furnaces that recycle collected particulate matter (PM) back into the furnace and that shall certify compliance with the metals emissions standards under subsection (3)(c)2a of this section:

a. The applicable particulate matter standard in lb/hr; and

b. The precompliance limit on the concentration of each metal in collected PM.

(c) Limits on operating conditions. The owner and operator shall establish limits on the following parameters consistent with the determinations made under paragraph (b) of this subsection and certify (under provisions of paragraph (i) of this subsection) to the

cabinet that the facility shall operate within the limits during interim status when there is hazardous waste in the unit until revised certification of precompliance under paragraph (h) of this subsection or certification of compliance under subsection (3) of this section:

1. Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under Section 7(2) or (5) of this administrative regulation) pumpable hazardous waste;

2. Feed rate of each metal in the following feed streams:

a. Total feed streams, except that industrial furnaces that comply with the alternative metals implementation approach under paragraph (d) of this subsection shall specify limits on the concentration of each metal in collected particulate matter in lieu of feed rate limits for total feedstreams;

b. Total hazardous waste feed; and

c. Total pumpable hazardous waste feed, unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under Section 7(3) or (5) of this administrative regulation;

3. Total feed rate of chlorine and chloride in total feed streams;

4. Total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light-weight aggregate kilns is not limited; and

5. Maximum production rate of the device in appropriate units when producing normal product.

(d) Operating requirements for furnaces that recycle PM. Owners and operators of furnaces that recycle collected particulate matter (PM) back into the furnace and that shall certify compliance with the metals emissions controls under subsection (3)(c)2a of this section shall comply with the special operating requirements provided in "Alternative Methodology for Implementing Metals Controls" in Section 9(1)(a) of 401 KAR 36:025.

(e) Measurement of feed rates and production rate.

1. General requirements. Limits on each of the parameters specified in paragraph (c) of this subsection (except for limits on metals concentrations in collected particulate matter (PM) for industrial furnaces that recycle collected PM) shall be established and continuously monitored and recorded under either of the following methods:

a. Instantaneous limits. A limit for a parameter may be established and continuously monitored and recorded on an instantaneous basis (that is, the value that occurs at any time) not to be exceeded at any time; or

b. Hourly rolling average limits. A limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:

(i) A continuous monitor is one (1) which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen (15) seconds, and computes and records the average value at least every sixty (60) seconds.

(ii) An hourly rolling average is the arithmetic mean of the sixty (60) most recent one (1) minute average values recorded by the continuous monitoring system.

2. Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (arsenic, beryllium, cadmium, and chromium) and lead may be established either on an hourly rolling average basis as prescribed by paragraph (e)1b of this subsection or on up to a twenty-four (24) hour rolling average basis. If the owner or operator elects to use an averaging period from two (2) to twenty-four (24) hours:

a. The feed rate of each metal shall be limited at any time to ten (10) times the feed rate that would be allowed on a hourly rolling average basis;

b. The continuous monitor shall meet the following specifications:

(i) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen (15) seconds, and computes and records the average value at least every sixty (60) seconds.

(ii) The rolling average for the selected averaging period is defined as the arithmetic mean of one (1) hour block averages for the averaging period. A one (1) hour block average is the arithmetic mean of the one (1) minute averages recorded during the sixty (60) minute period beginning at one (1) minute after the beginning of preceding clock hour.

3. Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (that is, metals, chloride, chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream shall be monitored under the continuous monitoring requirements of subparagraphs 1 and 2 of this paragraph.

(f) Public notice requirements at precompliance. On or before August 21, 1991, the owner or operator shall submit a notice with the following information for publication in a major local newspaper of general circulation and send a copy of the notice to the appropriate units of state and local government. The owner and operator shall provide to the cabinet with the certification of precompliance evidence of submitting the notice for publication. The notice, which shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 401 KAR 36:020", shall include:

1. Name and address of the owner and operator of the facility as well as the location of the device burning hazardous waste;

2. Date that the certification of precompliance is submitted to the cabinet;

3. Brief description of the regulatory process required to comply with the interim status requirements of this section including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl_2;

4. Types and quantities of hazardous waste burned including, but not limited to, source, whether solids or liquids, as well as an appropriate description of the waste;

5. Type of device(s) in which the hazardous waste is burned including a physical description and maximum production rate of each device;

6. Types and quantities of other fuels and industrial furnace feedstocks fed to each unit;

7. Brief description of the basis for this certification of precompliance as specified in paragraph (b) of this subsection;

8. Locations where the record for the facility may be viewed and copied by interested parties. These records and locations shall at a minimum include:

a. The administrative record kept by the cabinet office where the supporting documentation was submitted or another location designated by the cabinet; and

b. The BIF correspondence file kept at the facility site where the device is located. The correspondence file must include all correspondence between the facility and EPA, the cabinet, and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and cabinet site visit reports submitted to the owner or operator;

9. Notification of the establishment of a facility mailing list whereby interested parties shall notify the cabinet that they wish to be placed on the mailing list to receive future information and notices about this facility; and

10. Location (mailing address) of the applicable EPA regional office, hazardous waste division, where further information may be obtained on EPA regulation of hazardous waste burning.

(g) Monitoring other operating parameters. When the monitoring systems for the operating parameters listed in subsection (3)(a)5 to

13 of this section are installed and operating in conformance with vendor specifications or (for CO, HC, and oxygen) specifications provided by Section 9(1)(a) of 401 KAR 36:025 as appropriate, the parameters shall be continuously monitored and records shall be maintained in the operating record.

(h) Revised certification of precompliance. The owner or operator may revise, at any time, the information and operating conditions documented under paragraphs (b) and (c) of this subsection in the certification of precompliance by submitting a revised certification of precompliance under procedures provided by those subsections.

1. The public notice requirements of paragraph (f) of this subsection do not apply to recertifications.

2. The owner and operator shall operate the facility within the limits established for the operating parameters under paragraph (c) of this subsection until a revised certification is submitted under this section or a certification of compliance is submitted under subsection (3) of this section.

(i) Certification of precompliance statement. The owner or operator shall include the following signed statement with the certification of precompliance submitted to the cabinet:

"I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information and supporting documentation. Copies of all emissions tests, dispersion modeling results, and other information used to determine conformance with the requirements of Section 4(2) of this administrative regulation are available at the facility and may be obtained from the facility contact person listed above. Based on my inquiry of the person or persons who manages the facility, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I also acknowledge that the operating limits established in this certification pursuant to Section 4(2)(c) and (d) of 401 KAR 36:020 are enforceable limits at which the facility may legally operate during interim status until:

1. A revised certification of precompliance is submitted;

2. A certification of compliance is submitted; or

3. An operating permit is issued."

(3) Certification of compliance. The owner or operator shall conduct emissions testing to document compliance with the emissions standards of Sections 5(2) to (5) and 6, 7, and 8 of this administrative regulation and subsection (1)(e)1d of this section, under the procedures prescribed by this subsection, except under extensions of time provided by paragraph (g) of this subsection. Based on the compliance test, the owner or operator shall submit to the cabinet on or before August 21, 1992 a complete and accurate "certification of compliance" (under paragraph (d) of this subsection) with those emission standards establishing limits on the operating parameters specified in paragraph (a) of this subsection.

(a) Limits on operating conditions. The owner or operator shall establish limits on the following parameters based on operations during the compliance test (under procedures prescribed in paragraph (d)4 of this subsection) and include these limits with the certification of compliance. The boiler or industrial furnace shall be operated in accordance with these operating limits and all applicable emissions standards of subsection (1)(e)1d of this section, and Sections 5(2) to (5) and 6, 7, and 8 of this administrative regulation at all times when there is hazardous waste in the unit until an operating permit is issued.

(b) Prior notice of compliance testing. At least thirty (30) days prior to the compliance testing required by paragraph (c) of this subsection, the owner or operator shall notify the cabinet and submit the following information:

1. General facility information including:

a. EPA facility ID number;

b. Facility name, contact person, telephone number, and address;

c. Person responsible for conducting compliance test, including company name, address, and telephone number, and a statement of qualifications;

d. Planned date of the compliance test;

2. Specific information on each device to be tested including:

a. Description of boiler or industrial furnace;

b. A scaled plot plan showing the entire facility and location of the boiler or industrial furnace;

c. A description of the air pollution control system;

d. Identification of the continuous emission monitors that are installed, including:

(i) Carbon monoxide monitor;

(ii) Oxygen monitor;

(iii) Hydrocarbon monitor, specifying the minimum temperature of the system and, if the temperature is less than 150 degrees Centigrade, an explanation of why a heated system is not used (see paragraph (e) of this subsection) and a brief description of the sample gas conditioning system;

e. Indication of whether the stack is shared with another device that shall be in operation during the compliance test;

f. Other information useful to an understanding of the system design or operation.

3. Information on the testing planned, including a complete copy of the test protocol and quality assurance/quality control (QA/QC) plan, and a summary description for each test providing the following information at a minimum:

a. Purpose of the test (for example, demonstrate compliance with emissions of particulate matter); and

b. Planned operating conditions, including levels for each pertinent parameter specified in paragraph (a) of this subsection.

(c) Compliance testing.

1. General. Compliance testing shall be conducted under conditions for which the owner or operator has submitted a certification of precompliance under subsection (2) of this section and under conditions established in the notification of compliance testing required by paragraph (b) of this subsection. The owner or operator may seek approval on a case-by-case basis to use compliance test data from one (1) unit instead of testing a similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The cabinet shall provide a written approval to use compliance test data instead of testing a similar unit if the cabinet finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of this subsection.

(d) Certification of compliance. Within ninety (90) days of completing compliance testing, the owner or operator shall certify to the cabinet compliance with the emissions standards of Section 5(2), (3), and (15) of this administrative regulation, Sections 6 to 8 of this administrative regulation, and subsection (1)(d)1d of this section. The certification of compliance shall include the following information:

1. General facility and testing information including:

a. EPA facility ID number;

b. Facility name, contact person, telephone number, and address;

c. Person responsible for conducting compliance testing, including company name, address, and telephone number, and a statement of qualifications;

d. Date(s) of each compliance test;

e. Description of boiler or industrial furnace tested;

f. Person responsible for quality assurance/quality control (QA/QC), title, and telephone number, and statement that procedures prescribed in the QA/QC plan submitted under paragraph (b)3 of this subsection have been followed, or a description of any changes and

an explanation of why changes were necessary.

g. Description of any changes in the unit configuration prior to or during testing that would alter any of the information submitted in the prior notice of compliance testing under paragraph (b) of this subsection, and an explanation of why the changes were necessary;

h. Description of any changes in the planned test conditions prior to or during the testing that alter any of the information submitted in the prior notice of compliance testing under paragraph (b) of this subsection, and an explanation of why the changes were necessary; and

i. The complete report on results of emissions testing.

2. Specific information on each test including:

a. Purpose(s) of test (for example, demonstrate conformance with the emissions limits for particulate matter, metals, HCl, Cl_2, and CO); and

b. Summary of test results for each run and for each test including the following information:

(i) Date of run;

(ii) Duration of run;

(iii) Time-weighted average and highest hourly rolling average CO level for each run and for the test;

(iv) Highest hourly rolling average HC level, if HC monitoring is required for each run and for the test;

(v) If dioxin and furan testing is required under Section 5(5) of this administrative regulation, time-weighted average emissions for each run and for the test of chlorinated dioxin and furan emissions, and the predicted maximum annual average ground level concentration of the toxicity equivalency factor;

(vi) Time-weighted average particulate matter emissions for each run and for the test;

(vii) Time-weighted average HCl and Cl_2 emissions for each run and for the test;

(viii) Time-weighted average emissions for the metals subject to regulation under Section 7 of this administrative regulation for each run and for the test; and

(ix) QA/QC results.

3. Comparison of the actual emissions during each test with the emissions limits prescribed by Section 5(3), (4) and (5) of this administrative regulation, Sections 6 to 8 of this administrative regulation and established for the facility in the certification of precompliance under subsection (2) of this section.

4. Determination of operating limits based on all valid runs of the compliance test for each applicable parameter listed in paragraph (a) of this subsection using either of the following procedures:

a. Instantaneous limits. A parameter may be measured and recorded on an instantaneous basis (that is, the value that occurs at any time) and the operating limit specified as the time-weighted average during all runs of the compliance test; or

b. Hourly rolling average basis.

(i) The limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:

i. A continuous monitor is one (1) which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen (15) seconds, and computes and records the average value at least every sixty (60) seconds; and

ii. An hourly rolling average is the arithmetic mean of the sixty (60) most recent one (1) minute average values recorded by the continuous monitoring system.

(ii) The operating limit for the parameter shall be established based on compliance test data as the average over all test runs of the highest hourly rolling average value for each run.

c. Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (that is, arsenic, beryllium, cadmium, and chromium) and lead may be established either on an hourly rolling average basis as prescribed by clause b of this subparagraph or up to a twenty-four (24) hour rolling average basis. If the owner or operator elects to use an averaging period from two (2) to twenty-four (24) hours:

(i) The feed rate of each metal shall be limited at any time to ten (10) times the feed rate that would be allowed on a hourly rolling average basis;

(ii) The continuous monitor shall meet the following specifications:

i. A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen (15) seconds, and computes and records the average value at least every sixty (60) seconds; and

ii. The rolling average for the selected averaging period is defined as arithmetic mean of one (1) hour block averages for the averaging period. A one (1) hour block average is the arithmetic mean of the one minute averages recorded during the sixty (60) minute period beginning at one (1) minute after the beginning of preceding clock hour; and

(iii) The operating limit for the feed rate of each metal shall be established based on compliance test data as the average over all test runs of the highest hourly rolling average feed rate for each run.

d. Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (metals, chloride, chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream shall be monitored under the continuous monitoring requirements of clauses a to c of this subparagraph.

5. Certification of compliance statement. The following statement shall accompany the certification of compliance:

"I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information and supporting documentation. Copies of all emissions tests, dispersion modeling results and other information used to determine conformance with the requirements of Section 4(3) of 401 KAR 36:020 are available at the facility and can be obtained from the facility contact person listed above. Based on my inquiry of the person or persons who manages the facility, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I also acknowledge that the operating conditions established in this certification pursuant to Section 4(3)(d)4 of 401 KAR 36:020 are enforceable limits at which the facility can legally operate during interim status until a revised certification of compliance is submitted."

(e) Special requirements for HC monitoring systems. When an owner or operator is required to comply with the hydrocarbon (HC) controls provided by Section 5(3) of this administrative regulation, subsection (1)(e)1d of this section, a conditioned gas monitoring system may be used in conformance with specifications provided in Section 9(1)(a) of 401 KAR 36:025 provided that the owner or operator submits a certification of compliance without using extensions of time provided by paragraph (g) of this subsection.

(f) Special operating requirements for industrial furnaces that recycle collected PM. Owners and operators of industrial furnaces that recycle back into the furnace particulate matter (PM) from the air pollution control system shall:

1. When complying with the requirements of paragraph (c)2a of this subsection, comply with the operating requirements prescribed in "Alternative Method to Implement the Metals Controls" in Section 9(1)(a) of 401 KAR 36:025; and

2. When complying with the requirements of paragraph (c)2b of this subsection, comply with the operating requirements prescribed by that subsection.

(g) Extensions of time.

1. If the owner or operator does not submit a complete certifica-

tion of compliance for all of the applicable emissions standards of Sections 5 to 8 of this administrative regulation by August 21, 1992, he shall either:

a. Stop burning hazardous waste and begin closure activities under subsection (12) of this section for the hazardous waste portion of the facility; or

b. Limit hazardous waste burning only for purposes of compliance testing (and pretesting to prepare for compliance testing) a total period of 720 hours for the period of time beginning August 21, 1992, submit a notification to the cabinet by August 21, 1992 stating that the facility is operating under restricted interim status and intends to resume burning hazardous waste, and submit a complete certification of compliance by August 23, 1993; or

c. Obtain a case-by-case extension of time under subparagraph 2 of this paragraph.

2. The owner or operator may request a case-by-case extension of time to extend any time limit provided by this subsection if compliance with the time limit is not practicable for reasons beyond the control of the owner or operator.

a. In granting an extension, the cabinet may apply conditions as the facts warrant to ensure timely compliance with the requirements of this section and that the facility operates in a manner that does not pose a hazard to human health and the environment;

b. When an owner and operator request an extension of time to enable them to obtain a RCRA operating permit because the facility cannot meet the HC limit of Section 5(3) of this administrative regulation:

(i) The cabinet shall, in considering whether to grant the extension:

i. Determine whether the owner and operator have submitted in a timely manner a complete Part B permit application that includes information required under Section 9(1)(a) of 401 KAR 36:025 of this chapter; and

ii. Consider whether the owner and operator have made a good faith effort to certify compliance with all other emission controls, including the controls on dioxins and furans of Section 5(5) of this administrative regulation and the controls on PM, metals, and HCl/Cl_2.

(ii) If an extension is granted, the cabinet shall, as a condition of the extension, require the facility to operate under flue gas concentration limits on CO and HC that, based on available information, including information in the Part B permit application, are baseline CO and HC levels as defined by Section 5(6)(a) of this administrative regulation.

(h) Revised certification of compliance. The owner or operator may submit at any time a revised certification of compliance (recertification of compliance) under the following procedures:

1. Prior to submittal of a revised certification of compliance, hazardous waste may not be burned for more than a total of 720 hours under operating conditions that exceed those established under a current certification of compliance, and such burning may be conducted only for purposes of determining whether the facility can operate under revised conditions and continue to meet the applicable emissions standards of Sections 5 to 8 of this administrative regulation;

2. At least thirty (30) days prior to first burning hazardous waste under operating conditions that exceed those established under a current certification of compliance, the owner or operator shall notify the cabinet and submit the following information:

a. EPA facility ID number, and facility name, contact person, telephone number, and address;

b. Operating conditions that the owner or operator is seeking to revise and description of the changes in facility design or operation that prompted the need to seek to revise the operating conditions;

c. A determination that when operating under the revised operating conditions, the applicable emissions standards of Sections 5 to 8 of this administrative regulation are not likely to be exceeded. To document this determination, the owner or operator shall submit the applicable information required under subsection (2)(b) of this section; and

d. Complete emissions testing protocol for any pretesting and for a new compliance test to determine compliance with the applicable emissions standards of Sections 5 to 8 of this administrative regulation when operating under revised operating conditions. The protocol shall include a schedule of pretesting and compliance testing. If the owner and operator revises the scheduled date for the compliance test, he shall notify the cabinet in writing at least thirty (30) days prior to the revised date of the compliance test;

3. Conduct a compliance test under the revised operating conditions and the protocol submitted to the cabinet to determine compliance with the applicable emissions standards of Sections 5 to 8 of this administrative regulation; and

4. Submit a revised certification of compliance under paragraph (d) of this subsection.

(4) Periodic recertifications. The owner or operator shall conduct compliance testing and submit to the cabinet a recertification of compliance under provisions of subsection (3) of this section within three (3) years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he shall comply with the requirements of subsection (3)(h) of this section.

(5) Noncompliance with certification schedule. If the owner or operator does not comply with the interim status compliance schedule provided by subsections (2) to (4) of this section, hazardous waste burning shall terminate on the date that the deadline is missed, closure activities shall begin under subsection (12) of this section, and hazardous waste burning shall not resume except under an operating permit issued under Section 7 of 401 KAR 38:060. For purposes of compliance with the closure provisions of subsection (12) of this section and Sections 3(4)(b) and 4 of 401 KAR 35:070, the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.

(6) Start-up and shut-down. Hazardous waste (except waste fed solely as an ingredient under the Tier I (or adjusted Tier I) feed rate screening limits for metals and chloride, chlorine) shall not be fed into the device during start-up and shut-down of the boiler or industrial furnace, unless the device is operating within the conditions of operation specified in the certification of compliance.

(7) Automatic waste feed cutoff. During the compliance test required by subsection (3)(c) of this section, and upon certification of compliance under subsection (3) of this section, a boiler or industrial furnace shall be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in subsections (3)(a)1(v) to (xiii) of this section deviate from those established in the certification of compliance. In addition:

(a) To minimize emissions of organic compounds, the minimum combustion chamber temperature (or the indicator of combustion chamber temperature) that occurred during the compliance test shall be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber, with the minimum temperature during the compliance test defined as either:

1. If compliance with the combustion chamber temperature limit is based on a hourly rolling average, the minimum temperature during the compliance test is considered to be the average over all runs of the lowest hourly rolling average for each run; or

2. If compliance with the combustion chamber temperature limit is based on an instantaneous temperature measurement, the minimum temperature during the compliance test is considered to be the time-weighted average temperature during all runs of the test; and

(b) Operating parameters limited by the certification of compliance shall continue to be monitored during the cutoff, and the hazardous waste feed shall not be restarted until the levels of those parameters comply with the limits established in the certification of compliance.

(8) Fugitive emissions. Fugitive emissions shall be controlled by:

(a) Keeping the combustion zone totally sealed against fugitive emissions; or

(b) Maintaining the combustion zone pressure lower than atmospheric pressure; or

(c) An alternate means of control that the owner or operator demonstrates provides fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure. Support for this demonstration shall be included in the operating record.

(9) Changes. A boiler or industrial furnace shall cease burning hazardous waste when changes in combustion properties, or feed rates of the hazardous waste, other fuels, or industrial furnace feedstocks, or changes in the boiler or industrial furnace design or operating conditions deviate from the limits specified in the certification of compliance.

(10) Monitoring and inspections.

(a) The owner or operator shall monitor and record the following, at a minimum, while burning hazardous waste:

1. Feed rates and composition of hazardous waste, other fuels, and industrial furnace feed stocks, and feed rates of ash, metals, and total chloride and chlorine as necessary to ensure conformance with the certification of precompliance or certification of compliance;

2. Carbon monoxide (CO), oxygen, and if applicable, hydrocarbons (HC), on a continuous basis at a common point in the boiler or industrial furnace downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with the operating limits specified in the certification of compliance. CO, HC, and oxygen monitors shall be installed, operated, and maintained in accordance with methods specified in Section 9(1)(a) of 401 KAR 36:025; and

3. Upon the request of the cabinet, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feed stocks as appropriate) and the stack gas emissions shall be conducted to verify that the operating conditions established in the certification of precompliance or certification of compliance achieve the applicable standards of Sections 5 to 8 of this administrative regulation.

(b) The boiler or industrial furnace and associated equipment (for example, pumps, valves, pipes, and fuel storage tanks) shall be subjected to thorough visual inspection when they contain hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.

(c) The automatic hazardous waste feed cutoff system and associated alarms shall be tested at least once every seven (7) days when hazardous waste is burned to verify operability, unless the owner or operator can demonstrate that weekly inspections shall unduly restrict or upset operations and that less frequent inspections will be adequate. Support for the demonstration shall be included in the operating record. At a minimum, operational testing shall be conducted at least once every thirty (30) days.

(d) These monitoring and inspection data shall be recorded and the records shall be placed in the operating log.

(11) Recordkeeping. The owner or operator shall keep in the operating record of the facility all information and data required by this section until closure of the boiler or industrial furnace unit.

(12) Closure. At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the boiler or industrial furnace and shall comply with Sections 2 to 6 of 401 KAR 35:070.

Section 5. Standards to Control Organic Emissions. (1) DRE standard.

(a) General. Except as provided in paragraph (c) of this subsection, a boiler or industrial furnace burning hazardous waste shall achieve a destruction and removal efficiency (DRE) of 99.99 percent for all organic hazardous constituents in the waste feed. To demonstrate conformance with this requirement, 99.99 percent DRE shall be demonstrated during a trial burn for each principal organic hazardous constituent (POHC) designated (under paragraph (b) of this subsection) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \left[1 - \frac{W_{out}}{W_{in}}\right] \times 100$$

where:

W_{in} = Mass feed rate of one principal organic hazardous constituent (POHC) in the hazardous waste fired to the boiler or industrial furnace; and

W_{out} = Mass emission rate of the same POHC present in stack gas prior to release to the atmosphere.

(b) Designation of POHCs. Principal organic hazardous constituents (POHCs) are those compounds for which compliance with the DRE requirements of this section shall be demonstrated in a trial burn in conformance with procedures prescribed in Section 7 of 401 KAR 36:025. One (1) or more POHCs shall be designated by the cabinet for each waste feed to be burned. POHCs shall be designated based on the degree of difficulty of destruction of the organic constituents in the waste and on their concentrations or mass in the waste feed considering the results of waste analyses submitted with Part B of the permit application. POHCs are most likely to be selected from among those compounds listed in 401 KAR 31:170 that are also present in the normal waste feed. However, if the applicant demonstrates to the cabinet's satisfaction that a compound not listed in 401 KAR 31:170 or not present in the normal waste feed is a suitable indicator of compliance with the DRE requirements of this section, that compound may be designated as a POHC. Such POHCs need not be toxic or organic compounds.

(c) Dioxin-listed waste. A boiler or industrial furnace burning hazardous waste containing (or derived from) EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, or F027 shall achieve a destruction and removal efficiency (DRE) of 99.9999 percent for each POHC designated (under paragraph (b) of this subsection) in its permit. This performance shall be demonstrated on POHCs that are more difficult to burn 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 boiler or industrial furnace shall notify the cabinet of intent to burn EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027.

(d) Automatic waiver of DRE trial burn. Owners and operators of boilers operated under the special operating requirements provided by Section 11 of this administrative regulation are considered to be in compliance with the DRE standard of paragraph (a) of this subsection and are exempt from the DRE trial burn.

(e) Low-risk waste. Owners and operators of boilers or industrial furnaces that burn hazardous waste in compliance with the requirements of Section 10(1) of this administrative regulation are considered to be in compliance with the DRE standard of paragraph (a) of this subsection and are exempt from the DRE trial burn.

(2) Carbon monoxide standard.

(a) Except as provided in subsection (3) of this section, the stack gas concentration of carbon monoxide (CO) from a boiler or industrial furnace burning hazardous waste shall not exceed 100 ppmv on an hourly rolling average basis (that is, over any sixty (60) minute period), continuously corrected to seven (7) percent oxygen, dry gas basis.

(b) CO and oxygen shall be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Carbon Monoxide and Oxygen for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in Section 9(1)(a)

of 401 KAR 36:025.

(c) Compliance with the 100 ppmv CO limit shall be demonstrated during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). To demonstrate compliance, the highest hourly rolling average CO level during any valid run of the trial burn or compliance test shall not exceed 100 ppmv.

(3) Alternative carbon monoxide standard.

(a) The stack gas concentration of carbon monoxide (CO) from a boiler or industrial furnace burning hazardous waste may exceed the 100 ppmv limit provided that stack gas concentrations of hydrocarbons (HC) do not exceed 20 ppmv, except as provided by subsection (6) of this section for certain industrial furnaces.

(b) HC limits shall be established under this section on an hourly rolling average basis (over any sixty (60) minute period), reported as propane, and continuously corrected to seven (7) percent oxygen, dry gas basis.

(c) HC shall be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Hydrocarbons for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in Section 9(1)(a) of 401 KAR 36:025. CO and oxygen shall be continuously monitored in conformance with subsection (2)(b) of this section.

(d) The alternative CO standard is established based on CO data during the trial burn (for a new facility) and the compliance test (for an interim status facility). The alternative CO standard is the average over all valid runs of the highest hourly average CO level for each run. The CO limit is implemented on an hourly rolling average basis, and continuously corrected to seven (7) percent oxygen, dry gas basis.

(4) Special requirements for furnaces. Owners and operators of industrial furnaces (for example, kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see Section 4(1)(e)2 of this administrative regulation) at any location other than the end where products are normally discharged and where fuels are normally fired shall comply with the hydrocarbon limits provided by subsections (3) or (6) of this section irrespective of whether stack gas CO concentrations meet the 100 ppmv limit of subsection (2) of this section.

(5) Controls for dioxins and furans. Owners and operators of boilers and industrial furnaces that are equipped with a dry particulate matter control device that operates within the temperature range of 450-750 degrees Fahrenheit, and industrial furnaces operating under an alternative hydrocarbon limit established under subsection (6) of this section shall conduct a site-specific risk assessment as follows to demonstrate that emissions of chlorinated dibenzo-p-dioxins and dibenzofurans do not result in an increased lifetime cancer risk to the hypothetical maximum exposed individual (MEI) exceeding one (1) in 1,000,000:

(a) During the trial burn (for new facilities or an interim status facility applying for a permit) or compliance test (for interim status facilities), determine emission rates of the tetra-octa congeners of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs/CDFs) using Method 23, "Determination of Polychlorinated Dibenzo-p-Dioxins (PCDDs) and Polychlorinated Dibenzofurans (PCDFs) from Stationary Sources", in Section 9(1)(a) of 401 KAR 36:025;

(b) Estimate the 2,3,7,8-TCDD toxicity equivalence of the tetra-octa CDDs/CDFs congeners using "Procedures for Estimating the Toxicity Equivalence of Chlorinated Dibenzo-p-Dioxin and Dibenzofuran Congeners", Section 9(1)(a) of 401 KAR 36:025. Multiply the emission rates of CDD/CDF congeners with a toxicity equivalence greater than zero (see the procedure) by the calculated toxicity equivalence factor to estimate the equivalent emission rate of 2,3,7,8-TCDD;

(c) Conduct dispersion modeling using methods recommended in Guideline on Air Quality Models (Revised) or the "Hazardous Waste Combustion Air Quality Screening Procedure", which are provided in Section 9(1)(a) and (b), respectively, of 401 KAR 36:025, or "EPA SCREEN Screening Procedure" as described in Screening Procedures for Estimating Air Quality Impact of Stationary Sources to predict the maximum annual average off-site ground level concentration of 2,3,7,8-TCDD equivalents determined under paragraph (b) of this subsection. The maximum annual average on-site concentration shall be used when a person resides on-site; and

(d) The ratio of the predicted maximum annual average ground level concentration of 2,3,7,8-TCDD equivalents to the risk-specific dose for 2,3,7,8-TCDD provided in Section 5 of 401 KAR 36:025 (2.2×10^{-7}) shall not exceed one (1.0).

(6) Alternative HC limit for furnaces with organic matter in raw material. For industrial furnaces that cannot meet the 20 ppmv HC limit because of organic matter in normal raw material, the cabinet may establish an alternative HC limit on a case-by-case basis (under a Part B permit proceeding) at a level that ensures that flue gas HC (and CO) concentrations when burning hazardous waste are not greater than when not burning hazardous waste (the baseline HC level) provided that the owner or operator complies with the following requirements. However, cement kilns equipped with a bypass duct meeting the requirements of subsection (7) of this section, are not eligible for an alternative HC limit.

(a) The owner or operator shall demonstrate that the facility is designed and operated to minimize hydrocarbon emissions from fuels and raw materials when the baseline HC (and CO) level is determined. The baseline HC (and CO) level is defined as the average over all valid test runs of the highest hourly rolling average value for each run when the facility does not burn hazardous waste, and produces normal products under normal operating conditions feeding normal feedstocks and fuels. More than one (1) baseline level may be determined if the facility operates under different modes that may generate significantly different HC (and CO) levels;

(b) The owner or operator shall develop an approach to monitor over time changes in the operation of the facility that could reduce the baseline HC level;

(c) The owner or operator shall conduct emissions testing during the trial burn to:

1. Determine the baseline HC (and CO) level;

2. Demonstrate that, when hazardous waste is burned, HC (and CO) levels do not exceed the baseline level; and

3. Identify the types and concentrations of organic compounds listed in 401 KAR 31:170, that are emitted and conduct dispersion modeling to predict the maximum annual average ground level concentration of each organic compound. On-site ground level concentrations shall be considered for this evaluation if a person resides on site.

a. Sampling and analysis of organic emissions shall be conducted using procedures prescribed by the cabinet.

b. Dispersion modeling shall be conducted according to procedures provided by subsection (5)(b) of this section; and

4. Demonstrate that maximum annual average ground level concentrations of the organic compounds identified in subparagraph 3 of this paragraph do not exceed the following levels:

a. For the noncarcinogenic compounds listed in Section 4 of 401 KAR 36:025, the levels established in Section 4 of 401 KAR 36:025;

b. For the carcinogenic compounds listed in Section 5 of 401 KAR 36:025, the sum for all compounds of the ratios of the actual ground level concentration to the level established in Section 5 of 401 KAR 36:025 shall not exceed one (1.0). To estimate the health risk from chlorinated dibenzo-p-dioxins and dibenzofuran congeners, use the procedures prescribed by subsection (5)(c) of this section to estimate the 2,3,7,8-TCDD toxicity equivalence of the congeners.

c. For compounds not listed in Sections 4 or 5 of 401 KAR 36:025, one-tenth (0.1) micrograms per cubic meter.

(d) All hydrocarbon levels specified under this paragraph shall be monitored and reported as specified in subsections (3)(a) and (b) of this section.

(7) Monitoring CO and HC in the bypass duct of a cement kiln. Cement kilns may comply with the carbon monoxide and hydrocarbon limits provided by subsections (2) to (4) of this section by monitoring in the by pass duct provided that:

(a) Hazardous waste is fired only into the kiln and not at any location downstream from the kiln exit relative to the direction of gas flow; and

(b) The bypass duct diverts a minimum of ten (10) percent of kiln off-gas into the duct.

(8) Use of emissions test data to demonstrate compliance and establish operating limits. Compliance with the requirements of this section shall be demonstrated simultaneously by emissions testing or during separate runs under identical operating conditions. Further, data to demonstrate compliance with the CO and HC limits of this section or to establish alternative CO or HC limits under this section shall be obtained during the time that DRE testing, and where applicable, CDD/CDF testing under subsection (5) of this section and comprehensive organic emissions testing under subsection (6) of this section is conducted.

(9) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 3 of this administrative regulation) shall be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this section may be "information" justifying modification or revocation and reissuance of a permit under Section 2 of 401 KAR 38:040.

Section 6. Standards to Control Particulate Matter. (1) A boiler or industrial furnace burning hazardous waste shall not emit particulate matter in excess of 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) after correction to a stack gas concentration of seven (7) percent oxygen, using procedures prescribed in Methods 1 to 5 of Appendix A to 40 CFR Part 60, and Section 9(1)(a) of 401 KAR 36:025.

(2) An owner or operator meeting the requirements of Section 10(2) of this administrative regulation for the low risk waste exemption shall be exempt from the particulate matter standard.

(3) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 3 of this administrative regulation) shall be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this section may be "information" justifying modification or revocation and reissuance of a permit under Section 2 of 401 KAR 38:040.

Section 7. Standards to Control Metals Emissions. (1) General. The owner or operator shall comply with the metals standards provided by subsections (2), (3), (4), (5), or (6) of this section for each metal listed in subsection (2) of this section that is present in the hazardous waste at detectable levels using analytical procedures specified in test methods for evaluating solid waste, physical/chemical methods (SW-846).

(2) Tier I feed rate screening limits. Feed rate screening limits for metals are specified in Section 1 of 401 KAR 36:025 as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in paragraph (g) of this subsection.

(a) Noncarcinogenic metals. The feed rates of antimony, barium, lead, mercury, thallium, and silver in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed the screening limits specified in Section 1 of 401 KAR 36:025.

1. The feed rate screening limits for antimony, barium, mercury, thallium, and silver are based on either:

a. An hourly rolling average as defined in Section 3(5)(f)1b of this administrative regulation; or

b. An instantaneous limit not to be exceeded at any time.

2. The feed rate screening limit for lead is based on one of the following:

a. An hourly rolling average as defined in Section 3(5)(f)1b of this administrative regulation;

b. An averaging period of two (2) to twenty-four (24) hours as defined in Section 3(5)(f)2 of this administrative regulation with an instantaneous feed rate limit not to exceed ten (10) times the feed rate that would be allowed on an hourly rolling average basis; or

c. An instantaneous limit not to be exceeded at any time.

(b) Carcinogenic metals.

1. The feed rates of arsenic, cadmium, beryllium, and chromium in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed values derived from the screening limits specified in Section 1 of 401 KAR 36:025. The feed rate of each of these metals is limited to a level such that the sum of the ratios of the actual feed rate to the feed rate screening limit specified in Section 1 of 401 KAR 36:025 shall not exceed one (1.0), as provided by the following equation:

$$\sum_{i=1}^{n} \frac{AFR_{(i)}}{FRSL_{(i)}} \leq 1.0$$

where:

n = number of carcinogenic metals

AFR = actual feed rate to the device for metal "i"

FRSL = feed rate screening limit provided by Section 1 of 401 KAR 36:025 for metal "i".

2. The feed rate screening limits for the carcinogenic metals are based on either:

a. An hourly rolling average; or

b. An averaging period of two (2) to twenty-four (24) hours as defined in Section 3(5)(f)2 of this administrative regulation with an instantaneous feed rate limit not to exceed ten (10) times the feed rate that would be allowed on an hourly rolling average basis.

(c) TESH.

1. The terrain-adjusted effective stack height is determined according to the following equation:

$$TESH = Ha + H1 - Tr$$

where:

Ha = Actual physical stack height

H1 = Plume rise as determined from Section 6 of 401 KAR 36:025

as a function of stack flow rate and stack gas exhaust temperature.

Tr=Terrain rise within five kilometers of the stack.

2. The stack height (Ha) shall not exceed good engineering practice as specified in 40 CFR 51.100(ii).

3. If the TESH for a particular facility is not listed in 401 KAR 36:025, the nearest lower TESH listed in the table shall be used. If the TESH is four (4) meters or less, a value of four (4) meters shall be used.

(d) Terrain type. The screening limits are a function of whether the facility is located in noncomplex or complex terrain. A device located where any part of the surrounding terrain within five (5) kilometers of the stack equals or exceeds the elevation of the physical stack height (Ha) is considered to be in complex terrain and the screening limits for complex terrain apply. Terrain measurements are to be made from USGS 7.5-minute topographic maps of the area surrounding the facility.

(e) Land use. The screening limits are a function of whether the facility is located in an area where the land use is urban or rural. To determine whether land use in the vicinity of the facility is urban or rural, procedures provided in Section 9(1)(a) or (b) of 401 KAR 36:025 shall be used.

(f) Multiple stacks. Owners and operators of facilities with more than one (1) on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls of metals emissions under a hazardous waste operating permit or interim status controls shall comply with the screening limits for all such units assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics. The worst-case stack is determined from the following equation as applied to each stack:

$$K = HVT$$

Where:

K = a parameter accounting for relative influence of stack height and plume rise;

H = physical stack height (meters);

V = stack gas flow rate (m^3/second); and

T = exhaust temperature (°K).

The stack with the lowest value of K is the worst-case stack.

(g) Criteria for facilities not eligible for screening limits. If any criteria below are met, the Tier I (and Tier II) screening limits do not apply. Owners and operators of such facilities shall comply with the Tier III standards provided by subsection (4) of this section.

1. The device is located in a narrow valley less than one (1) kilometer wide;

2. The device has a stack taller than twenty (20) meters and is located such that the terrain rises to the physical height within one (1) kilometer of the facility;

3. The device has a stack taller than twenty (20) meters and is located within five (5) kilometers of a shoreline of a large body of water such as an ocean or large lake;

4. The physical stack height of any stack is less than two and one-half (2.5) times the height of any building within five building heights or five (5) projected building widths of the stack and the distance from the stack to the closest boundary is within five (5) building heights or five (5) projected building widths of the associated building; or

5. The cabinet determines that standards based on site-specific dispersion modeling are required.

(h) Implementation. The feed rate of metals in each feedstream shall be monitored to ensure that the feed rate screening limits are not exceeded.

(3) Tier II emission rate screening limits. Emission rate screening limits are specified in Section 1 of 401 KAR 36:025 as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in subsection (2)(g) of this section.

(a) Noncarcinogenic metals. The emission rates of antimony, barium, lead, mercury, thallium, and silver shall not exceed the screening limits specified in Section 1 of 401 KAR 36:025.

(b) Carcinogenic metals. The emission rates of arsenic, cadmium, beryllium, and chromium shall not exceed values derived from the screening limits specified in Section 1 of 401 KAR 36:025. The emission rate of each of these metals is limited to a level such that the sum of the ratios of the actual emission rate to the emission rate screening limit specified in Section 1 of 401 KAR 36:025 shall not exceed one (1.0), as provided by the following equation:

$$\sum_{i=1}^{n} \frac{AER_{(i)}}{ERSL_{(i)}} \leq 1.0$$

where:

n = number of carcinogenic metals

AER = actual emission rate for metal "i"

ERSL = emission rate screening limit provided by Section 1 of 401 KAR 36:025 for metal "i".

(c) Implementation. The emission rate limits shall be implemented by limiting feed rates of the individual metals to levels during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate averaging periods are the same as provided by subsections (2)(a)1 and 2 and (b)2 of this section. The feed rate of metals in each feedstream shall be monitored to ensure that the feed rate limits for the feedstreams specified under Sections 3 or 4 of this administrative regulation are not exceeded.

(d) Definitions and limitations. The definitions and limitations provided by subsection (2) of this section for the following terms also apply to the Tier II emission rate screening limits provided by this subsection: terrain-adjusted effective stack height, good engineering practice stack height, terrain type, land use, and criteria for facilities not eligible to use the screening limits.

(e) Multiple stacks.

1. Owners and operators of facilities with more than one (1) on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a hazardous waste operating permit or interim status controls shall comply with the emissions screening limits for any such stacks assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics.

2. The worst-case stack is determined by procedures provided in subsection (2)(f) of this section.

3. For each metal, the total emissions of the metal from those stacks shall not exceed the screening limit for the worst-case stack.

(4) Tier III site-specific risk assessment.

(a) General. Conformance with the Tier III metals controls shall be demonstrated by emissions testing to determine the emission rate for each metal, air dispersion modeling to predict the maximum annual average off-site ground level concentration for each metal, and a demonstration that acceptable ambient levels are not exceeded.

(b) Acceptable ambient levels. Sections 4 or 5 of 401 KAR 36:025 list the acceptable ambient levels for purposes of this administrative regulation. Reference air concentrations (RACs) are listed for the noncarcinogenic metals and 10^{-5} risk-specific doses (RSDs) are listed for the carcinogenic metals. The RSD for a metal is the acceptable ambient level for that metal provided that only one of the four carcinogenic metals is emitted. If more than one (1) carcinogenic metal is emitted, the acceptable ambient level for the carcinogenic metals is a fraction of the RSD as described in paragraph (c) of this subsection.

(c) Carcinogenic metals. For the carcinogenic metals, arsenic, cadmium, beryllium, and chromium, the sum of the ratios of the predicted maximum annual average off-site ground level concentrations (except that on-site concentrations shall be considered if a person resides on-site) to the risk-specific dose (RSD) for all carcinogenic metals emitted shall not exceed one (1.0) as determined by the following equation:

$$\sum_{i=1}^{n} \frac{\text{Predicted Ambient Concentration}_{(i)}}{\text{Risk-Specific Dose}_{(i)}} \leq 1.0$$

where: n = number of carcinogenic metals.

(d) Noncarcinogenic metals. For the noncarcinogenic metals, the predicted maximum annual average off-site ground level concentration for each metal shall not exceed the reference air concentration (RAC).

(e) Multiple stacks. Owners and operators of facilities with more than one (1) on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a hazardous waste operating permit or interim status controls shall conduct emissions testing and dispersion modeling to demonstrate that the aggregate emissions from all such on-site stacks do not result in an exceedance of the acceptable ambient levels.

(f) Implementation. Under Tier III, the metals controls shall be implemented by limiting feed rates of the individual metals to levels during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate averaging periods are the same as provided by subsections (2)(a)1 and 2 and (b)2 of this section. The feed rate of metals in each feedstream shall be monitored to ensure that the feed rate limits for the feedstreams specified under Sections 3 or 4 of this administrative regulation are not exceeded.

(5) Adjusted Tier I feed rate screening limits. The owner or operator may adjust the feed rate screening limits provided by Section 1 of 401 KAR 36:025 to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit for a metal is determined by back-calculating from the acceptable ambient levels provided by Sections 4 and 5 of 401 KAR 36:025 using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted Tier I feed rate screening limit. The feed rate screening limits for carcinogenic metals are implemented as prescribed in subsection (2)(b) of this section.

(6) Alternative implementation approaches.

(a) The cabinet may approve on a case-by-case basis approaches to implement the Tier II or Tier III metals emission limits provided by subsection (3) or (4) of this section alternative to monitoring the feed rate of metals in each feedstream.

(b) The emission limits provided by subsection (4) of this section shall be determined as follows:

1. For each noncarcinogenic metal, by back-calculating from the RAC provided in Section 4 of 401 KAR 36:025 to determine the allowable emission rate for each metal using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with subsection (8) of this section; and

2. For each carcinogenic metal by:

a. Back-calculating from the RSD provided in Section 5 of 401 KAR 36:025 to determine the allowable emission rate for each metal if that metal were the only carcinogenic metal emitted using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with subsection (8) of this section; and

b. If more than one (1) carcinogenic metal is emitted, selecting an emission limit for each carcinogenic metal not to exceed the emission rate determined by clause a of this subparagraph such that the sum for all carcinogenic metals of the ratios of the selected emission limit to the emission rate determined by that subsection does not exceed one (1.0).

(7) Emission testing.

(a) General. Emission testing for metals shall be conducted using the Multiple Metals Train as described in Section 9(1)(a) of 401 KAR 36:025.

(b) Hexavalent chromium. Emissions of chromium are assumed to be hexavalent chromium unless the owner or operator conducts emissions testing to determine hexavalent chromium emissions using procedures prescribed in Section 9(1)(a) of 401 KAR 36:025.

(8) Dispersion modeling. Dispersion modeling required under this section shall be conducted according to methods recommended in Section 9(1)(b) of 401 KAR 36:025, the "Hazardous Waste Combustion Air Quality Screening Procedure" described in Section 9(1)(a) of 401 KAR 36:025, or "EPA SCREEN Screening Procedure" as described in Screening Procedures for Estimating Air Quality Impact of Stationary Sources to predict the maximum annual average off-site ground level concentration. However, on-site concentrations shall be considered when a person resides on-site.

(9) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 3 of this administrative regulation) shall be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this section may be "information" justifying modification or revocation and reissuance of a permit under Section 2 of 401 KAR 38:040.

Section 8. Standards to Control Hydrogen Chloride (HCl) and Chlorine Gas (Cl_2) Emissions. (1) General. The owner or operator shall comply with the hydrogen chloride (HCl) and chlorine (Cl_2) controls provided by subsections (2) or (3) of this section.

(2) Screening limits.

(a) Tier I feed rate screening limits. Feed rate screening limits are specified for total chlorine in Section 2 of 401 KAR 36:025 as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. The feed rate of total chlorine and chloride, both organic and inorganic, in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed the levels specified.

(b) Tier II emission rate screening limits. Emission rate screening limits for HCl and Cl_2 are specified in Section 3 of 401 KAR 36:025 as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. The stack emission rates of HCl and Cl_2 shall not exceed the levels specified.

(c) Definitions and limitations. The definitions and limitations provided by Section 7(2) of this administrative regulation for the following terms also apply to the screening limits provided by this subsection: terrain-adjusted effective stack height, good engineering practice stack height, terrain type, land use, and criteria for facilities not eligible to use the screening limits.

(d) Multiple stacks. Owners and operators of facilities with more than one (1) on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on HCl or Cl_2 emissions under a hazardous waste operating permit or interim status controls shall comply with the Tier I and Tier II screening limits for those stacks assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics.

1. The worst-case stack is determined by procedures provided in Section 7(2)(f) of this administrative regulation.

2. Under Tier I, the total feed rate of chlorine and chloride to all subject devices shall not exceed the screening limit for the worst-case stack.

3. Under Tier II, the total emissions of HCl and Cl_2 from all subject stacks shall not exceed the screening limit for the worst-case stack.

(3) Tier III site-specific risk assessments.

(a) General. Conformance with the Tier III controls shall be demonstrated by emissions testing to determine the emission rate for HCl and Cl_2, air dispersion modeling to predict the maximum annual average off-site ground level concentration for each compound, and a demonstration that acceptable ambient levels are not exceeded.

(b) Acceptable ambient levels. Section 4 of 401 KAR 36:025 lists the reference air concentrations (RACs) for HCl (7 micrograms per cubic meter) and Cl_2 (0.4 micrograms per cubic meter).

(c) Multiple stacks. Owners and operators of facilities with more than one (1) on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on HCl or Cl_2 emissions under a hazardous waste operating permit or interim status controls shall conduct emissions testing and dispersion modeling to demonstrate that the aggregate emissions from all such on-site stacks do not result in an exceedance of the acceptable ambient levels for HCl and Cl_2.

(4) Averaging periods. The HCl and Cl_2 controls are implemented by limiting the feed rate of total chlorine and chloride in all feedstreams, including hazardous waste, fuels, and industrial furnace feed stocks. Under Tier I, the feed rate of total chloride and chlorine is limited to the Tier I screening limits. Under Tier II and Tier III, the feed rate of total chloride and chlorine is limited to the feed rates during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed

rate limits are based on either:

(a) An hourly rolling average as defined in Section 3(5)(f) of this administrative regulation; or

(b) An instantaneous basis not to be exceeded at any time.

(5) Adjusted Tier I feed rate screening limits. The owner or operator may adjust the feed rate screening limit provided by Section 2 of 401 KAR 36:025 to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit is determined by back-calculating from the acceptable ambient level for Cl_2 provided by Section 4 of 401 KAR 36:025 using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted Tier I feed rate screening limit.

(6) Emissions testing. Emissions testing for HCl and Cl_2 shall be conducted using the procedures described in Section 9(1)(a) of 401 KAR 36:025.

(7) Dispersion modeling. Dispersion modeling shall be conducted according to the provisions of Section 7(8) of this administrative regulation.

(8) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 3 of this administrative regulation) shall be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this section may be "information" justifying modification or revocation and reissuance of a permit under Section 2 of 401 KAR 38:040.

Section 9. Small Quantity On-site Burner Exemption. (1) Exempt quantities. Owners and operators of facilities that burn hazardous waste in an on-site boiler or industrial furnace are exempt from the requirements of this administrative regulation provided that:

(a) The quantity of hazardous waste burned in a device for a calendar month does not exceed the limits provided in the following table based on the terrain-adjusted effective stack height as defined in Section 7(2)(c) of this administrative regulation:

Exempt Quantities for Small Quantity Burner Exemption

Terrain-adjusted effective stack height of device (meters)	Allowable hazardous waste burning rate (gallons/ month)	Terrain-adjusted effective stack height of device (meters)	Allowable hazardous waste burning rate (gallons/ month)
0 to 3.9	0	40.0 to 44.9	210
4.0 to 5.9	13	45.0 to 49.9	260
6.0 to 7.9	18	50.0 to 54.9	330
8.0 to 9.9	27	55.0 to 59.9	400
10.0 to 11.9	40	60.0 to 64.9	490
12.0 to 13.9	48	65.0 to 69.9	610
14.0 to 15.9	59	70.0 to 74.9	680
16.0 to 17.9	69	75.0 to 79.9	760
18.0 to 19.9	76	80.0 to 84.9	850
20.0 to 21.9	84	85.0 to 89.9	960
22.0 to 23.9	93	90.0 to 94.9	1,100
24.0 to 25.9	100	95.0 to 99.9	1,200
26.0 to 27.9	110	100.0 to 104.9	1,300
28.0 to 29.9	130	105.0 to 109.9	1,500
30.0 to 34.9	140	110.0 to 114.9	1,700
35.0 to 39.9	170	115.0 or greater	1,900

(b) The maximum hazardous waste firing rate does not exceed at any time one (1) percent of the total fuel requirements for the device (hazardous waste plus other fuel) on a total heat input or mass input basis, whichever results in the lower mass feed rate of hazardous waste;

(c) The hazardous waste has a minimum heating value of 5,000 Btu/lb, as generated; and

(d) The hazardous waste fuel does not contain (and is not derived from) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027.

(2) Mixing with nonhazardous fuels. If hazardous waste fuel is mixed with a nonhazardous fuel, the quantity of hazardous waste before such mixing is used to comply with subsection (1) of this section.

(3) Multiple stacks. If an owner or operator burns hazardous waste in more than one (1) on-site boiler or industrial furnace exempt under this administrative regulation, the quantity limits provided by subsection (1)(a) of this section are implemented according to the following equation:

$$\sum_{i=1}^{n} \frac{\text{Actual Quantity Burned}_{(i)}}{\text{Allowable Quantity Burned}_{(i)}} \leq 1.0$$

where:

n means the number of stacks;

Actual Quantity Burned means the waste quantity burned per month in device "i";

Allowable Quantity Burned, means the maximum allowable exempt quantity for stack "i" from the table in subsection (1)(a) of this section.

(4) Notification requirements. The owner or operator of facilities qualifying for the small quantity burner exemption under this section shall provide a one (1) time signed, written notice to the cabinet indicating the following:

(a) The combustion unit is operating as a small quantity burner of hazardous waste;

(b) The owner and operator is in compliance with the requirements of this administrative regulation; and

(c) The maximum quantity of hazardous waste that the facility may burn per month as provided by subsection (1)(a) of this section.

(5) Recordkeeping requirements. The owner or operator shall maintain at the facility for at least three (3) years sufficient records documenting compliance with the hazardous waste quantity, firing rate, and heating value limits of this section. At a minimum, these records shall indicate the quantity of hazardous waste and other fuel burned in each unit per calendar month, and the heating value of the hazardous waste.

Section 10. Low Risk Waste Exemption. (1) Waiver of DRE standard. The DRE standard of Section 5(1) of this administrative regulation does not apply if the boiler or industrial furnace is operated in conformance with paragraph (a) of this subsection and the owner or operator demonstrates by procedures prescribed in paragraph (b) of this subsection that the burning shall not result in unacceptable adverse health effects.

(a) The device shall be operated as follows:

1. A minimum of fifty (50) percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the cabinet on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The fifty (50) percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;

2. Primary fuels and hazardous waste fuels shall have a minimum as-fired heating value of 8,000 Btu/lb;

3. The hazardous waste is fired directly into the primary fuel flame zone of the combustion chamber; and

4. The device operates in conformance with the carbon monoxide controls provided by Section 5(2)(a) of this administrative regulation.

Devices subject to the exemption provided by this section are not eligible for the alternative carbon monoxide controls provided by Section 5(3) of this administrative regulation.

(b) Procedures to demonstrate that the hazardous waste burning shall not pose unacceptable adverse public health effects are as follows:

1. Identify and quantify those nonmetal compounds listed in Section 8 of 401 KAR 36:025 that could reasonably be expected to be present in the hazardous waste. The constituents excluded from analysis shall be identified and the basis for their exclusion explained;

2. Calculate reasonable, worst case emission rates for each constituent identified in subparagraph 1 of this paragraph by assuming the device achieves 99.9 percent destruction and removal efficiency. That is, assume that one-tenth (0.1) percent of the mass weight of each constituent fed to the device is emitted.

3. For each constituent identified in subparagraph 1 of this paragraph, use emissions dispersion modeling to predict the maximum annual average ground level concentration of the constituent.

a. Dispersion modeling shall be conducted using methods specified in Section 7(8) of this administrative regulation.

b. Owners and operators of facilities with more than one (1) on-site stack from a boiler or industrial furnace that is exempt under this section shall conduct dispersion modeling of emissions from all stacks exempt under this section to predict ambient levels prescribed by this subsection.

4. Ground level concentrations of constituents predicted under subparagraph 3 of this paragraph shall not exceed the following levels:

a. For the noncarcinogenic compounds listed in Section 4 of 401 KAR 36:025, the levels established in Section 4 of 401 KAR 36:025.

b. For the carcinogenic compounds listed in Section 5 of 401 KAR 36:025, the sum for all constituents of the ratios of the actual ground level concentration to the level established in Section 5 of 401 KAR 36:025 shall not exceed one (1.0); and

c. For constituents not listed in Sections 4 or 5 of 401 KAR 36:025, one-tenth (0.1) micrograms per cubic meter.

(2) Waiver of particulate matter standard. The particulate matter standard of Section 6 of this administrative regulation shall not apply if:

(a) The DRE standard is waived under subsection (1) of this section; and

(b) The owner or operator complies with the Tier I or adjusted Tier I metals feed rate screening limits provided by Section 7(2) or (5) of this administrative regulation.

Section 11. Waiver of DRE Trial Burn for Boilers. Boilers that operate under the special requirements of this section, and that do not burn hazardous waste containing (or derived from) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027, are considered to be in conformance with the DRE standard of Section 5(1) of this administrative regulation, and a trial burn to demonstrate DRE is waived. When burning hazardous waste:

(1) A minimum of fifty (50) percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the cabinet on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The fifty (50) percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;

(2) Boiler load shall not be less than forty (40) percent. Boiler load is the ratio at any time of the total heat input to the maximum design heat input;

(3) Primary fuels and hazardous waste fuels shall have a minimum as-fired heating value of 8,000 Btu/lb, and each material fired in a burner where hazardous waste is fired shall have a heating value of at least 8,000 Btu/lb, as-fired;

(4) The device shall operate in conformance with the carbon monoxide standard provided by Section 5(2)(a) of this administrative regulation. Boilers subject to the waiver of the DRE trial burn provided by this section are not eligible for the alternative carbon monoxide standard provided by Section 5(3) of this administrative regulation;

(5) The boiler shall be a water tube type boiler that does not feed fuel using a stoker or stoker type mechanism; and

(6) The hazardous waste shall be fired directly into the primary fuel flame zone of the combustion chamber with an air or steam atomization firing system, mechanical atomization system, or a rotary cup atomization system under the following conditions:

(a) Viscosity. The viscosity of the hazardous waste fuel as-fired shall not exceed 300 SSU;

(b) Particle size. When a high pressure air or steam atomizer, low pressure atomizer, or mechanical atomizer is used, seventy (70) percent of the hazardous waste fuel shall pass through a 200 mesh (seventy-four (74) micron) screen, and when a rotary cup atomizer is used, seventy (70) percent of the hazardous waste shall pass through a 100 mesh (150 micron) screen;

(c) Mechanical atomization systems. Fuel pressure within a mechanical atomization system and fuel flow rate shall be maintained within the design range taking into account the viscosity and volatility of the fuel;

(d) Rotary cup atomization systems. Fuel flow rate through a rotary cup atomization system shall be maintained within the design range taking into account the viscosity and volatility of the fuel.

Section 12. Standards for Direct Transfer. (1) Applicability. This administrative regulation applies to owners and operators of boilers and industrial furnaces subject to Section 3 or 4 of this administrative regulation if hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit.

(2) Definition.

(a) When used in this section, the following terms have the meanings given below:

1. "Direct transfer 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 between a container (transport vehicle) and a boiler or industrial furnace.

2. "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(b) This section references several requirements provided in 401 KAR 34:180 and 34:190 and 401 KAR 35:180 and 35:190. For purposes of this section, the term "tank systems" in those referenced requirements means direct transfer equipment as defined in paragraph (a) of this subsection.

(3) General operating requirements.

(a) No direct transfer of a pumpable hazardous waste shall be conducted from an open-top container to a boiler or industrial furnace.

(b) Direct transfer equipment used for pumpable hazardous waste shall always be closed, except when necessary to add or remove the waste, and shall not be opened, handled, or stored in a manner that may cause any rupture or leak.

(c) The direct transfer of hazardous waste to a boiler or industrial furnace shall be conducted so that it does not:

1. Generate extreme heat or pressure, fire, explosion, or violent reaction;

2. Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

3. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

4. Damage the structural integrity of the container or direct transfer equipment containing the waste;

5. Adversely affect the capability of the boiler or industrial furnace to meet the standards provided by Sections 5 to 8 of this administrative regulation; or

6. Threaten human health or the environment.

(d) Hazardous waste shall not be placed in direct transfer equipment, if it could cause the equipment or its secondary containment system to rupture, leak, corrode, or otherwise fail.

(e) The owner or operator of the facility shall use appropriate controls and practices to prevent spills and overflows from the direct transfer equipment or its secondary containment systems. These include at a minimum:

1. Spill prevention controls (check valves, dry discount couplings); and

2. Automatic waste feed cutoff to use if a leak or spill occurs from the direct transfer equipment.

(4) Areas where direct transfer vehicles (containers) are located. Areas where direct transfer vehicles (containers) are located. Applying the definition of container under this section, owners and operators shall comply with the following requirements:

(a) The containment requirements of Section 6 of 401 KAR 34:180;

(b) The use and management requirements of 401 KAR 35:180, except for Sections 1 and 5, and except that in lieu of the special requirements of Section 6 of 401 KAR 35:180 for ignitable or reactive waste, the owner or operator may comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjacent property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code" (1977 or 1981). The owner or operator shall obtain and keep on file at the facility a written certification by the local Fire Marshall that the installation meets the subject NFPA codes; and

(c) The closure requirements of Section 9 of 401 KAR 34:180.

(5) Direct transfer equipment. Direct transfer equipment shall meet the following requirements:

(a) Secondary containment. Owners and operators shall comply with the secondary containment requirements of Section 4 of 401 KAR 35:190, except for subsections (1), (4), (5), and (9) of 401 KAR 35:190 as follows:

1. For all new direct transfer equipment, prior to their being put into service; and

2. For existing direct transfer equipment within two (2) years after August 21, 1991.

(b) Requirements prior to meeting secondary containment requirements.

1. For existing direct transfer equipment that does not have secondary containment, the owner or operator shall determine whether the equipment is leaking or is unfit for use. The owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by an engineer in accordance with Section 7(4) of 401 KAR 38:070 that attests to the equipment's integrity by August 21, 1992.

2. This assessment shall determine whether the direct transfer equipment is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be transferred to ensure that it shall not collapse, rupture, or fail. At a minimum, this assessment shall consider the following:

a. Design standard(s), if available, according to which the direct transfer equipment was constructed;

b. Hazardous characteristics of the waste(s) that have been or will be handled;

c. Existing corrosion protection measures;

d. Documented age of the equipment, if available, (otherwise, an estimate of the age); and

e. Results of a leak test or other integrity examination such that the effects of temperature variations, vapor pockets, cracks, leaks, corrosion, and erosion are accounted for.

3. If, as a result of the assessment specified above, the direct transfer equipment is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of Section 7(1) and (2) of 401 KAR 35:190.

(c) Inspections and recordkeeping.

1. The owner or operator shall inspect at least once each operating hour when hazardous waste is being transferred from the transport vehicle (container) to the boiler or industrial furnace:

a. Overfill and spill control equipment (waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

b. The above ground portions of the direct transfer equipment to detect corrosion, erosion, or releases of waste (wet spots, dead vegetation); and

c. Data gathered from monitoring equipment and leak-detection equipment, (pressure and temperature gauges) to ensure that the direct transfer equipment is being operated according to its design.

2. The owner or operator shall inspect cathodic protection systems, if used, to ensure that they are functioning properly according to the schedule provided by Section 6(2) of 401 KAR 35:190:

3. Records of inspections made under this subsection shall be maintained in the operating record at the facility, and available for inspection for at least three (3) years from the date of the inspection.

(d) Design and installation of new ancillary equipment. Owners and operators shall comply with the requirements of Section 3 of 401 KAR 35:190.

(e) Response to leaks or spills. Owners and operators shall comply with the requirements of Section 7 of 401 KAR 35:190.

(f) Closure. Owners and operators shall comply with the requirements of Section 8 of 401 KAR 35:190 except for Section 8(3)(b) to (d) of 401 KAR 35:190.

Section 13. Regulation of Residues. A residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace is not excluded from the definition of a hazardous waste under Section 4(2)(d), (g) or (h) of 401 KAR 31:190 unless the device and the owner or operator meet the following requirements:

(1) The device meets the following criteria:

(a) Boilers. Boilers shall burn at least fifty (50) percent coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;

(b) Ore or mineral furnaces. Industrial furnaces subject to Section 4(2)(g) of 401 KAR 31:010 shall process at least fifty (50) percent by weight normal, nonhazardous raw materials;

(c) Cement kilns. Cement kilns shall process at least fifty (50) percent by weight normal cement-production raw materials.

(2) The owner or operator demonstrates that the hazardous waste does not significantly affect the residue by demonstrating conformance with either of the following criteria:

(a) Comparison of waste-derived residue with normal residue. The waste-derived residue shall not contain 401 KAR 31:170 constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in Section 8 of 401 KAR 36:025 that may be generated as products of incomplete combustion. Sampling and analyses shall be in conformance with procedures prescribed in test methods for evaluating solid waste, physical/chemical methods.

1. Normal residue. Concentrations of toxic constituents of concern

in normal residue shall be determined based on analyses of a minimum of ten (10) samples representing a minimum of ten (10) days of operation. Composite samples may be used to develop a sample for analysis provided that the composting period does not exceed twenty-four (24) hours. The upper tolerance limit (at ninety-five (95) percent confidence with a ninety-five (95) percent proportion of the sample distribution) of the concentration in the normal residue shall be considered the statistically-derived concentration in the normal residue. If changes in raw materials or fuels reduce the statistically-derived concentrations of the toxic constituents of concern in the normal residue, the statistically-derived concentrations shall be revised or statistically-derived concentrations of toxic constituents in normal residue shall be established for a new mode of operation with the new raw material or fuel. To determine the upper tolerance limit in the normal residue, the owner or operator shall use statistical procedures prescribed in "Statistical Methodology for Bevill Residue Determinations" in Section 9(1)(a) of 401 KAR 36:025.

2. Waste-derived residue. Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each twenty-four (24) hour period has concentrations of toxic constituents that are higher than the concentrations established for the normal residue under subparagraph 1 of this paragraph. If so, hazardous waste burning has significantly affected the residue and the residue shall not be excluded from the definition of a hazardous waste. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one (1) or more samples obtained over a twenty-four (24) hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed twenty-four (24) hours. If more than one (1) sample is analyzed to characterize waste-derived residues generated over a twenty-four (24) period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results shall be disregarded; or

(b) Comparisons of waste-derived residue concentrations with health-based limits.

1. Nonmetal constituents. The concentrations of nonmetal toxic constituents of concern (specified in paragraph (a) of this subsection) in the waste-derived residue shall not exceed the health-based levels specified in Section 7 of 401 KAR 36:025. If a health-based limit for a constituent of concern is not listed in Section 7 of 401 KAR 36:025, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher, shall be used; and

2. Metal constituents. The concentration of metals in an extract obtained using the Toxicity Characteristic Leaching Procedure of Section 5 of 401 KAR 31:030 shall not exceed the levels specified in Section 7 of 401 KAR 36:025; and

3. Sampling and analysis. Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each twenty-four (24) hour period has concentrations of toxic constituents that are higher than the health-based levels. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one (1) or more samples obtained over a twenty-four (24) hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed twenty-four (24) hours. If more than one (1) sample is analyzed to characterize waste-derived residues generated over a twenty-four (24) hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results shall be disregarded.

(3) Records sufficient to document compliance with the provisions of this administrative regulation shall be retained until closure of the boiler or industrial furnace. At a minimum, the following shall be recorded:

(a) Levels of constituents in 401 KAR 31:170, that are present in waste-derived residues;

(b) If the waste-derived residue is compared with normal residue under subsection (2)(a) of this section:

1. The levels of constituents in 401 KAR 31:170, that are present in normal residues; and

2. Data and information, including analyses of samples as necessary, obtained to determine if changes in raw materials or fuels would reduce the concentration of toxic constituents of concern in the normal residue.

Section 14. Repeal of Administrative Regulation. 401 KAR 36:040, Hazardous waste burned for energy recovery, is hereby repealed.

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 provisions of this administrative regulation were promulgated by the U.S. Environmental Protection Agency on February 21, 1991 (with subsequent amendments). The EPA regulations, codified at 40 CFR 266 Subpart H, were promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) to Resource Conservation and Recovery Act (RCRA). Pursuant to HSWA, the February 21, 1991 regulations were self-implementing, meaning they took effect in all states, including Kentucky, even though the states had not adopted them through their own regulation promulgation process. Proposed 401 KAR 36:020 mirrors 40 CFR 266 Subpart H. Adoption of this administrative regulation will bring Kentucky's regulatory program for hazardous waste burned in boilers and industrial furnaces into alignment with the federal regulatory program so as not to subject such facilities to two sets of conflicting standards. Since this administrative regulation mirrors 40 CFR 266, Subpart H, which is already in

effect in Kentucky, this administrative regulation will not affect any entities.

(a) Direct and indirect costs or savings to those affected: Because the provisions of this administrative regulation are already in effect in Kentucky, facilities will not incur additional costs or savings as a result of this administrative regulation.

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Because the provisions of this administrative regulation are already in effect in Kentucky facilities will not incur additional reporting or paperwork requirements as a result of this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Kentucky is already implementing the provisions of this administrative regulation on behalf of U.S. EPA. Adoption of this administrative regulation will not result in additional costs or savings.

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Because Kentucky is already implementing the provisions of this administrative regulation on behalf of U.S. EPA, adoption of this administrative regulation will not alter reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, to gain consistency with the federal hazardous waste program there was no alternatives to the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no conflicting, overlapping, or duplicative statutes, regulations, or policies.

(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: There is no federal mandate to promulgate this administrative regulation. However, the federal counterpart to this administrative regulation is 40 CFR 266 Subpart H. This federal subpart establishes standards applicable to facilities that burn hazardous waste in boilers and industrial furnaces.

2. State compliance standards: The proposed state compliance standards mirror those of 40 CFR 266 Subpart H.

3. Minimum or uniform standards contained in the federal mandate: Standards applicable to facilities that burn hazardous waste in boilers and industrial furnaces.

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

401 KAR 36:025. Tables and procedures associated with the standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.99, 40 CFR Part 266, Appendices I to XII (July 1, 1992)

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 the standards of Appendices I to XII of 40 CFR Part 266 (July 1, 1992).

Section 1. Tier I and Tier II Feed Rate and Emissions Screening Limits for Metals. (1) Table 1-A. Tier I and Tier II Feed Rate and Emissions Screening Limits for Noncarcenogenic Metals for Facilities in Noncomplex Terrain - Values for Urban Areas:

Terrain adjusted eff. stack ht. (m)	Antimony (g/hr)	Barium (g/hr)	Lead (g/hr)	Mercury (g/hr)	Silver (g/hr)	Thallium (g/hr)
4	6.0E+01	1.0E+04	1.8E+01	6.0E+01	6.0E+02	6.0E+01
6	6.8E+01	1.1E+04	2.0E+01	6.8E+01	6.8E+02	6.8E+01
8	7.6E+01	1.3E+04	2.3E+01	7.6E+01	7.6E+02	7.6E+01
10	8.6E+01	1.4E+04	2.6E+01	8.6E+01	8.6E+02	8.6E+01
12	9.6E+01	1.7E+04	3.0E+01	9.6E+01	9.6E+02	9.6E+01
14	1.1E+02	1.8E+04	3.4E+01	1.1E+02	1.1E+03	1.1E+02
16	1.3E+02	2.1E+04	3.6E+01	1.3E+02	1.3E+03	1.3E+02
18	1.4E+02	2.4E+04	4.3E+01	1.4E+02	1.4E+03	1.4E+02
20	1.6E+02	2.7E+04	4.6E+01	1.6E+02	1.6E+03	1.6E+02
22	1.8E+02	3.0E+04	5.4E+01	1.8E+02	1.8E+03	1.8E+02
24	2.0E+02	3.4E+04	6.0E+01	2.0E+02	2.0E+03	2.0E+02
26	2.3E+02	3.9E+04	6.8E+01	2.3E+02	2.3E+03	2.3E+02
28	2.6E+02	4.3E+04	7.8E+01	2.6E+02	2.6E+03	2.6E+02
30	3.0E+02	5.0E+04	9.0E+01	3.0E+02	3.0E+03	3.0E+02
35	4.0E+02	6.6E+04	1.1E+02	4.0E+02	4.0E+03	4.0E+02
40	4.6E+02	7.8E+04	1.4E+02	4.6E+02	4.6E+03	4.6E+02
45	6.0E+02	1.0E+05	1.8E+02	6.0E+02	6.0E+03	6.0E+02

50	7.8E+02	1.3E+05	2.3E+02	7.8E+02	7.8E+03	7.8E+02
55	9.6E+02	1.7E+05	3.0E+02	9.6E+02	9.6E+03	9.6E+02
60	1.2E+03	2.0E+05	3.6E+02	1.2E+03	1.2E+04	1.2E+03
65	1.5E+03	2.5E+05	4.3E+02	1.5E+03	1.5E+04	1.5E+03
70	1.7E+03	2.8E+05	5.0E+02	1.7E+03	1.7E+04	1.7E+03
75	1.9E+03	3.2E+05	5.8E+02	1.9E+03	1.9E+04	1.9E+03
80	2.2E+03	3.6E+05	6.4E+02	2.2E+03	2.2E+04	2.2E+03
85	2.5E+03	4.0E+05	7.6E+02	2.5E+03	2.5E+04	2.5E+03
90	2.8E+03	4.6E+05	8.2E+02	2.8E+03	2.8E+04	2.8E+03
95	3.2E+03	5.4E+05	9.6E+02	3.2E+03	3.2E+04	3.2E+03
100	3.6E+03	6.0E+05	1.1E+03	3.6E+03	3.6E+04	3.6E+03
105	4.0E+03	6.8E+05	1.2E+03	4.0E+03	4.0E+04	4.0E+03
110	4.6E+03	7.8E+05	1.4E+03	4.6E+03	4.6E+04	4.6E+03
115	5.4E+03	8.6E+05	1.6E+03	5.4E+03	5.4E+04	5.4E+03
120	6.0E+03	1.0E+06	1.8E+03	6.0E+03	6.0E+04	6.0E+03

(2) Table 1-B. Tier I and Tier II Feed Rate and Emissions Screening Limits for Noncarcenogenic Metals for Facilities in Noncomplex Terrain - Values for Rural Areas:

Terrain adjusted eff. stack ht. (m)	Antimony (g/hr)	Barium (g/hr)	Lead (g/hr)	Mercury (g/hr)	Silver (g/hr)	Thallium (g/hr)
4	3.1E+01	5.2E+03	9.4E+00	3.1E+01	3.1E+02	3.1E+01
6	3.6E+01	6.0E+03	1.1E+01	3.6E+01	3.6E+02	3.6E+01
8	4.0E+01	6.8E+03	1.2E+01	4.0E+01	4.0E+02	4.0E+01
10	4.6E+01	7.8E+03	1.4E+01	4.6E+01	4.6E+02	4.6E+01
12	5.8E+01	9.6E+03	1.7E+01	5.8E+01	5.8E+02	5.8E+01
14	6.8E+01	1.1E+04	2.1E+01	6.8E+01	6.8E+02	6.8E+01
16	8.6E+01	1.4E+04	2.6E+01	8.6E+01	8.6E+02	8.6E+01
18	1.1E+02	1.8E+04	3.2E+01	1.1E+02	1.1E+03	1.1E+02
20	1.3E+02	2.2E+04	4.0E+01	1.3E+02	1.3E+03	1.3E+02
22	1.7E+02	2.8E+04	5.0E+01	1.7E+02	1.7E+03	1.7E+02
24	2.2E+02	3.6E+04	6.4E+01	2.2E+02	2.2E+03	2.2E+02
26	2.8E+02	4.6E+04	8.2E+01	2.8E+02	2.8E+03	2.8E+02
28	3.5E+02	5.8E+04	1.0E+02	3.5E+02	3.5E+03	3.5E+02
30	4.3E+02	7.6E+04	1.3E+02	4.3E+02	4.3E+03	4.3E+02
35	7.2E+02	1.2E+05	2.1E+02	7.2E+02	7.2E+03	7.2E+02
40	1.1E+03	1.8E+05	3.2E+02	1.1E+03	1.1E+04	1.1E+03
45	1.5E+03	2.5E+05	4.6E+02	1.5E+03	1.5E+04	1.5E+03
50	2.0E+03	3.3E+05	6.0E+02	2.0E+03	2.0E+04	2.0E+03
55	2.6E+03	4.4E+05	7.8E+02	2.6E+03	2.6E+04	2.6E+03
60	3.4E+03	5.8E+05	1.0E+03	3.4E+03	3.4E+04	3.4E+03
65	4.6E+03	7.6E+05	1.4E+03	4.6E+03	4.6E+04	4.6E+03
70	5.4E+03	9.0E+05	1.6E+03	5.4E+03	5.4E+04	5.4E+03
75	6.4E+03	1.1E+06	1.9E+03	6.4E+03	6.4E+04	6.4E+03
80	7.6E+03	1.3E+06	2.3E+03	7.6E+03	7.6E+04	7.6E+03
85	9.4E+03	1.5E+06	2.8E+03	9.4E+03	9.4E+04	9.4E+03
90	1.1E+04	1.8E+06	3.3E+03	1.1E+04	1.1E+05	1.1E+04
95	1.3E+04	2.2E+06	3.9E+03	1.3E+04	1.3E+05	1.3E+04
100	1.5E+04	2.6E+06	4.6E+03	1.5E+04	1.5E+05	1.5E+04
105	1.8E+04	3.0E+06	5.4E+03	1.8E+04	1.8E+05	1.8E+04
110	2.2E+04	3.6E+06	6.6E+03	2.2E+04	2.2E+05	2.2E+04
115	2.6E+04	4.4E+06	7.8E+03	2.6E+04	2.6E+05	2.6E+04
120	3.1E+04	5.0E+06	9.2E+03	3.1E+04	3.1E+05	3.1E+04

(3) Table 1-C. Tier I and Tier II Feed Rates and Emissions Screening Limits for Noncarcenogenic Metals for Facilities in Complex Terrain - Values for Urban Rural Areas:

Terrain adjusted eff. stack ht. (m)	Antimony (g/hr)	Barium (g/hr)	Lead (g/hr)	Mercury (g/hr)	Silver (g/hr)	Thallium (g/hr)
4	1.4E+01	2.4E+03	4.3E+00	1.4E+01	1.4E+02	1.4E+01
6	2.1E+01	3.5E+03	6.2E+00	2.1E+01	2.1E+02	2.1E+01
8	3.0E+01	5.0E+03	9.2E+00	3.0E+01	3.0E+02	3.0E+01
10	4.3E+01	7.6E+03	1.3E+01	4.3E+01	4.3E+02	4.3E+01
12	5.4E+01	9.0E+03	1.7E+01	5.4E+01	5.4E+02	5.4E+01
14	6.8E+01	1.1E+04	2.0E+01	6.8E+01	6.8E+02	6.8E+01

16	7.8E+01	1.3E+04	2.4E+01	7.8E+01	7.8E+02	7.8E+01
18	8.6E+01	1.4E+04	2.6E+01	8.6E+01	8.6E+02	8.6E+01
20	9.6E+01	1.6E+04	2.9E+01	9.6E+01	9.6E+02	9.6E+01
22	1.0E+02	1.8E+04	3.2E+01	1.0E+02	1.0E+03	1.0E+02
24	1.2E+02	1.9E+04	3.5E+01	1.2E+02	1.2E+03	1.2E+02
26	1.3E+02	2.2E+04	3.6E+01	1.3E+02	1.3E+03	1.3E+02
28	1.4E+02	2.4E+04	4.3E+01	1.4E+02	1.4E+03	1.4E+02
30	1.6E+02	2.7E+04	4.6E+01	1.6E+02	1.6E+03	1.6E+02
35	2.0E+02	3.3E+04	5.8E+01	2.0E+02	2.0E+03	2.0E+02
40	2.4E+02	4.0E+04	7.2E+01	2.4E+02	2.4E+03	2.4E+02
45	3.0E+02	5.0E+04	9.0E+01	3.0E+02	3.0E+03	3.0E+02
50	3.6E+02	6.0E+04	1.1E+02	3.6E+02	3.6E+03	3.6E+02
55	4.6E+02	7.6E+04	1.4E+02	4.6E+02	4.6E+03	4.6E+02
60	5.8E+02	9.4E+04	1.7E+02	5.8E+02	5.8E+03	5.8E+02
65	6.8E+02	1.1E+05	2.1E+02	6.8E+02	6.8E+03	6.8E+02
70	7.8E+02	1.3E+05	2.4E+02	7.8E+02	7.8E+03	7.8E+02
75	8.6E+02	1.4E+05	2.6E+02	8.6E+02	8.6E+03	8.6E+02
80	9.6E+02	1.6E+05	2.9E+02	9.6E+02	9.6E+03	9.6E+02
85	1.1E+03	1.8E+05	3.3E+02	1.1E+03	1.1E+04	1.1E+03
90	1.2E+03	2.0E+05	3.6E+02	1.2E+03	1.2E+04	1.2E+03
95	1.4E+03	2.3E+05	4.0E+02	1.4E+03	1.4E+04	1.4E+03
100	1.5E+03	2.6E+05	4.6E+02	1.5E+03	1.5E+04	1.5E+03
105	1.7E+03	2.8E+05	5.0E+02	1.7E+03	1.7E+04	1.7E+03
110	1.9E+03	3.2E+05	5.8E+02	1.9E+03	1.9E+04	1.9E+03
115	2.1E+03	3.6E+05	6.4E+02	2.1E+03	2.1E+04	2.1E+03
120	2.4E+03	4.0E+05	7.2E+02	2.4E+03	2.4E+04	2.4E+03

(4) Table 1-D. Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Noncomplex Terrain - Values for use in Urban Areas:

Values for use in urban areas

Values for use in rural areas

Terrain adjusted eff. stack ht. (m)	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)
4	4.6E-02	1.1E-01	1.7E-02	8.2E-02	2.4E-02	5.8E-02	8.6E-03	4.3E-02
6	5.4E-02	1.3E-01	1.9E-02	9.4E-02	2.8E-02	6.6E-02	1.0E-02	5.0E-02
8	6.0E-02	1.4E-01	2.2E-02	1.1E-01	3.2E-02	7.6E-02	1.1E-02	5.6E-02
10	6.8E-02	1.6E-01	2.4E-02	1.2E-01	3.6E-02	8.6E-02	1.3E-02	6.4E-02
12	7.6E-02	1.8E-01	2.7E-02	1.4E-01	4.3E-02	1.1E-01	1.6E-02	7.8E-02
14	8.6E-02	2.1E-01	3.1E-02	1.5E-01	5.4E-02	1.3E-01	2.0E-02	9.6E-02
16	9.6E-02	2.3E-01	3.5E-02	1.7E-01	6.8E-02	1.6E-01	2.4E-02	1.2E-01
18	1.1E-01	2.6E-01	4.0E-02	2.0E-01	8.2E-02	2.0E-01	3.0E-02	1.5E-01
20	1.2E-01	3.0E-01	4.4E-02	2.2E-01	1.0E-01	2.5E-01	3.7E-02	1.9E-01
22	1.4E-01	3.4E-01	5.0E-02	2.5E-01	1.3E-01	3.2E-01	4.8E-02	2.4E-01
24	1.6E-01	3.9E-01	5.8E-02	2.8E-01	1.7E-01	4.0E-01	6.0E-02	3.0E-01
26	1.8E-01	4.3E-01	6.4E-02	3.2E-01	2.1E-01	5.0E-01	7.6E-02	3.9E-01
28	2.0E-01	4.8E-01	7.2E-02	3.6E-01	2.7E-01	6.4E-01	9.8E-02	5.0E-01
30	2.3E-01	5.4E-01	8.2E-02	4.0E-01	3.5E-01	8.2E-01	1.2E-01	6.2E-01
35	3.0E-01	6.8E-01	1.0E-01	5.4E-01	5.4E-01	1.3E+00	1.9E-01	9.6E-01
40	3.6E-01	9.0E-01	1.3E-01	6.8E-01	8.2E-01	2.0E+00	3.0E-01	1.5E+00
45	4.6E-01	1.1E+00	1.7E-01	8.6E-01	1.1E+00	2.8E+00	4.2E-01	2.1E+00
50	6.0E-01	1.4E+00	2.2E-01	1.1E+00	1.5E+00	3.7E+00	5.4E-01	2.8E+00
55	7.6E-01	1.8E+00	2.7E-01	1.4E+00	2.0E+00	5.0E+00	7.2E-01	3.6E+00
60	9.4E-01	2.2E+00	3.4E-01	1.7E+00	2.7E+00	6.4E+00	9.6E-01	4.8E+00
65	1.1E+00	2.8E+00	4.2E-01	2.1E+00	3.6E+00	8.6E+00	1.3E+00	6.4E+00
70	1.3E+00	3.1E+00	4.6E-01	2.4E+00	4.3E+00	1.0E+01	1.5E+00	7.6E+00
75	1.5E+00	3.6E+00	5.4E-01	2.7E+00	5.0E+00	1.2E+01	1.8E+00	9.0E+00
80	1.7E+00	4.0E+00	6.0E-01	3.0E+00	6.0E+00	1.4E+01	2.2E+00	1.1E+01
85	1.9E+00	4.6E+00	6.8E-01	3.4E+00	7.2E+00	1.7E+01	2.6E+00	1.3E+01
90	2.2E+00	5.0E+00	7.8E-01	3.9E+00	8.6E+00	2.0E+01	3.0E+00	1.5E+01
95	2.5E+00	5.8E+00	9.0E-01	4.4E+00	1.0E+01	2.4E+01	3.6E+00	1.8E+01
100	2.8E+00	6.8E+00	1.0E+00	5.0E+00	1.2E+01	2.9E+01	4.3E+00	2.2E+01
105	3.2E+00	7.6E+00	1.1E+00	5.6E+00	1.4E+01	3.4E+01	5.0E+00	2.6E+01
110	3.6E+00	8.6E+00	1.3E+00	6.4E+00	1.7E+01	4.0E+01	6.0E+00	3.0E+01

115	4.0E+00	9.6E+00	1.5E+00	7.2E+00	2.0E+01	4.8E+01	7.2E+00	3.6E+01
120	4.6E+00	1.1E+01	1.7E+00	8.2E+00	2.4E+01	5.8E+01	8.6E+00	4.3E+01

(5) Table 1-E. Tier I and Tier II Feed Rate and Emissions Screening Limits for Carcinogenic Metals for Facilities in Complex Terrain - Values for use in Urban and Rural Areas:

Values for use in urban and rural areas

Terrain adjusted eff. stack ht. (m)	Arsenic (g/hr)	Cadmium (g/hr)	Chromium (g/hr)	Beryllium (g/hr)
4	1.1E-02	2.6E-02	4.0E-03	2.0E-02
6	1.6E-02	3.9E-02	5.8E-03	2.9E-02
8	2.4E-02	5.8E-02	8.6E-03	4.3E-02
10	3.5E-02	8.2E-02	1.3E-02	6.2E-02
12	4.3E-02	1.0E-01	1.5E-02	7.6E-02
14	5.0E-02	1.3E-01	1.9E-02	9.4E-02
16	6.0E-02	1.4E-01	2.2E-02	1.1E-01
18	6.8E-02	1.6E-01	2.4E-02	1.2E-01
20	7.6E-02	1.8E-01	2.7E-02	1.3E-01
22	8.2E-02	1.9E-01	3.0E-02	1.5E-01
24	9.0E-02	2.1E-01	3.3E-02	1.6E-01
26	1.0E-01	2.4E-01	3.6E-02	1.8E-01
28	1.1E-01	2.7E-01	4.0E-02	2.0E-01
30	1.2E-01	3.0E-01	4.4E-02	2.2E-01
35	1.5E-01	3.7E-01	5.4E-02	2.7E-01
40	1.9E-01	4.6E-01	6.8E-02	3.4E-01
45	2.4E-01	5.4E-01	8.4E-02	4.2E-01
50	2.9E-01	6.8E-01	1.0E-01	5.0E-01
55	3.5E-01	8.4E-01	1.3E-01	6.4E-01
60	4.3E-01	1.0E+00	1.5E-01	7.8E-01
65	5.4E-01	1.3E+00	1.9E-01	9.6E-01
70	6.0E-01	1.4E+00	2.2E-01	1.1E+00
75	6.8E-01	1.6E+00	2.4E-01	1.2E+00
80	7.6E-01	1.8E+00	2.7E-01	1.3E+00
85	8.2E-01	2.0E+00	3.0E-01	1.5E+00
90	9.4E-01	2.3E+00	3.4E-01	1.7E+00
95	1.0E+00	2.5E+00	4.0E-01	1.9E+00
100	1.2E+00	2.8E+00	4.3E-01	2.1E+00
105	1.3E+00	3.2E+00	4.8E-01	2.4E+00
110	1.5E+00	3.5E+00	5.4E-01	2.7E+00
115	1.7E+00	4.0E+00	6.0E-01	3.0E+00
120	1.9E+00	4.4E+00	6.4E-01	3.3E+00

Section 2. Tier I Feed Rate Screening Limits for Total Chlorine.

	Noncomplex Terrain		Complex Terrain
Terrain-adjusted effective stack height (m)	Urban (g/hr)	Rural (g/hr)	(g/hr)
4	8.2E + 01	4.2E + 01	1.9E + 01
6	9.1E + 01	4.8E + 01	2.8E + 01
8	1.0E + 02	5.3E + 01	4.1E + 01
10	1.2E + 02	6.2E + 01	5.8E + 01
12	1.3E + 02	7.7E + 01	7.2E + 01
14	1.5E + 02	9.1E + 01	9.1E + 01
16	1.7E + 02	1.2E + 02	1.1E + 02
18	1.9E + 02	1.4E + 02	1.2E + 02
20	2.1E + 02	1.8E + 02	1.3E + 02
22	2.4E + 02	2.3E + 02	1.4E + 02
24	2.7E + 02	2.9E + 02	1.6E + 02
26	3.1E + 02	3.7E + 02	1.7E + 02

28	3.5E + 02	4.7E + 02	1.9E + 02
30	3.9E + 02	5.8E + 02	2.1E + 02
35	5.3E + 02	9.6E + 02	2.6E + 02
40	6.2E + 02	1.4E + 03	3.3E + 02
45	8.2E + 02	2.0E + 03	4.0E + 02
50	1.1E + 03	2.6E + 03	4.8E + 02
55	1.3E + 03	3.5E + 03	6.2E + 02
60	1.6E + 03	4.6E + 03	7.7E + 02
65	2.0E + 03	6.2E + 03	9.1E + 02
70	2.3E + 03	7.2E + 03	1.1E + 03
75	2.5E + 03	8.6E + 03	1.2E + 03
80	2.9E + 03	1.0E + 04	1.3E + 03
85	3.3E + 03	1.2E + 04	1.4E + 03
90	3.7E + 03	1.4E + 04	1.6E + 03
95	4.2E + 03	1.7E + 04	1.8E + 03
100	4.8E + 03	2.1E + 04	2.0E + 03
105	5.3E + 03	2.4E + 04	2.3E + 03
110	6.2E + 03	2.9E + 04	2.5E + 03
115	7.2E + 03	3.5E + 04	2.8E + 03
120	8.2E + 03	4.1E + 03	3.2E + 03

Section 3. Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride.

	Noncomplex terrain				Complex terrain	
Terrain-adjusted effective stack height (m)	Values for urban areas		Values for rural areas		Values for use in urban and rural areas	
	$C1_2$ (g/hr)	HC1 (g/hr)	$C1_2$ (g/hr)	HC1 (g/hr)	$C1_2$ (g/hr)	HC1 (g/hr)
4	8.2E + 01	1.4E + 03	4.2E + 01	7.3E + 02	1.9E + 01	3.3E + 02
6	9.1E + 01	1.6E + 03	4.8E + 01	8.3E + 02	2.8E + 01	4.9E + 02
8	1.0E + 02	1.8E + 03	5.3E + 01	9.2E + 02	4.1E + 01	7.1E + 02
10	1.2E + 02	2.0E + 03	6.2E + 01	1.1E + 03	5.8E + 01	1.0E + 03
12	1.3E + 02	2.3E + 03	7.7E + 01	1.3E + 03	7.2E + 01	1.3E + 03
14	1.5E + 02	2.6E + 03	9.1E + 01	1.6E + 03	9.1E + 01	1.6E + 03
16	1.7E + 02	2.9E + 03	1.2E + 02	2.0E + 03	1.1E + 02	1.8E + 03
18	1.9E + 02	3.3E + 03	1.4E + 02	2.5E + 03	1.2E + 02	2.0E + 03
20	2.1E + 02	3.7E + 03	1.8E + 02	3.1E + 03	1.3E + 02	2.3E + 03
22	2.4E + 02	4.2E + 03	2.3E + 02	3.9E + 03	1.4E + 02	2.4E + 03
24	2.7E + 02	4.8E + 03	2.9E + 02	5.0E + 03	1.6E + 02	2.8E + 03
26	3.1E + 02	5.4E + 03	3.7E + 02	6.5E + 03	1.7E + 02	3.0E + 03
28	3.5E + 02	6.0E + 03	4.7E + 02	8.1E + 03	1.9E + 02	3.4E + 03
30	3.9E + 02	6.9E + 03	5.8E + 02	1.0E + 04	2.1E + 02	3.7E + 03
35	5.3E + 02	9.2E + 03	9.6E + 02	1.7E + 04	2.6E + 02	4.6E + 03
40	6.2E + 02	1.1E + 04	1.4E + 03	2.5E + 04	3.3E + 02	5.7E + 03
45	8.2E + 02	1.4E + 04	2.0E + 03	3.5E + 04	4.0E + 02	7.0E + 03
50	1.1E + 03	1.8E + 04	2.6E + 03	4.6E + 04	4.8E + 02	8.4E + 03
55	1.3E + 03	2.3E + 04	3.5E + 03	6.1E + 04	6.2E + 02	1.1E + 04
60	1.6E + 03	2.9E + 04	4.6E + 03	8.1E + 04	7.7E + 02	1.3E + 04
65	2.0E + 03	3.4E + 04	6.2E + 03	1.1E + 05	9.1E + 02	1.6E + 04
70	2.3E + 03	3.9E + 04	7.2E + 03	1.3E + 05	1.1E + 03	1.8E + 04
75	2.5E + 03	4.5E + 04	8.6E + 03	1.5E + 05	1.2E + 03	2.0E + 04
80	2.9E + 03	5.0E + 04	1.0E + 04	1.8E + 05	1.3E + 03	2.3E + 04
85	3.3E + 03	5.8E + 04	1.2E + 04	2.2E + 05	1.4E + 03	2.5E + 04
90	3.7E + 03	6.6E + 04	1.4E + 04	2.5E + 05	1.6E + 03	2.9E + 04
95	4.2E + 03	7.4E + 04	1.7E + 04	3.0E + 05	1.8E + 03	3.2E + 04
100	4.8E + 03	8.4E + 04	2.1E + 04	3.6E + 05	2.0E + 03	3.5E + 04
105	5.3E + 03	9.2E + 04	2.4E + 04	4.3E + 05	2.3E + 03	3.9E + 04
110	6.2E + 03	1.1E + 05	2.9E + 04	5.1E + 05	2.5E + 03	4.5E + 04
115	7.2E + 03	1.3E + 05	3.5E + 04	6.1E + 05	2.8E + 03	5.0E + 04
120	8.2E + 03	1.4E + 05	4.1E + 04	7.2E + 05	3.2E + 03	5.6E + 04

Section 4. Reference Air Concentrations (RAC).

Note: The RAC for other Appendix VIII of 40 CFR 261 constituents not listed in this section or in Section 5 of this administrative regulation is 0.1 vg/m^3.

Constituent	CAS No.	RAC (ug/m^3)
Acetaldehyde	75-07-0	10
Acetonitrile	75-05-8	10
Acetophenone	98-86-2	100
Acrolein	107-02-8	20
Aldicarb	116-06-3	1
Aluminum Phosphide	20859-73-8	0.3
Allyl Alcohol	107-18-6	5
Antimony	7440-36-0	0.3
Barium	7440-39-3	50
Barium Cyanide	542-62-1	50
Bromomethane	74-83-9	0.8
Calcium Cyanide	592-01-8	30
Carbon Disulfide	75-15-0	200
Chloral	75-87-6	2
Chlorine (free)		0.4
2-Chloro-1,3-butadiene	126-99-8	3
Chromium III	16065-83-1	1000
Copper Cyanide	544-92-3	5
Cresols	1319-77-3	50
Cumene	98-82-8	1
Cyanide (free)	57-12-15	20
Cyanogen	460-19-5	30
Cyanogen Bromide	506-68-3	80
Di-n-butyl Phthalate	84-74-2	100
o-Dichlorobenzene	95-50-1	10
p-Dichlorobenzene	106-46-7	10
Dichlorodifluoromethane	75-71-8	200
2,4-Dichlorophenol	120-83-2	3
Diethyl Phthalate	84-66-2	800
Dimethoate	60-51-5	0.8
2,4-Dinitrophenol	51-28-5	2
Dinoseb	88-85-7	0.9
Diphenylamine	122-39-4	20
Endosulfan	115-29-1	0.05
Endrin	72-20-8	0.3
Fluorine	7782-41-4	50
Formic Acid	64-18-6	2000
Glycidyaldehyde	765-34-4	0.3
Hexachlorocyclopentadiene	77-47-4	5
Hexachlorophene	70-30-4	0.3
Hydrocyanic Acid	74-90-8	20
Hydrogen Chloride	7647-01-1	7
Hydrogen Sulfide	7783-06-4	3
Isobutyl Alcohol	78-83-1	300
Lead	7439-92-1	0.09
Maleic Anyhdride	108-31-6	100
Mercury	7439-97-6	0.3
Methacrylonitrile	126-98-7	0.1
Methomyl	16752-77-5	20
Methoxychlor	72-43-5	50
Methyl Chlorocarbonate	79-22-1	1000
Methyl Ethyl Ketone	78-93-3	80
Methyl Parathion	298-00-0	0.3
Nickel Cyanide	557-19-7	20
Nitric Oxide	10102-43-9	100
Nitrobenzene	98-95-3	0.8
Pentachlorobenzene	606-93-5	0.8
Pentachlorophenol	87-86-5	30
Phenol	108-95-2	30
M-Phenylenediamine	108-45-2	5
Phenylmercuric Acetate	62-38-4	0.075
Phosphine	7803-51-2	0.3

Phthalic Anhydride	85-44-9	2000
Potassium Cyanide	151-50-8	50
Potassium Silver Cyanide	506-61-6	200
Pyridine	110-86-1	1
Selenious Acid	7783-60-8	3
Selenourea	630-10-4	5
Silver	7440-22-4	3
Silver Cyanide	506-64-9	100
Sodium Cyanide	143-33-9	30
Strychnine	57-24-9	0.3
1,2,4,5-Tetrachlorobenzene	95-94-3	0.3
2,3,4,6-Tetrachlorophenol	58-90-2	30
Tetraethyl Lead	78-00-2	0.0001
Tetrahydrofuran	109-99-9	10
Thallic Oxide	1314-32-5	0.3
Thallium	7440-28-0	0.5
Thallium (I) Acetate	563-68-8	0.5
Thallium (I) Carbonate	6533-73-9	0.3
Thallium (I) Chloride	7791-12-0	0.3
Thallium (I) Nitrate	10102-45-1	0.5
Thallium Selenite	12039-52-0	0.5
Thallium (I) Sulfate	7446-18-6	0.075
Thiram	137-26-8	5
Toluene	108-88-3	300
1,2,4-Trichlorobenzene	120-82-1	20
Trichloromonofluoromethane	75-69-4	300
2.4.5-Trichlorophenol	95-95-4	100
Vanadium Pentoxide	1314-62-1	20
Warfarin	81-81-2	0.3
Xylenes	1330-20-7	80
Zinc Cyanide	557-21-1	50
Zinc Phosphide	1314-84-7	0:3

Note: The RAC for other 401 KAR 31:170 constituents not listed in this section or in Section 5 of this administrative regulation is 0.1 vg/m^3.

Section 5. Risk Specific Doses (10^{-6}) (RSD).

Constituent	CAS No.	Unit risk (m3/ug)	RsD (ug/m3)
Acrylamide	79-06-1	1.3E-03	7.7E-03
Acrylonitrile	107-13-1	6.8E-05	1.5E-01
Aldrin	309-00-2	4.9E-03	2.0E-03
Aniline	62-53-3	7.4E-06	1.4E+00
Arsenic	7440-38-2	4.3E-03	2.3E-03
Benz(a)anthracene	56-55-3	8.9E-04	1.1E-02
Benxene	71-43-2	8.3E-06	1.2E+00
Benzidine	92-87-5	6.7E-02	1.5E-04
Benzo(a)pyrene	50-32-8	3.3E-03	3.0E-03
Beryllium	7440-41-7	2.4E-03	4.2E-03
Bis(2-chloroethyl)ether	111-44-4	3.3E-04	3.0E-02
Bis(chloromethyl)ether	542-88-1	6.2E-02	1.6E-04
Bis(2-ethylhexyl)-phthalate	117-81-7	2.4E-07	4.2E+01
1,3-Butadiene	106-99-0	2.8E-04	3.6E-02
Cadmium	7440-43-9	1.8E-03	5.6E-03
Carbon Tetrachloride	56-23-5	1.5E-05	6.7E-01
Chlordane	57-74-9	3.7E-04	2.7E-02
Chloroform	67-66-3	2.3E-05	4.3E-01
Chloromethane	74-87-3	3.6E-06	2.8E+00
Chromium VI	7440-47-3	1.2E-02	8.3E-04
DDT	50-29-3	9.7E-05	1.0E-01
Dibenz(a,h)anthracene	53-70-3	1.4E-02	7.1E-04
1,2-Dibromo-3-chloropropane	96-12-8	6.3E-03	1.6E-03
1,2-Dibromoethane	106-93-4	2.2E-04	4.5E-02
1,1-Dichloroethane	75-34-3	2.6E-05	3.8E-01
1,2-Dichloroethane	107-06-2	2.6E-05	3.8E-01
1,1-Dichloroethylene	75-35-4	5.0E-05	2.0E-01

1,3-Dichloropropene	542-75-6	3.5E-01	2.9E-05
Dieldrin	60-57-1	4.6E-03	2.2E-03
Diethylstilbestrol	56-53-1	1.4E-01	7.1E-05
Dimethylnitrosamine	62-75-9	1.4E-02	7.1E-04
2,4-Dinitrotoluene	121-14-2	8.8E-05	1.1E-01
1,2-Diphenylhydrazine	122-66-7	2.2E-04	4.5E-02
1,4-Dioxane	123-91-1	1.4E-06	7.1E+00
Epichlorohydrin	106-89-8	1.2E-06	8.3E+00
Ethylene Oxide	75-21-8	1.0E-04	1.0E-01
Ethylene Dibromide	106-93-4	2.2E-04	4.5E-02
Formaldehyde	50-00-0	1.3E-05	7.7E-01
Heptachlor	76-44-8	1.3E-03	7.7E-03
Heptachlor Epoxide	1024-57-3	2.6E-03	3.8E-03
Hexachlorobenzene	118-74-1	4.9E-04	2.0E-02
Hexachlorobutadiene	87-68-3	2.0E-05	5.0E-01
Alpha-hexachloro-cyclohexane	319-84-6	1.8E-03	5.6E-03
Beta-hexachloro-cyclohexane	319-85-7	5.3E-04	1.9E-02
Gamma-hexachloro-cyclohexane	58-89-9	3.8E-04	2.6E-02
Hexachlorocyclohexane, Technical		5.1E-04	2.0E-02
Hexachlorodibenxo-p-dioxin(1,2 Mixture)		1.3E+0	7.7E-06
Hexachloroethane	67-72-1	4.0E-06	2.5E+00
Hydrazine	302-01-2	2.9E-03	3.4E-03
Hydrazine Sulfate	302-01-2	2.9E-03	3.4E-03
3-Methylcholanthrene	56-49-5	2.7E-03	3.7E-03
Methyl Hydrazine	60-34-4	3.1E-04	3.2E-02
Methylene Chloride	75-09-2	4.1E-06	2.4E+00
4,4'-Methylene-bis-2-chloroaniline	101-14-4	4.7E-05	2.1E-01
Nickel	7440-02-0	2.4E-04	4.2E-02
Nickel Refinery Dust	7440-02-0	2.4E-04	4.2E-02
Nickel Subsulfide	12035-72-2	4.8E-04	2.1E-02
2-Nitropropane	79-46-9	2.7E-02	3.7E-04
N-Nitroso-n-butylamine	924-16-3	1.6E-03	6.3E-03
N-Nitroso-n-methylurea	684-93-5	8.6E-02	1.2E-04
N-Nitrosodiethylamine	55-18-5	4.3E-02	2.3E-04
N-Nitrosopyrrolidine	930-55-2	6.1E-04	1.6E-02
Pentachloronitrobenzene	82-68-8	7.3E-05	1.4E-01
PCBs	1336-36-3	1.2E-03	8.3E-03
Pronamide	23950-58-5	4.6E-06	2.2E+00
Reserpine	50-55-5	3.0E-03	3.3E-03
2,3,7,8-Tetrachloro-dibenzo-p-dioxin	1746-01-6	4.5E+01	2.2E-07
1,1,2,2-Tetrachloroethane	79-34-5	5.8E-05	1.7E-01
Tetrachloroethylene	127-18-4	4.8E-07	2.1E+01
Thiourea	62-56-6	5.5E-04	1.8E-02
1,1,2-Trichloroethane	79-00-5	1.6E-05	6.3E-01
Trichloroethylene	79-01-6	1.3E-06	7.7E+00
2,4,6-Trichlorophenol	88-06-2	5.7E-06	1.8E+00
Toxaphene	8001-35-2	3.2E-04	3.1E-02
Vinyl Chloride	75-01-4	7.1E-06	1.4E+00

Section 6. Stack Plume Rise (SPR).

Exhaust Temperaturs (Ko)

Flow rate (m3/s)	<325	325-349	350-399	400-449	450-499	500-599	600-699	700-799	800-999	1000-1499	>1499
<0.5	0	0	0	0	0	0	0	0	0	0	0
0.5-0.9	0	0	0	0	0	0	0	0	1	1	1
1.0-1.9	0	0	0	0	1	1	2	3	3	3	4
2.0-2.9	0	0	1	3	4	4	6	6	7	8	9
3.0-3.9	0	1	2	5	6	7	9	10	11	12	13

4.0-4.9	1	2	4	6	8	10	12	13	14	15	17
5.0-7.4	2	3	5	8	10	12	14	16	17	19	21
7.5-9.9	3	5	8	12	15	17	20	22	22	23	24
10.0-12.4	4	6	10	15	19	21	23	24	25	26	27
12.5-14.9	4	7	12	18	22	23	25	26	27	28	29
15.0-19.9	5	8	13	20	23	24	26	27	28	29	31
20.0-24.9	6	10	17	23	25	27	29	30	31	32	34
25.0-29.9	7	12	20	25	27	29	31	32	33	35	36
30.0-34.9	8	14	22	26	29	31	33	35	36	37	39
35.0-39.9	9	16	23	28	30	32	35	36	37	39	41
40.0-49.9	10	17	24	29	32	34	36	38	39	41	42
50.0-59.9	12	21	26	31	34	36	39	41	42	44	46
60.0-69.9	14	22	27	33	36	39	42	43	45	47	49
70.0-79.9	16	23	29	35	38	41	44	46	47	49	51
80.0-89.9	17	25	30	36	40	42	46	48	49	51	54
90.0-99.9	19	26	31	38	42	44	48	50	51	53	56
100.0-119.9	21	26	32	39	43	46	49	52	53	55	58
120.0-139.9	22	28	35	42	46	49	52	55	56	59	61
140.0-159.9	23	30	36	44	48	51	55	58	59	62	65
160.0-179.9	25	31	38	46	50	54	58	60	62	65	67
180.0-199.9	26	32	40	48	52	56	60	63	65	67	70
>199.9	26	33	41	49	54	58	62	65	67	69	73

Section 7. Health Based Limits for Exclusion of Waste-Derived Residues.

*NOTE: The RAC for other Appendix VIII of 40 CFR 261 constituents not listed in this section or in Section 5 of this administrative regulation is 0.1 vg/m^3.

(1) Metals - TCLP Extract Concentration Limits.

Constituent	CAS No.	Concentration limits (mg/L)
Antimony	7440-36-0	1xE+00
Arsenic	7440-38-2	5xE+00
Barium	7440-39-3	1xE+02
Beryllium	7440-41-7	7xE-03
Cadmium	7440-43-9	1xE+00
Chromium	7440-47-3	5xE+00
Lead	7439-92-1	5xE+00
Mercury	7439-97-6	2xE-01
Nickel	7440-02-0	7xE+01
Selenium	7782-49-2	1xE+00
Silver	7440-22-4	5xE+00
Thallium	7440-28-0	7XE+00

(2) Nonmetals - Residue Concentration Limits.

Constituent	CAS No.	Concentration Limits

		for Residues (mg/kg)
Acetonitrile	75-05-8	2xE-01
Acetophenone	98-86-2	4xE+00
Acrolein	107-02-8	5xE-01
Acrylamide	79-06-1	2xE-04
Acrylonitrile	107-13-1	7xE-04
Aldrin	309-00-2	2xE-05
Allyl alcohol	107-18-6	2xE-01
Aluminum phosphide	20859-73-8	1xE-02
Aniline	62-53-3	6xE-02
Barium cyanide	542-62-1	1xE+00
Benz(a)anthracene	56-55-3	1xE-04
Benzene	71-43-2	5xE-03
Benzidine	92-87-5	1xE-06
Bis(2-chloroethyl) ether	111-44-4	3xE-04
Bis(chloromethyl) ether	542-88-1	2xE-06
Bis(2-ethylhexyl) phthalate	117-81-7	3xE+01
Bromoform	75-25-2	7xE-01
Calcium cyanide	592-01-8	1xE-06
Carbon disulfide	75-15-0	4xE+00
Carbon tetrachloride	56-23-5	5xE-03
Chlordane	57-74-9	3xE-04
Chlorobenzene	108-90-7	1xE+00
Chloroform	67-66-3	6xE-02
Copper cyanide	544-92-3	2xE-01
Cresols (Cresylic acid)	1319-77-3	2xE+00
Cyanogen	460-19-5	1xE+00
DDT	50-29-3	1xE-03
Dibenz(a, h)-anthracene	53-70-3	7xE-06
1,2-Dibromo-3-chloropropane	96-12-8	2xE-05
p-Dichlorobenzene	106-46-7	7.5xE-02
Dichlorodifluoromethane	75-71-8	7xE+00
1,1-Dichloroethylene	75-35-4	5xE-03
2,4-Dichlorophenol	120-83-2	1xE-01
1,3-Dichloropropene	542-75-6	1xE-03
Dieldrin	60-57-1	2xE-05
Diethyl phthalate	84-66-2	3xE+01
Diethylstilbesterol	56-53-1	7xE-07
Dimethoate	60-51-5	3xE-02
2,4-Dinitrotoluene	121-14-2	5xE-04
Diphenylamine	122-39-4	9xE-01
1,2-Diphenylhydrazine	122-66-7	5xE-04
Endosulfan	115-29-7	2xE-03
Endrin	72-20-8	2xE-04
Epichlorohydrin	106-89-8	4xE-02
Ethylene dibromide	106-93-4	4xE-07
Ethylene oxide	75-21-8	3xE-04
Fluorine	7782-41-4	4xE+00
Formic acid	64-18-6	7xE+01
Heptachlor	76-44-8	8xE-05
Heptachlor epoxide	1024-57-3	4xE-05
Hexachlorobenzene	118-74-1	2xE-04
Hexachlorobutadiene	87-68-3	5xE-03
Hexachlorocyclopentadiene	77-47-4	2xE-01
Hexachlorodibenzo-p-dioxins	19408-74-3	6xE-08
Hexachloroethane	67-72-1	3xE-02
Hydrazine	302-01-1	1xE-04
Hydrogen cyanide	74-90-8	7xE-05
Hydrogen sulfide	7783-06-4	1xE-06
Isobutyl alcohol	78-83-1	1xE+01
Methomyl	16752-77-5	1xE+00
Methoxychlor	72-43-5	1xE-01
3-Methylcholanthrene	56-49-5	4xE-05
4,4'-Methylenebis (2-chloroaniline)	101-14-4	2xE-03
Methylene chloride	75-09-2	5xE-02
Methyl ethyl ketone (MEK)	78-93-3	2xE+00

Methyl hydrazine	60-34-4	3xE-04
Methyl parathion	298-00-0	2xE-02
Naphthalene	91-20-3	1xE+01
Nickel cyanide	557-19-7	7xE-01
Nitric oxide	10102-43-9	4xE+00
Nitrobenzene	98-95-3	2xE-02
N-Nitrosodi-n-butylamine	924-16-3	6xE-05
N-Nitrosodiethylamine	55-18-5	2xE-06
N-Nitroso-N-methylurea	684-93-5	1xE-07
N-Nitrosopyrrolidine	930-55-2	2xE-04
Pentachlorobenzene	608-93-5	3xE-02
Pentachloronitrobenzene (PCNB)	82-68-8	1xE-01
Pentachlorophenol	87-86-5	1xE+00
Phenol	108-95-2	1xE+00
Phenylmercury acetate	62-38-4	3xE-03
Phosphine	7803-51-2	1xE-02
Polychlorinated biphenyls, N.O.S	1336-36-3	5xE-05
Potassium cyanide	151-50-8	2xE+00
Potassium silver cyanide	506-61-6	7xE+00
Pronamide	23950-58-5	3xE+00
Pyridine	110-86-1	4xE-02
Reserpine	50-55-5	3xE-05
Selenourea	630-10-4	2xE-01
Silver cyanide	506-64-9	4xE+00
Sodium cyanide	143-33-9	1xE+00
Strychnine	57-24-9	1xE-02
1,2,4,5-Tetrachlorobenzene	95-94-3	1xE-02
1,1,2,2-tetrachloroethane	79-34-5	2xE-03
Tetrachloroethylene	127-18-4	7xE-01
2,3,4,6-Tetrachlorophenol	58-90-2	1xE-02
Tetraethyl lead	78-00-2	4xE-06
Thiourea	62-56-6	2xE-04
Toluene	108-88-3	1xE+01
Toxaphene	8001-35-2	5xE-03
1,1,2-Trichloroethane	79-00-5	6xE-03
Trichloroethylene	79-01-6	5xE-03
Trichloromonofluoromethane	75-69-4	1xE+01
2,4,5-Trichlorophenol	95-95-4	4xE+00
2,4,6-Trichlorophenol	88-06-2	4xE+00
Vanadium pentoxide	1314-62-1	7xE-01
Vinyl chloride	75-01-4	2xE-03

*NOTE: The health based concentration limits for Section 1 of 401 KAR 31:170 constituents for which a health-based concentration is not provided in this section is 2xE-06 mg/kg.

Section 8. Potential PICs for Determination of Exclusion of Waste-Derived Residues.

PICs Found in Stack Effluents

Volatiles	Semivolatiles
Benzene	Bis(2-ethylhexyl)phthalate
Toluene	Naphthalene
Carbon tetrachloride	Phenol
Chloroform	Diethyl phthalate
Methylene chloride	Butyl benzyl phthalate
Trichloroethylene	2,4-Dimethylphenol
Tetrachloroethylene	o-Dichlorobenzene
1,1,1-Trichloroethane	m-Dichlorobenzene
Chlorobenzene	p-Dichlorobenzene
cis-1,4-Dichloro-2-butene	Hexachlorobenzene
Bromochloromethane	2,4,6-Trichlorophenol
Bromodichloromethane	Fluoranthene
Bromoform	o-Nitrophenol
Bromomethane	1,2,4-Trichlorobenzene
Methylene bromide	o-Chlorophenol
Methyl ethyl ketone	Pentachlorophenol

Pyrene
Dimethyl phthalate
Mononitrobenzene
2,6-Toluene diisocyanate

Section 9. Lead-bearing Materials that may be Processed in Exempt Lead Smelters. (1) Exempt lead-bearing materials when generated or originally produced by lead-associated industries:
Acid dump/fill solids
Sump mud
Materials from laboratory analyses
Acid filters
Baghouse bags
Clothing (for example, coveralls, aprons, shoes, hats, and gloves)
Sweepings
Air filter bags and cartridges
Respiratory cartridge filters
Shop abrasives
Stacking boards
Waste shipping containers (for example, cartons, bags, drums, and cardboard)
Paper hand towels
Wiping rags and sponges
Contaminated pallets
Water treatment sludges, filter cakes, residues, and solids
Emission control dusts, sludges, filter cakes, residues, and solids from lead-associated industries (for example, K069 and D008 wastes)
Spent grids, posts, and separators
Spent batteries
Lead oxide and lead oxide residues
Lead plates and groups
Spent battery cases, covers, and vents
Pasting belts
Water filter media
Cheesecloth from pasting rollers
Pasting additive bags
Asphalt paving materials
(2) Exempt lead-bearing materials when generated or originally produced by any industry.
Charging jumpers and clips
Platen abrasive
Fluff from lead wire and cable casings
Lead-based pigments and compounding pigment dust

Section 10. Nickel or Chromium-bearing Materials that may be Processed in Exempt Nickel-chromium Recovery Furnaces. (1) Exempt nickel or chromium-bearing materials when generated by manufacturers or users of nickel, chromium, or iron.
Baghouse bags
Raney nickel catalyst
Floor sweeping
Air filters
Electroplating bath filters
Wastewater filter media
Wood pallets
Disposable clothing (coveralls, aprons, hats, and gloves)
Laboratory samples and spent chemicals
Shipping containers and plastic liners from containers or vehicles used to transport nickel or chromium-containing wastes
Respirator cartridge filters
Paper hand towels
(2) Exempt nickel or chromium-bearing materials when generated by any industry.
Electroplating wastewater treatment sludges (F006)
Nickel and/or chromium-containing solutions
Nickel, chromium, and iron catalysts
Nickel-cadmium and nickel-iron batteries
Filter cake from wet scrubber system water treatment plants in the specialty steel industry
Filter cake from nickel-chromium alloy pickling operations

Section 11. Other Appendices of 40 CFR Part 266 (July 1, 1992). (1) The following appendices from 40 CFR Part 266 (July 1, 1992) are hereby incorporated into this administrative regulation by reference:
(a) Appendix IX Methods Manual For Compliance with the BIF Regulations;
(b) Appendix X Guideline on Air Quality Models (Revised);
(c) Appendix XI Lead-bearing Materials That May be Processed in Exempt Lead Smelters; and
(d) Appendix XII Nickel or Chromium-bearing Materials That May be Processed in Exempt Nickel-chromium Recovery Furnaces.
(2) Copies of the documents specified in subsection (1) of this section are available for inspection and copying at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716, between 8 a.m. and 4:30 p.m., EST, 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 proposed administrative regulation affects owners and operators of sites or facilities that manage hazardous waste.
(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation since the provisions of this proposed administrative regulation already apply to Kentucky facilities through federal regulation. Federal regulations promulgated by the authority of the hazardous and solid waste amendments to the resource Conservation and Recovery Act take effect and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to the cost of complying with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Any reporting or paperwork required from Kentucky facilities went into effect as a result of compliance with federal regulations. There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no costs associated with complying with this administrative regulation since the provisions in this proposed administrative regulation were promulgated by the authority of the hazardous and solid waste amendments to the Resource Conservation and Recovery Act and are imposed on the states regardless of state administrative regulation. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Any reporting or paperwork requirements are required as a result of compliance with federal regulations. There are no additional requirements imposed as a result of promulgating the state administrative regulation.

(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 appendices to 40 CFR Part 266. However, there is no federal mandate to promulgate this administrative regulation. The provisions in this proposed administrative regulation were promulgated by the authority of the federal Resource Conservation and Recovery Act and are imposed on the states regardless of state administrative regulation. Kentucky facilities are already subject to compliance with this administrative regulation whether or not the state adopts these federal requirements. This administrative regulation is proposed only for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224. 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 the appendices to 40 CFR Part 266.

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

401 KAR 38:240. Specific Part B requirements for process vents.

RELATES TO: KRS 224.10, 224.40, 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 specific Part B requirements for process vents.

Section 1. Specific Part B Information Requirements for Process Vents. Except as otherwise provided in 401 KAR 34:010, owners and operators of facilities that have process vents to which 401 KAR 34:275 applies shall provide the following additional information:

(1) For facilities that cannot install a closed-vent system and control device to comply with the provisions 401 KAR 34:275 on the effective date that the facility becomes subject to the provisions of 401 KAR 34:275 or 401 KAR 35:275, an implementation schedule as specified in Section 4(1)(b) of 401 KAR 34:275.

(2) Documentation of compliance with the process vent standards in Section 3 of 401 KAR 34:275 including:

(a) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (for example, identify the hazardous waste management units on a facility plot plan).

(b) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions shall be made using operating parameter values (temperatures, flow rates, or concentrations for example) that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(c) Information and data used to determine whether or not a process vent is subject to the requirements of Section 3 of 401 KAR 34:275.

(3) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of Section 3 of 401 KAR 34:275, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in Section 6(2)(c) of 401 KAR 34:275.

(4) Documentation of compliance with Section 4 of 401 KAR 34:275, including:

(a) A list of all information references and sources used in preparing the documentation.

(b) Records, including the dates, of each compliance test required by Section 4(1) of 401 KAR 34:275.

(c) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" or other engineering texts acceptable to the cabinet that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Section 6(2)(d)3 of 401 KAR 34:275.

(d) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(e) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of ninety-five (95) weight percent or greater unless the total organic emission limits of Section 3(1) of 401 KAR 34:275 for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than ninety-five (95) weight percent.

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 are submitting Part B applications for process vents.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed amendment adds changes made elsewhere in the administrative regulation package relating to boilers and industrial furnaces. This proposed amendment is being promulgated as a result of amendments to federal regulations required by the hazardous and solid waste amendments to the Resource Conservation Act which take effect upon promulgation whether or not the state has administrative regulations in effect. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224.

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 requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be additional costs to the administrative body to review the Part B applications submitted as a result of the authorization the cabinet will receive to administer this program once the administrative regulation is effective.

2. Continuing costs or savings: Costs will continue as long as applications are received.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be additional requirements to maintain records and generate reports on the activities of facilities with Part B permits for equipment.

(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 270.24. However, there is no federal mandate to promulgate this administrative regulation. Some of the changes included in this proposed amendment are already in effect for Kentucky hazardous waste sites or facilities with permits even if this administrative regulation is not adopted. Other changes are being made in response to EPA comments on the previous amendments to this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter224.

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 270.24.

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

401 KAR 38:250. Specific Part B requirements for equipment.

RELATES TO: KRS 224.10, 224.40, 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 specific Part B requirements for equipment.

Section 1. Specific Part B information requirements for equipment. Except as otherwise provided in 401 KAR 34:010, owners and operators of facilities that have equipment to which 401 KAR 34:280 applies shall provide the following additional information:

(1) For each piece of equipment to which 401 KAR 34:280 applies:

(a) Equipment identification number and hazardous waste management unit identification.

(b) Approximate locations within the facility (for example, identify the hazardous waste management unit on a facility plot plan).

(c) Type of equipment (a pump or pipeline valve for example).

(d) Percent by weight total organics in the hazardous waste stream at the equipment.

(e) Hazardous waste state at the equipment (for example, gas, vapor, or liquid).

(f) Method of compliance with the standard (for example, "monthly leak detection and repair" or "equipped with dual mechanical seals").

(2) For facilities that cannot install a closed-vent system and control device to comply with the provisions of 401 KAR 34:280 on the effective date that the facility becomes subject to the provisions of 401 KAR 34:280 or 35:280, an implementation schedule as specified in Section 4(1)(b) of 401 KAR 34:275.

(3) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in Section 6(2)(c) of 401 KAR 34:275.

(4) Documentation that demonstrates compliance with the equipment standards in Sections 3 to 10 of 401 KAR 34:280. This documentation shall contain the records required under Section 15 of 401 KAR 34:280. The cabinet may request further documentation before deciding if compliance has been demonstrated.

(5) Documentation to demonstrate compliance with Section 10 of 401 KAR 34:280 shall include the following information:

(a) A list of all information references and sources used in preparing the documentation.

(b) Records, including the dates, of each compliance test required by Section 4(10) of 401 KAR 34:275.

(c) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "ATPI Course 415: Control of Gaseous Emissions" or other engineering texts acceptable to the cabinet that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Section 6(2)(d)3 of 401 KAR 34:275.

(d) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(e) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of ninety-five (95) weight percent or greater.

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 are submitting Part B applications for equipment.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed amendment adds changes made elsewhere in the regulation package relating to boilers and industrial furnaces. This proposed amendment is being promulgated as a result of amendments to federal regulations required by the hazardous and solid waste amendments to the Resource Conservation Act which take effect upon promulgation whether or not the state has regulations in effect. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224.

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 requirements imposed as a result of promulgating the state administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be additional costs to the administrative body to review the Part B applications submitted as a result of the authorization the cabinet will receive to administer this program once the administrative regulation is effective.

2. Continuing costs or savings: Costs will continue as long as applications are received.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be additional requirements to maintain records and generate reports on the activities of facilities with Part B permits for equipment.

(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 270.25. However, there is no federal mandate to promulgate this administrative regulation. Some of the changes included in this proposed amendment are already in effect for Kentucky hazardous waste sites or facilities with permits even if this administrative regulation is not adopted. Other changes are being made in response to EPA comments on the previous amendments to this administrative regulation. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated 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 270.25.

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

401 KAR 38:260. Specific Part B information requirements for boilers and industrial furnaces burning hazardous waste.

RELATES TO: KRS 224.10, 224.40, 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 specific Part B requirements for boilers and industrial furnaces burning hazardous waste.

Section 1. Specific Part B Information Requirements for Boilers and Industrial Furnaces Burning Hazardous Waste. (1) Trial burns.

(a) General. Except as provided below, owners and operators that are subject to the standards to control organic emissions provided by Section 5 of 401 KAR 36:020, standards to control particulate matter provided by Section 6 of 401 KAR 36:020, standards to control metals emissions provided by Section 7 of 401 KAR 36:020, or standards to control hydrogen chloride or chlorine gas emissions provided by Section 8 of 401 KAR 36:020 shall conduct a trial burn to demonstrate conformance with those standards and shall submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with Section 7 of 401 KAR 38:060.

1. A trial burn to demonstrate conformance with a particular emission standard may be waived under provisions of Sections 5 to 8 of 401 KAR 36:020 and paragraphs (b) to (e) of this subsection; and

2. The owner or operator may submit data in lieu of a trial burn, as prescribed in paragraph (f) of this subsection.

(b) Waiver of trial burn for destruction and removal efficiency (DRE).

1. Boilers operated under special operating requirements. When seeking to be permitted under Sections 5(1)(d) and 11 of 401 KAR 36:020 that automatically waive the DRE trial burn, the owner or operator of a boiler shall submit documentation that the boiler operates under the special operating requirements provided by Section 11 of 401 KAR 36:020.

2. Boilers and industrial furnaces burning low risk waste. When seeking to be permitted under the provisions for low risk waste

provided by Sections 5(1)(e) and 10 of 401 KAR 36:020 that waive the DRE trial burn, the owner or operator shall submit:

a. Documentation that the device is operated in conformance with the requirements of Section 10(1)(a) of 401 KAR 36:020.

b. Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in 401 KAR 31:170, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion explained. The analysis shall rely on analytical techniques specified in test methods for evaluating solid waste, physical and chemical methods incorporated by reference in Section 3 of 401 KAR 30:010.

c. Documentation of hazardous waste firing rates and calculations of reasonable, worst-case emission rates of each constituent identified in clause b of this subparagraph using procedures provided by Section 10(1)(b)2 of 401 KAR 36:020.

d. Results of emissions dispersion modeling for emissions identified in clause c of this subparagraph using modeling procedures prescribed by Section 7(8) of 401 KAR 36:020. The cabinet shall review the emission modeling conducted by the applicant to determine conformance with these procedures. The cabinet shall either approve the modeling or determine that alternate or supplementary modeling is appropriate.

e. Documentation that the maximum annual average ground level concentration of each constituent identified in clause b of this subparagraph quantified in conformance with clause d of this subparagraph does not exceed the allowable ambient level established in Sections 4 or 5 of 401 KAR 36:025. The acceptable ambient concentration for emitted constituents for which a specific reference air concentration has not been established in Section 4 of 401 KAR 36:025 or risk-specific dose has not been established in Section 5 of 401 KAR 36:025 is one-tenth (0.1) micrograms per cubic meter as noted in the footnote to Section 4 of 401 KAR 36:025.

(c) Waiver of trial burn for metals. When seeking to be permitted under the Tier I (or adjusted Tier I) metals feed rate screening limits provided by Section 7(2) and (5) of 401 KAR 36:020 that control metals emissions without requiring a trial burn, the owner or operator shall submit:

1. Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

2. Documentation of the concentration of each metal controlled by Section 7(2) or (5) of 401 KAR 36:020 in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of each metal;

3. Documentation of how the applicant shall ensure that the Tier I feed rate screening limits provided by Section 7(2) or (5) of 401 KAR 36:020 shall not be exceeded during the averaging period provided by that subsection;

4. Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by Section 7(2)(c) to (e) of 401 KAR 36:020;

5. Documentation of compliance with the provisions of Section 7(2)(f) of 401 KAR 36:020, if applicable, for facilities with multiple stacks;

6. Documentation that the facility does not fail the criteria provided by Section 7(2)(g) of 401 KAR 36:020 for eligibility to comply with the screening limits; and

7. Proposed sampling and metals analysis plan for the hazardous waste, other fuels, and industrial furnace feed stocks.

(d) Waiver of trial burn for particulate matter. When seeking to be permitted under the low risk waste provisions of Section 10(2) of 401 KAR 36:020 which waives the particulate standard (and trial burn to demonstrate conformance with the particulate standard), applicants shall submit documentation supporting conformance with paragraphs (b)2 and (c) of this subsection.

(e) Waiver of trial burn for HCl and Cl_2. When seeking to be permitted under the Tier I (or adjusted Tier I) feed rate screening limits for total chloride and chlorine provided by Section 8(2)(a) and (5) of 401 KAR 36:020 that control emissions of hydrogen chloride (HCl) and chlorine gas (Cl_2) without requiring a trial burn, the owner or operator shall submit:

1. Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

2. Documentation of the levels of total chloride and chlorine in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of total chloride and chlorine;

3. Documentation of how the applicant shall ensure that the Tier I (or adjusted Tier I) feed rate screening limits provided by Section 8(2)(a) or (5) of 401 KAR 36:020 shall not be exceeded during the averaging period provided by that subsection;

4. Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by Section 8(2)(c) of 401 KAR 36:020;

5. Documentation of compliance with the provisions of Section 8(2)(d) of 401 KAR 36:020, if applicable, for facilities with multiple stacks;

6. Documentation that the facility does not fail the criteria provided by Section 8(2)(c) of 401 KAR 36:020 for eligibility to comply with the screening limits; and

7. Proposed sampling and analysis plan for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks.

(f) Data in lieu of trial burn. The owner or operator may seek an exemption from the trial burn requirements to demonstrate conformance with Sections 5 to 8 of 401 KAR 36:020 and Section 7 of 401 KAR 38:060 by providing the information required by Section 7 of 401 KAR 36:020 from previous compliance testing of the device in conformance with Section 4 of 401 KAR 36:020, or from compliance testing or trial or operational burns of similar boilers or industrial furnaces burning similar hazardous wastes under similar conditions. If data from a similar device is used to support a trial burn waiver, the design and operating information required by Section 7 of 401 KAR 38:060 shall be provided for both the similar device and the device to which the data is to be applied, and a comparison of the design and operating information shall be provided. The cabinet shall approve a permit application without a trial burn if he finds that the hazardous wastes are sufficiently similar, the devices are sufficiently similar, the operating conditions are sufficiently similar, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under Section 3 of 401 KAR 36:020) operating conditions that shall ensure conformance with Section 3(3) of 401 KAR 36:020. In addition, the following information shall be submitted:

1. For a waiver from any trial burn:

a. A description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from compliance testing, or operational or trial burns are provided to support the contention that a trial burn is not needed;

b. The design and operating conditions of the boiler or industrial furnace to be used, compared with that for which comparative burn data are available; and

c. Such supplemental information as the cabinet finds necessary to achieve the purposes of this subsection.

2. For a waiver of the DRE trial burn, the basis for selection of POHCs used in the other trial or operational burns which demonstrate compliance with the DRE performance standard in Section 5(1) of 401 KAR 36:020. This analysis shall specify the constituents in 401 KAR 31:170, that the applicant has identified in the hazardous waste for which a permit is sought, and any differences from the POHCs in the hazardous waste for which burn data are provided.

(2) Alternative HC limit for industrial furnaces with organic matter in raw materials. Owners and operators of industrial furnaces requesting an alternative HC limit under Section 5(6) of 401 KAR

36:020 shall submit the following information at a minimum:

(a) Documentation that the furnace is designed and operated to minimize HC emissions from fuels and raw materials;

(b) Documentation of the proposed baseline flue gas HC (and CO) concentration, including data on HC (and CO) levels during tests when the facility produced normal products under normal operating conditions from normal raw materials while burning normal fuels and when not burning hazardous waste;

(c) Test burn protocol to confirm the baseline HC (and CO) level including information on the type and flow rate of all feedstreams, point of introduction of all feedstreams, total organic carbon content (or other appropriate measure of organic content) of all nonfuel feedstreams, and operating conditions that affect combustion of fuel(s) and destruction of hydrocarbon emissions from nonfuel sources;

(d) Trial burn plan to:

1. Demonstrate that flue gas HC (and CO) concentrations when burning hazardous waste do not exceed the baseline HC (and CO) level; and

(2) Identify the types and concentrations of organic compounds listed in 401 KAR 31:170, that are emitted when burning hazardous waste in conformance with procedures prescribed by the cabinet;

(e) Implementation plan to monitor over time changes in the operation of the facility that could reduce the baseline HC level and procedures to periodically confirm the baseline HC level; and

(f) Such other information as the cabinet finds necessary to achieve the purposes of this subsection.

(3) Alternative metals implementation approach. When seeking to be permitted under an alternative metals implementation approach under Section 7(b) of 401 KAR 36:020, the owner or operator shall submit documentation specifying how the approach ensures compliance with the metals emissions standards of Section 7(3) or (4) of 401 KAR 36:020 and how the approach can be effectively implemented and monitored. Further, the owner or operator shall provide such other information that the cabinet finds necessary to achieve the purposes of this subsection.

(4) Automatic waste feed cutoff system. Owners and operators shall submit information describing the automatic waste feed cutoff system, including any pre-alarm systems that may be used.

(5) Direct transfer. Owners and operators that use direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in Section 12 of 401 KAR 36:020) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by Section 12 of 401 KAR 36:020.

(6) Residues. Owners and operators that claim that their residues are excluded from administrative regulation under the provisions of Section 13 of 401 KAR 36:020 shall submit information adequate to demonstrate conformance with those provisions.

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: The provisions of this administrative regulation were promulgated by the U.S. Environmental Protection Agency on February 21, 1991 (with subsequent amendments). The EPA regulations, codified at 40 CFR 270.22, were promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) to Resource Conservation and Recovery Act (RCRA). Pursuant to HSWA, the February 21, 1991 regulations were self-implementing, meaning they took effect in all states, including Kentucky, even though the states had not adopted them through their own regulation promulgation process. Proposed 401 KAR 36:020 mirrors 40 CFR 270.22. Adoption of this administrative regulation will bring Kentucky's regulatory program for hazardous waste burned in boilers and industrial furnaces into alignment with the federal regulatory program so as not to subject such facilities to two sets of conflicting standards. Since this administrative regulation mirrors 40 CFR 270.22, which is already in effect in Kentucky, this administrative regulation will not affect any entities.

(a) Direct and indirect costs or savings to those affected: Because the provisions of this administrative regulation are already in effect in Kentucky, facilities will not incur additional costs or savings as a result of this administrative regulation.

1. First year: See above.

2.Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b)Reporting and paperwork requirements: Because the provisions of this administrative regulation are already in effect in Kentucky facilities will not incur additional reporting or paperwork requirements as a result of this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Kentucky is already implementing the provisions of this administrative regulation on behalf of U.S. EPA. Adoption of this administrative regulation will not result in additional costs or savings.

1. First year: See above.

2. Continuing costs or savings: See above.

3.Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Because Kentucky is already implementing the provisions of this administrative regulation on behalf of U.S. EPA, adoption of this administrative regulation will not alter reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, to gain consistency with the federal hazardous waste program there was no alternatives to the promulgation of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no conflicting, overlapping, or duplicative statutes, regulations, or policies.

(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 270.22. However, there is no federal mandate to promulgate this administrative regulation. Some of the changes included in this proposed administrative regulation are already in effect for Kentucky hazardous waste sites or facilities with permits even if this administrative regulation is not adopted. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated 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 270.22

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

401 KAR 38:270. Specific Part B information requirements for drip pads.

RELATES TO: KRS 224.10, 224.40, 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 specific Part B information requirements for drip pads.

Section 1. Special Part B Information Requirements for Drip Pads. Except as otherwise provided by 401 KAR 34:100, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads shall provide the following additional information:

(1) A list of hazardous wastes placed or to be placed on each drip pad.

(2) If an exemption is sought to 401 KAR 34:060, as provided by Section 1 of 401 KAR 34:060, detailed plans and an engineering report describing how the requirements of Section 1(2)(b) of 401 KAR 34:060 shall be met.

(3) Detailed plans and an engineering report describing how the drip pad shall be designed, constructed, operated and maintained to meet the requirements of Section 4 of 401 KAR 34:285, including the as-built drawings and specifications. This submission shall address the following items as specified in Section 5 of 401 KAR 34:285:

(a) The design characteristics of the drip pad.

(b) The liner system.

(c) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time.

(d) Practices designed to maintain drip pads.

(e) The associated collection system.

(f) Control of run-on to the drip pad.

(g) Control of run-off from the drip pad.

(h) The interval at which drippage and other materials shall be removed from the associated collection system and a statement demonstrating that the interval shall be sufficient to prevent overflow onto the drip pad.

(i) Procedures for cleaning the drip pad at least once every seven (7) days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned.

(j) Operating practices and procedures that shall be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized.

(k) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and nonpressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices.

(l) Provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals.

(n) A description of how each drip pad, including appurtenances for control of run-on and run-off, shall be inspected in order to meet the requirements of Section 4 of 401 KAR 34:285. This information shall be included in the inspection plan submitted under Section 2(5) of 401 KAR 38:090.

(o) A certification signed by an engineer, stating that the drip pad design meets the requirements of Section 4(1) to (6) of 401 KAR 34:285.

(p) A description of how hazardous waste residues and contaminated materials shall be removed from the drip pad at closure, as required under Section 6(1) of 401 KAR 34:285. For any waste not to be removed from the drip pad upon closure, the owner or operator shall submit detailed plans and an engineering report describing how Section 6(1) and (2) of 401 KAR 34:230 shall be complied with. This information shall be included in the closure plan and, where applicable, the postclosure plan submitted under Section 2(13) of 401 KAR 38:090.

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 are submitting Part B applications for drip pads.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no increased costs associated with complying with this administrative regulation. This proposed administrative regulation adds changes made elsewhere in the regulation package relating to wood preserving facilities. This proposed administrative regulation is being promulgated as a result of amendments to federal regulations required by the hazardous and solid waste amendments to the Resource Conservation Act which take effect upon promulgation whether or not the state has regulations in effect. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated in KRS Chapter 224.

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 requirements imposed as a result of promulgating the state administrative regulation. Facilities will be required to report to the state instead of the federal government.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be additional costs to the administrative body to review the Part B applications submitted as a result of the authorization the cabinet will receive to administer this program once the regulation is effective.

2. Continuing costs or savings: Costs will continue as long as applications are received.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There will be additional requirements to maintain records and generate reports on the activities of facilities with Part B permits for drip pads.

(3) Assessment of anticipated effect on state and local revenues: State revenues will increase because applicants for Part B permits are required to pay an application fee.

(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 270.26. However, there is no federal mandate to promulgate this administrative regulation. Some of the changes included in this proposed administrative regulation are already in effect for Kentucky hazardous waste sites or facilities with permits even if this administrative regulation is not adopted. The federal Resource Conservation and Recovery Act requires that states be consistent with and no less stringent than the federal rules in order to operate the program in lieu of the federal government. This administrative regulation is proposed for the purpose of maintaining the state's authority for the hazardous waste program as mandated 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 270.26.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 1:101. Proof of liability and cargo insurance.

RELATES TO: KRS Chapter 281, 49 CFR Parts 387, 1023, 1043

STATUTORY AUTHORITY: KRS 281.600, 49 CFR Parts 387, 1023, 1043

NECESSITY AND FUNCTION: To establish a system of insurance filings for all motor carriers operating in intrastate commerce or which have been registered in Kentucky pursuant to the provisions of 49 CFR Part 1023.

Section 1. Proof Insurance of Interstate Exempt and Intrastate Motor Carriers. (1) Evidence of insurance required by KRS Chapter 281 shall be filed for motor carriers operating in intrastate commerce and those operating in interstate commerce but which are exempt from the authority of the Interstate Commerce Commission with the Division of Motor Carriers in the form of a certificate of insurance. The certificate of insurance shall be written to show the term of the bond

or policy to be continuous until cancelled under proper notice. Another form of evidence of insurance shall not be accepted.

(2) The certificate of bodily injury and property damage insurance shall be on form TC 95-211, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance" revised April, 1988. This form is incorporated by reference.

(3) All motor carriers operating pursuant to KRS 281.655(7) shall file proof of cargo insurance on form TC 95-212, "Uniform Motor Carrier Cargo Certificate of Insurance" revised April, 1988. This form is incorporated by reference.

(4)(a) Cancellation of insurance required to be filed pursuant to KRS Chapter 281 shall be effected through the filing of form TC 95-213, "Uniform Notice of Cancellation of Motor Carrier Insurance Policies" revised April, 1988. This form is incorporated by reference.

(b) Notice of the reinstatement of insurance which was cancelled pursuant to subparagraph (a) of this subsection shall be as set forth in subsections (2) and (3) of this section.

Section 2. Insurance - Interstate Authorized Carriers. (1) Provisions of Title 49, Code of Federal Regulations, Part 387 as effective October 1, 1992 and 49 CFR Part 1043.2, shall govern the minimum amounts of liability insurance of a motor carrier of property or passengers authorized to do so by the Interstate Commerce Commission.

(2) In accordance with 49 CFR Part 1023, Interstate Commerce Commission authorized motor carriers registered in Kentucky pursuant to 601 KAR 1:040, Section 5 shall file proof of insurance with the Division of Motor Carriers on Form B.M.C. 91, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982, or if more than one (1) insurance carrier is involved, Form B.M.C. 91X, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982. These forms are incorporated by reference.

Section 3. Reinstatement of Insurance. A motor carrier desiring to file a reinstatement of insurance which has been cancelled shall file a new certificate of insurance as required by this administrative regulation.

Section 4. Self-insurers. (1) Persons applying in accordance with KRS 281.655(9) for an exemption in whole or in part, from the requirements of KRS 281.655(1), (5) and (6) shall file their application in petition form accompanied by a balance sheet and an income statement, as exhibits, which shall be prepared by a Certified Public Accountant or a responsible accounting officer of the applicant and shall reflect the actual financial condition of the applicant as of the last calendar quarter preceding the date of the application.

(2) When an authorized carrier operating exclusively in interstate commerce has qualified as a self-insurer with the Interstate Commerce Commission, and that commission has entered an order allowing the carrier to qualify as a self-insurer, the applicant may file, as an exhibit, a certified copy of the ICC order with its application in lieu of a balance sheet and an income statement.

(3) The cabinet may, in its discretion, enter an order consistent with its opinion of the applicant's financial condition.

(4) The order may be revoked by the cabinet at any time when it has reason to believe that the financial condition of the applicant has changed.

(5) The cabinet may also require the filing of additional financial statements or other information at any time it desires.

Section 5. Material Incorporated by Reference. All of the material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays. Its telephone number is (502)564-4540.

Section 6. Repeal. 601 KAR 1:100, Insurance, is hereby repealed.

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary
STEPHEN REEDER, Deputy Secretary
APPROVED BY AGENCY: October 6, 1993
FILED WITH LRC: October 15, 1993 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 23, 1993 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Fourth Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 18, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 18, 1993. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on November 23, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to. Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All motor carriers operating in Kentucky in intrastate and all of the motor carriers based in Kentucky but operating under the authority of the ICC.

(a) Direct and indirect costs or savings to those affected: None as a result of this administrative regulation which replaces 601 KAR 1:100.

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: Listed the specific form to be used to file proof of insurance. These forms relating to ICC-authorized motor carriers have changed little, but now the motor carrier will only be required to file the form in its base state instead of all jurisdictions in which it does business.

(2) Effects on the promulgating administrative body: Reporting and paperwork changes.

(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: The notation in the computer and the filing of the proof of insurance by all motor carriers operating in will no longer be accomplished for those ICC-authorized motor carriers based in another jurisdiction. That savings in paperwork/manpower will be off-set by the requirement to report and deliver to the other jurisdictions the fees collected on their behalf from the Kentucky-based, ICC-authorized motor carriers.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The idea of amending 601 KAR 1:100 was rejected because it got too complex with the forms spelled out in 601 KAR 1:100.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: KRS 281.655 sets forth the amount of required liability insurance for intrastate motor carriers. These amounts are significantly less than the amounts set forth in 49 CFR Part 1043 for interstate, ICC-authorized motor carriers. Since some carriers operate both in interstate and intrastate commerce an apparent conflict exists.

(a) Necessity of proposed regulation if in conflict: Federal regulation 49 CFR Part 1023 requires that the insurance registration for base state, ICC-authorized motor carriers at least equal the requirements of 49 CFR Part 1043.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: KRS 281.655 allows the Transportation Cabinet to adopt the federal regulations in 49 CFR Part 387. The liability insurance requirements of 49 CFR Part 397 are the same as those set forth in 49 CFR Part 1043. Therefore, a true conflict has been avoided.

(6) Any additional information or comments: In order to implement the federal mandate found in 49 CFR Part 1023, four of the Department of Vehicle Regulation's administrative regulations had to be amended. The other three are 601 KAR 1:040, 601 KAR 2:010 and 601 KAR 9:040. In order to determine how the federal mandate has been implemented all four need to be evaluated together.

Tiering: Was tiering applied? Yes. The administrative regulation requires different insurance registration forms for different types of motor carriers and no Kentucky registration for ICC-authorized motor carriers based in another jurisdiction.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 1023 and 49 CFR Part 1043.

2. State compliance standards. The forms required for the filing of proof of insurance by Kentucky-based, ICC-authorized motor carriers are the same required by federal regulation.

3. Minimum or uniform standards contained in the federal mandate. Kentucky can only require ICC-authorized motor carriers based in Kentucky to file proof of insurance.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation, pursuant to KRS Chapter 281, requires the motor carriers operating in intrastate commerce in Kentucky to file proof of insurance. The federal regulations are silent on intrastate commerce.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Since the federal regulation is silent on proof of insurance for motor carriers operating in intrastate commerce and KRS Chapter 281 requires the filing of proof of insurance, the filing requirement must be imposed.

TRANSPORTATION CABINET
Kentucky Bicycle and Bikeways Commission

601 KAR 14:020. Bicycle safety standards.

RELATES TO: KRS Chapter 189

STATUTORY AUTHORITY: KRS 174.125, 189.287

NECESSITY AND FUNCTION: KRS Chapter 189 sets forth many bicycle safety standards that can be overridden by administrative regulations promulgated by the Transportation Cabinet. The Bicycle and Bikeways Commission authorized by KRS 174.125 has suggested that with the ever-growing use of bicycles in Kentucky additional or different standards are necessary for the safety of the traveling public. This administrative regulation sets forth the required bicycle safety standards.

Section 1. Front Lights. A bicycle operated on a highway during the hours or atmospheric conditions described in KRS 189.030(1) shall be equipped with one (1) front light which clearly reveals substantial objects at least fifty (50) feet ahead and which is visible for 500 feet.

Section 2. Rear Lights or Reflectors. A bicycle, when operated on a highway or highway shoulder, shall display on either the bicycle or the bicyclist so that it is visible from the rear of the bicycle:

(1) One (1) red reflector or red light visible for at least 100 feet; and

(2) During the hours or atmospheric conditions described in KRS 189.030(1), one (1) red light or flashing red light visible for at least 500 feet.

Section 3. Horn or Bell. (1) A bicycle may be equipped with a bell, horn or other device capable of making an abrupt sound.

(2) Every person operating a bicycle shall shout or sound the bell, horn or sound device whenever necessary as a warning of the approach of the bicycle to pedestrians or other bicycles, but shall not sound the horn or sound device unnecessarily.

(3) A bicycle shall not be equipped with a siren or whistle.

Section 4. Brakes. A bicycle shall not be operated on a highway or highway shoulder without brakes adequate to control the movement of and to stop the bicycle.

Section 5. Seat. A bicyclist, when operating on a highway or highway shoulder, shall ride on or astride a permanently attached bicycle seat.

Section 6. Passengers. A bicycle, when being operated on a highway or highway shoulder, shall not carry more than the number of persons for which the bicycle was designed or is safely equipped.

Section 7. Packages. A bicyclist, when operating on a highway or highway shoulder, shall not carry a package, bundle, or article that prevents the operator from keeping at least one (1) hand on the handle bars.

Section 8. Prohibition Against Attaching to Vehicles. A bicyclist, when operating on a highway or highway shoulder, shall not attach either the bicycle or himself to any other vehicle.

Section 9. Operation of Bicycles. A bicycle shall be operated in the same manner as a motor vehicle except the following traffic conditions shall apply:

(1) A bicycle may be operated on the shoulder of a highway;

(2) If a highway lane is marked for the exclusive use of bicycles, the operator of a bicycle shall use the lane whenever feasible;

(3) The operator or a bicycle which has wheels with a diameter of more than fourteen (14) inches shall not operate the bicycle upon or along a sidewalk except in crossing the sidewalk to or from abutting property; and

(4) Not more than two (2) bicycles shall be operated abreast in a single highway lane.

KEITH LOGSDON, Chairman
NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: September 27, 1993

FILED WITH LRC: October 4, 1993 at 2 p.m.

PUBLIC HEARING: A public comment hearing on this administra-

tive regulation will be held on November 23, 1993 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Fourth Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 18, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 18, 1993. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until November 23, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502)564-4890.

REGULATORY IMPACT ANALYSIS

Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: All bicycle riders in the Commonwealth of Kentucky.

(a) Direct and indirect costs or savings to those affected: There is a one time savings to each person who operates a bicycle only during daylight hours of approximately $50.

1. First year: $50 per person.

2. Continuing costs or savings: $50 for each new bicycle purchased in the state that is ridden only during daylight hours.

3. Additional factors increasing or decreasing costs: None

(b) Reporting or paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Bicycle Commission, appointed earlier this year by Governor Jones, in its review of existing state laws regarding bicycle safety determined that even though the Transportation Cabinet was authorized to promulgate administrative regulations relating to bicycle safety, it had not done so. The existing state law requires that anytime a bicycle is operated on public roadways, it have front and rear lights. The Bicycle Commission deemed this to be unacceptable since most bicyclist operate exclusively in daylight hours and there is no reason to go to the expense of putting lights on their bicycles. In addition, there are national safety standards relating to bicycles and their operation which have been adopted by almost all jurisdictions and have been recommended to be adopted by all jurisdictions. Those that the Bicycle Commission believed could be promulgated as an administrative regulation are included in this administrative regulation. The alternative was the "do-nothing alternative" which once the Bicycle Commission was appointed and became active, was inappropriate.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: KRS 189.040(9) and 189.080.

(a) Necessity of proposed regulation if in conflict: There is not truly a conflict since both statutes allow administrative regulations to be promulgated relating to bicycle safety which override the statutes. The Bicycle Commission believes that should be done.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments. The Bicycle Commission agrees that if someone wishes to use a bell or horn on a bicycle it is acceptable. However, in most instances a warning scream can be heard much easier by other traffic than the bell or horn. The national bicycle associations agree that not requiring a bell or whistle but allowing a person to use their voice is much more appropriate. To operate the bell or whistle the rider may have to remove his hands from the handle bars at a time when it is most inappropriate for safety purposes to do so.

TIERING: Was tiering applied? Yes. While it is generally determined that bicyclist should not operate on sidewalks but rather use the streets like any other vehicle, it was agreed that children operating smaller bicycles do not yet know the rules of the road sufficiently to be on the highways. Therefore, the small bicycles were allowed to continue operation on sidewalks. In addition, lights are only required of bicycles being operated after dark.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 3:141. Repeal of 806 KAR 3:140.

RELATES TO: KRS 304.3-315

STATUTORY AUTHORITY: KRS 304.2-110, 304.3-315

NECESSITY AND FUNCTION: 806 KAR 3:140 is no longer necessary because the statute which requires the administrative regulation, KRS 304.3-315, has been repealed.

Section 1. 806 KAR 3:140, Liability and health insurance statistical reports, is repealed.

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: September 9, 1993

FILED WITH LRC: October 11, 1993 at 10 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for November 22, 1993, at 9:30 a.m., (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Don W. Stephens, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9:30 a.m., (ET) on November 22, 1993, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: Carla H. Montgomery

Need for the Proposed Regulation: 304.3-315, which became effective in 1988, required the Commissioner of Insurance to prescribe by administrative regulation a reporting form for liability and health insurance statistical reports. 1992 House Bill 433 (1992 Ky. Acts c. 386, section 5) repealed KRS 304.3-315 effective July 14, 1992. Therefore, 806 KAR 3:140 is no longer necessary.

(1) Type and numbers of entities affected: There are 1,200 insurers authorized to transact liability and health insurance in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be savings because these reports are no longer required.

2. Continuing costs or savings: Savings will continue because the reports are no longer necessary.

3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There will be savings because the department will no longer receive these statistical reports.
2. Continuing costs or savings: Savings will continue because the department will no longer receive these statistical reports.
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 requiring this regulation has been repealed, so it is necessary to repeal the regulation.
(5) Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None
TIERING: Tiering is unnecessary since 806 KAR 3:140 is being repealed.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission

810 KAR 1:032. Breeders' Award Program.

RELATES TO: KRS 230.217
STATUTORY AUTHORITY: KRS 230.260(3)
NECESSITY AND FUNCTION: KRS 230.217 requires the Commission to establish a Breeders' Award Program with criteria suitable to disburse the receipts from the Breeders' Award Fund as generated by the funding mechanism created by KRS 230.380.

Section 1. Definitions. (1) "Breeder" means the owner of the dam of a runner at the time the runner was foaled in Kentucky unless the dam was under a lease or foal-sharing agreement at the time of foaling. If there was a lease or foal-sharing agreement, the person that is specified by the lease or agreement shall be considered the breeder. For implementation of this subsection, the records of the Jockey Club will be used as the official records.

(2) "Purse" means a prize awarded on race day as a result of competing in a live race within Kentucky. Purse shall include winnings paid by the track, entry fees, Kentucky Thoroughbred Development supplements, corporate supplements, and Breeders' Cup supplements with the exception of purses won in Breeders' Cup championship races and bonus supplements defined as awards resulting from multirace winnings. For implementation of this subsection, the records of the Jockey Club will be used as the official records.

(3) "Runner" means a thoroughbred horse who is both foaled in Kentucky and sired by a Kentucky Thoroughbred Development Fund registered stallion which competes in races conducted in Kentucky. For implementation of this subsection relating to sires, the records of the Kentucky thoroughbred owners and breeders will be official.

(4) "Stallion" means the sire of a runner provided the stallion is registered no later than December 31 in the year the runner was bred with the Kentucky Thoroughbred Development Fund pursuant to the provisions of KRS 230.400(5)(a).

(5) "Stallion owner" means the owner of the sire of a runner when the breeding of the runner took place according to the records of the Jockey Club.

Section 2. Stallion and Dam Awards. The available Breeders' Award Funds shall be apportioned with eighty (80) percent being allocated to the breeders and twenty (20) percent being allocated to the owners of the stallions.

Section 3. Timing of Awards. (1) Disbursements from the Breeders' Award Fund shall be made as soon as is practicable after the end of each calendar year.

(2) Awards made in 1994 shall be based on purses according to Section 1 of this administrative regulation in the 1993 calendar year.

(3) For awards earned in 1993 and distributed in 1994, the calculation shall be restricted to purses of runners from the foal crop of 1991 who ran as two (2) year olds in 1993.

(4) For awards earned in 1994 and distributed in 1995, the calculation shall be restricted to purses of runners from the foal crops of 1991 and 1992.

(5) For awards distributed each year after 1995, the calculation shall include one (1) additional year's foal crop and allow for awards to one (1) additional age group of runners.

Section 4. Calculation. (1) Funds available in the state account as of December 31 in each year preceding the actual awards shall be apportioned according to the provisions of Section 2 of this administrative regulation.

(2) Records of purse winnings for all runners shall be obtained from the Jockey Club restricted to the runners' age groups scheduled to benefit from the awards according to Section 3 of this administrative regulation.

(3) The funds apportioned to breeders shall be awarded by:

(a) Assigning the individual runner's purses to the breeder if the runner was foaled in Kentucky and sired by a registered Kentucky stallion;

(b) Dividing the individual breeder's assigned winnings from each runner by the total of all assigned winnings to breeders from all runners; then

(c) Multiplying the ratio from paragraph (b) of this subsection times to total to be awarded to breeders pursuant to the split in Section 2 of this administrative regulation. This product shall be awarded to the breeder.

(4) The funds apportioned to stallion owners shall be awarded by:

(a) Assigning the individual runner's purses to the stallion if the runner was sired by a registered Kentucky stallion and foaled in Kentucky;

(b) Dividing the individual stallion's assigned winnings by the total of all assigned winnings to registered Kentucky stallions; then

(c) Multiplying the ratio from subsection (3)(b) of this section times to total to be awarded to stallion owners pursuant to the split in Section 2 of this administrative regulation. This product shall be awarded to the stallion owner.

(5) All awards shall be given to the breeder or stallion owner as defined in Section 1 of this administrative regulation.

(6) Each individual award as a result of each calculation required by subsections (3)(c) and (4)(c) of this section will be reduced by five (5) dollars to cover postage and processing.

Section 5. Application Requirements. (1) After the awards are calculated, the recipients of the awards will be notified according to last known addresses on file with the Jockey Club, Kentucky Thoroughbred Owners and Breeders, or the Kentucky Racing Commission. Each potential recipient will be required to return an application for the award that certifies they are the rightful beneficiary to the award and certifies their taxpayer ID number or Social Security number.

(2) Awards due recipients that cannot be located will lapse to the Breeders' Award Fund for distribution in the following year. Failure to return the application required by subsection (1) of this section within thirty (30) days of the mailing date will result in forfeiting any award.

(3) Any contested awards shall be decided by the Breeders' Award Committee. Any appeal from the committee's ruling shall be heard by the hearing officer who shall present findings of fact, conclusions of law, and a recommended order to the Kentucky Racing Commission. If the commission determines a correctable error has occurred, the commission may use available funds in the

Breeders' Award Fund to correct an error.

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: October 1, 1993
FILED WITH LRC: October 8, 1993 at 1 p.m.
PUBLIC HEARING: A public hearing will be held on November 22, 1993 at 10 a.m. at the offices of the Kentucky Racing Commission located at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, KY 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact: Mike Fulkerson
(1) Type and number of entities affected: Breeders whose mares foal in Kentucky and stallion owners whose stallions are registered pursuant to KRS 230.400.
(a) Direct and indirect costs or savings to those affected: There are no costs to those affected since this is an award program. The $5 charge for postage and processing will come from the gross awards and will still result in those affected getting an award.
1. First year: Approximately $3,000.
2. Continuing costs or savings: Costs will increase but so will funds to cover those expenses.
3. Additional factors increasing or decreasing costs (Note effects upon competition): There is no competition.
(b) Reporting and paperwork requirements: Beneficiaries will have to fill out a form certifying they are the rightful beneficiary and provide taxpayer ID.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Will cost a small amount which will be covered by the $5 charge.
1. First year: The program will pay for itself with no taxpayer supplements needed.
2. Continuing costs or savings: As the program grows in complexity, the funding mechanism grows also.
3. Additional factors increasing or decreasing costs: Same as 1(a)(1).
(b) Reporting and paperwork requirements: Will require a minimum of paperwork but will likely require a personal service contract with the Jockey Club.
(3) Assessment of anticipated effect on state and local revenues: There are none.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Kentucky's program is tailored to individual needs and funds available.
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There are none.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
Tiering: Was tiering applied? Yes. Tiering is applied to allow one new foal crop to be added to the awards supplements each year. Thus, as revenues grow so do beneficiaries.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement

815 KAR 7:090. Kentucky Building Code - 1994 Edition.

RELATES TO: KRS Chapter 198B
STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050
NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation adopts the BOCA National Building Code/1993, Twelfth Edition, Chapters 1 through 35 with modifications, thereby establishing the Kentucky Building Code basic provisions relating to construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation, electrical systems and accessibility to physically disabled persons. This administrative regulation includes the substance of 815 KAR 7:010, 815 KAR 7:025 and 815 KAR 7:060, which are being repealed.

Section 1. Adoption of Building Code and Definitions. (1) Adoption of the model code. The "BOCA National Building Code/1993," Twelfth Edition, is hereby incorporated by reference with specific additions, deletions and changes set forth in this administrative regulation.
(a) It is published by Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60477.
(b) Copies are available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. Highway 127 South, Suite 1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.
(2) Definitions. The following definitions apply to this administrative regulation and Chapter 2 of the building code adopted by reference in this administrative regulation shall be amended to include these definitions:
(a) "Bed and breakfast establishment" see subsection 310.2.
(b) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.
(c) "BOCA" means Building Officials and Code Administrators International, Inc.
(d) "Building" as defined by KRS 198B.010(4).
(e) "Chapter" means a chapter of the "BOCA National Building Code/1993", Twelfth Edition, Chapters 1 through 35, published by Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60477.
(f) "Code official" or "official" means an inspector certified by the department in accordance with 815 KAR 7:070 and designated by the department or by a local government as an enforcement official for the Kentucky Building Code pursuant to KRS Chapter 198B.
(g) "Commissioner" as defined by KRS 198B.010(11).
(h) "Department" as defined by KRS 198B.010(13).
(i) "Farm" means property located outside the corporate limits of a municipality on at least ten (10) acres and having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) and qualified by and registered with the property valuation administrator in that county.
(j) "Fire code official" means the State Fire Marshal, fire chief or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety (Fire Prevention Code) as set forth in 815 KAR Chapter 10 of the Kentucky administrative regulations.

(k) "Industrialized building system" or "building system" as defined in KRS 198B.010(18) and shall apply to buildings of any size or use, all or any component parts of which are of closed construction made from precast concrete panels or precut wood sections fabricated to individual specifications in an off-site manufacturing facility and assembled in accordance with the manufacturer's instructions.

(l) "KAR" means Kentucky administrative regulations.

(m) "KBC" means the Kentucky Building Code as established in this chapter.

(n) "Kentucky standards of safety" means the Kentucky administrative regulations established by the Commissioner of the Department of Housing, Buildings and Construction pursuant to KRS 227.300 to serve as the fire prevention code for existing buildings as well as a supplement to this code, where applicable.

(o) "KRS" means Kentucky revised statutes.

(p) "Manufactured/mobile home" means a factory-built structure on a permanent chassis designed to be used as a dwelling and which is regulated by the federal government and the State Fire Marshal. These homes are required to carry a "HUD" seal applied by the manufacturer.

(q) "Modular home" means an industrialized building system designed to be used as a residence which is not a manufactured home and does not carry a "HUD" seal.

(r) "Ordinary repair" means any nonstructural reconstruction or renewal of any part of an existing building for the purpose of its maintenance, or decoration, and shall include, but not be limited to, the replacement or installation of nonstructural components of the building such as roofing, siding, windows, storm windows, insulation, drywall or lath and plaster, or any other replacement, in kind, that does not alter the structural integrity, alter the occupancy or use of the building, or affect, by rearrangement, exitways and means of egress; but shall not include additions to, or alteration of, or relocation of any standpipe, water supply, sewer, drainage, gas, soil, waste, vent or similar piping, electric wiring or mechanical equipment including furnaces and hot water heaters or other work affecting public health or safety.

(s) "Person" means a person, partnership, corporation or other legal entity.

(t) "Single family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall not be connected to any other unit or building.

(u) "Trade-name or brand-name home" means a single structure home made of precut or prefabricated panels, sections or individual pieces which are sold or prefabricated under a name that identifies both the manufacturer and a particular type of structure that the manufacturer makes, and which are assembled on a permanent foundation by conventional home building and electrical and plumbing installation techniques.

Section 2. Chapter 1, Administration. Amend Chapter 1 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend the following subsections of Section 101, Scope, to read:

(a) Amend subsection 101.1 to read: "101.1, Title: This Chapter shall supersede all other conflicting administration provisions which may be referenced by this code and these regulations shall be known as the Kentucky Building Code, hereafter referred to as "this code."

(b) Amend subsection 101.2 to read as follows: "101.2 Scope: The provisions of this code shall apply, as specified in this code, to the following:"

1. "101.2.1 New construction: The construction, use and occupancy of buildings and structures;

2. 101.2.2 Existing buildings: Alterations and additions to buildings and structures; and

3. 101.2.3 Appurtenances: Appurtenances to buildings and structures; whether hereafter erected or, where expressly stated in this code, existing; and whether on land, over water, or on water, permanently moored to land, and substantially a land structure."

(c) Amend subsection 101.3 to read: "101.3 Single-family dwellings: All single family dwellings shall comply with this section."

1. "101.3.1 All single family dwellings (R-4) shall comply fully with the National Electrical Code requirements."

2. "101.3.2 Modular homes and other trade-name or brand-name homes shall comply with all the requirements of this code. Exceptions:

a. Manufactured/mobile homes.

b. Farm dwellings.

c. Site built homes which are not trade-name or brand-name homes, unless local ordinance requires compliance, in which case Section 310.6 allows the builder to elect to build in accordance with this code or the CABO One and Two Family Dwelling Code listed in Chapter 35."

3. "101.3.3 Other codes applicable: The National Electrical Code shall apply to all manufactured/mobile homes exterior service hookups and the State Plumbing Code shall apply to the exterior water and sewer lines of nonfarm manufactured/mobile homes."

(d) Amend subsection 101.4 to read: "101.4 Intent: The KBC's intent shall be to secure public safety, health and welfare affected by building construction quality, through structural strength, adequate means of egress, light and ventilation, electrical systems, plumbing, energy, boiler safety, accessibility for persons with physical disabilities, life safety from hazards of fire and explosion and other disasters and, in general, to secure safety to life and property from all hazards incident to the removal, design, erection, repair or occupancy of buildings. It shall also be the intent of this code to avoid duplicative plan review and inspection of new construction and to maintain one (1) set of administrative regulations with the requirements relating to the construction of buildings in the state to enable builders, owners and code officials to be adequately informed."

(e) Create a new subsection, 101.5 Other regulations, to read: "101.5 Other regulations: Other local or state law shall be consulted to determine the existence of other powers given to the code official, such as those related to demolition or authority over unsafe structures unless a change of use as required by Chapter 34 is made or proposed. This code shall not be cited as authority for upgrading existing structures which are not under construction."

(f) Create a new subsection, 101.6 Fire safety authority, to read: "101.6 Fire safety authority: The State Fire Marshal and the local fire code official shall continue to be the authority having jurisdiction for enforcement of the Kentucky Standards of Safety (Fire Prevention Code) in existing buildings not regulated by this code, and for continued fire safety maintenance in buildings constructed and approved under this code."

(g) Create a new subsection, 101.7 Accessibility, to read: "101.7 Accessibility: Facilities and buildings required by KRS 198B.270 to be accessible to persons with physical disabilities shall comply with Chapter 11 of this code."

(h) Create a new subsection, 101.8 Accepted engineering practice, to read: "101.8 Accepted engineering practice: In the absence of provisions not specifically contained in this code or final decisions of the appeals board, the specifications and standards listed in Chapter 35 shall be deemed to represent accepted engineering practice with respect to materials, equipment, system or method of construction as specified and shall be required acceptable where and as referred to by a specific section of the code."

(2) Amend the following subsections of Section 102, Applicability, to read:

(a) Amend subsection 102.1 General, to read: "102.1 General: The provisions of this code shall apply to all matters affecting or relating to buildings and structures as set forth in subsection 101.2 and 101.3. The construction, alteration, addition and change of

occupancy of buildings shall comply with this code."

(b) Amend subsection 102.2 to read: "102.2 Existing Structures: The legal use and occupancy of any structure existing on the date of adoption of this code or for which it has been approved, may be continued without change, except as is specifically covered in this code and deemed necessary by the code official for the general safety and welfare of the occupants and the public, or as may be required by the State Fire Marshal under the Kentucky Standards of Safety (Fire Prevention Code), or an existing structures code adopted by and enforced under authority of a local ordinance. Application of the code to existing buildings shall apply as required by subsection 3401.1 when alterations, additions or changes of occupancy as set forth in Chapter 34 of this code are proposed or occur."

(c) Create a new subsection, 102.2.1 Moved structures, to read: "102.2.1 Moved structures: Buildings and structures moved into or within the Commonwealth shall comply with the provisions of this code for new buildings and structures and shall not be used or occupied until the certificate of occupancy has been issued by the code official."

(d) Amend subsection 102.3 to read: "102.3 Alternative regulations: A structural, fire or sanitary safety building requirement necessary for the safety of the occupants and which is not specifically covered by this code, shall be determined by other administrative regulations of the department or other applicable law."

(e) Amend subsection 102.4 to read: "102.4 Referenced standards: The standards referenced in this code and listed in Chapter 35 shall be considered part of the requirements of this code to the prescribed extent of each reference. If differences occur between provisions of this code and referenced standards, the provisions of this code shall apply, and newer editions of referenced standards may be used to meet the intent of the code in lieu of the adopted edition."

(f) Create a new subsection, 102.5 Violation, to read: "102.5 Violation: A person who violates a provision of this administrative regulation or any other provision of this code shall be subject to the penalties in Section 116 of this code."

(3) Amend Section 103, Validity, by retitling it "Ordinary Repairs and Maintenance" and amend subsection 103.1 as follows:

(a) "103.1 Repairs: Ordinary repairs to structures may be made without application or notice to the code official. Ordinary repairs shall not include:

1. The cutting away of any wall or partition;

2. The removal or cutting of any structural beam or bearing support;

3. The removal or change of any required means of egress;

4. Rearrangement of parts of a structure affecting the exit; or requirements."

(b) Amend subsection 103.2 to read: "103.2 Maintenance: All buildings and structures, both existing and new, shall be maintained in a safe and sanitary condition. Service equipment, means of egress, devices and safeguards required by this code or a previous code in a building or structure, shall be maintained in good working order."

(c) Amend subsection 103.3 to read: "103.3 Owner responsibility: The owner or the owner's designated agent shall be responsible for the safe and sanitary maintenance of the building or structure and its means of egress facilities at all times."

(d) Create a new subsection, 103.4 Housekeeping inspections, to read as follows: "103.4 Housekeeping inspections: Periodic inspections of existing uses and occupancies shall be made by legally authorized fire code, health and other designated lawful officials to insure maintenance of equipment and good housekeeping conditions."

(e) Create a new subsection, 103.5 Nonstructural repairs, to read as follows: "103.5 Nonstructural repairs: Nonstructural alterations or repairs which do not adversely affect a structural member having a required fire resistance rating may be made with the same materials of which the structure was constructed."

(4) Amend Section 104 and retitle to "Department of Building Inspection" and amend subsection 104.1 as follows:

(a) Amend subsection 104.1 to read: "104.1 Building code official: Each local government shall employ or otherwise provide for a certified level II code official, certified electrical inspector and other code enforcement personnel necessary to enforce this code within its jurisdiction. The department shall be responsible for the enforcement of this code as it pertains to the buildings assigned to it by law."

(b) Amend subsection 104.2 to read: "104.2 Appointment: Local building code officials shall be appointed by the chief appointing authority for the respective jurisdiction and shall meet the qualifications for the position which may be established by the appointing authority, in addition to the requirements for certification of Kentucky building code inspectors set forth in 815 KAR 7:070."

(c) Amend subsection 104.4 to read: "104.4 Retention of records: The building code official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections and notices and orders issued. These records shall be retained in accordance with state retention regulations promulgated by the Kentucky Department of Libraries and Archives pursuant to KRS 171.450."

(d) Amend subsection 104.5 to read: "104.5 Building size includes firewall: To determine plan review jurisdiction and the necessity for design professionals, the calculation of the total square footage and occupant load for any project shall include areas on both sides of firewalls."

(e) Amend subsection 104.7 to read: "104.7 Official records: Official records shall be kept of all business and activities of the various local building departments or state building departments specified in this code, and all of these records shall be open to the public for inspection at all appropriate times under the terms and conditions of KRS Chapter 61."

(5) Amend Section 105, Duties and Powers of the Code Official, as follows:

(a) Amend subsection 105.1 to read as follows: "105.1.1 Local Jurisdiction: The local building code official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for buildings as listed in this section and the determination of jurisdiction shall be based upon occupant load calculations in accordance with Section 1008.0 of this code."

1. "105.1.1 In storage, residential or utility occupancies: The local code official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for all buildings classified as storage, residential, miscellaneous or utility occupancies as long as the buildings do not exceed three (3) stories in height or 20,000 square feet (1860 m^2) of floor area."

2. "105.1.2 In assembly, business or mercantile occupancies: The local code official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for all buildings classified as assembly, business or mercantile occupancies having a capacity which does not exceed 100 persons."

3. "105.1.3 In churches: The local code official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for all churches having a capacity of 400 or less persons and 6,000 square feet (558 m^2) or less of total floor area."

4. "105.1.4 In factory or industrial occupancies: The local code official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for all buildings classified as factory or industrial occupancies having a capacity which does not exceed 100 persons."

5. "105.1.5 State Buildings Exempt: Buildings owned by the Commonwealth shall not be subject to local plan review, inspection or approval, regardless of size, occupant load or occupancy classification."

(b) Amend subsection 105.2 to read: "105.2 State Jurisdiction: It

shall be the responsibility of the department to review construction documents, issue permits, make inspections and to determine compliance with this code for the buildings listed below."

1. "105.2.1 Buildings classified as assembly occupancies having a capacity in excess of 100 persons, except churches having a capacity of 400 or less persons and 6,000 or less square feet of total floor area."

2. "105.2.2 Buildings classified as educational, institutional, high hazard, frozen food locker plants or industrialized building systems, regardless of occupancy size or occupancy classification."

3. "105.2.3 Buildings classified as business and mercantile occupancies having a capacity in excess of 100 persons."

4. "105.2.4 Buildings classified as industrial and factory occupancies having a capacity in excess of 100 persons."

5. "105.2.5 All other buildings containing in excess of three (3) stories or 20,000 square feet of floor area."

6. "105.2.6 All buildings owned by the Commonwealth regardless of occupancy classification or size."

(c) Amend subsection 105.4 to read: "105.4 Preemptive authority: The board may withdraw or preempt authority for plan review and inspection for code compliance under this code from a local building department if it finds, upon petition of the department, that the local inspection agency is not adequately performing any portion of its program, allowing the department to preempt that portion of a local program."

(d) Amend subsection 105.5 to read as follows: "105.5 Identification: The building code official and authorized representatives shall carry proper identification of their respective office for the purpose of inspecting buildings and premises and the performance of duties under this code."

(e) Amend subsection 105.6 to read as follows: "105.6 Rulemaking authority: By means of the board's appeals procedures, the board may issue interpretations which shall be binding upon the appellee and the building code official and the building code official shall implement the provisions of this code to secure its intent as determined by the board."

(f) Amend subsection 105.7 to read as follows: "105.7 Additional responsibility: A local government may petition the department for additional plan review responsibility in accordance with KRS 198B.060(5) and (6)."

(g) Amend subsection 105.8 to read as follows: "105.8 Required inspections: The code official having jurisdiction shall make all the required inspections, or he may accept reports of inspection by authoritative and recognized services or individuals. Inspection reports shall be in writing and certified by a responsible officer of an authoritative service or by the responsible individual."

(6) Amend Section 106, Approval, as follows: Create a new subsection, 106.5 Supporting data, to read: "106.5 Supporting data: Building code officials may accept supporting data from the following sources to assist them in their determinations:

(a) Duly authenticated research reports from BOCA; or

(b) From other approved authenticated sources for materials or assemblies proposed for use which are not specifically provided for in this code."

(7) Amend Section 107, Application for Permit, as follows:

(a) Amend subsection 107.1 to read: "107.1 Permit application: An application shall be submitted to the code official for the following activities and these activities shall not commence without a permit being issued in accordance with Section 108.0:

1. Construct or alter a structure;

2. Construct an addition or change of occupancy as prescribed by Chapter 34 of this code; or

3. The installation or alteration of equipment required by this code.

(b) Amend subsection 107.1.1 to read: "107.1.1 Repairs Exception: Application or notice to the code official is not required for ordinary repairs."

(c) Amend subsection 107.2 to read: "107.2 Form of application: The application for a permit shall be submitted to the code official, in writing, and shall be accompanied by the required fee, as prescribed in Section 112."

(d) Amend subsection 107.3 to read as follows: "107.3 By whom application is made: Application for a permit shall be made by the owner or lessee of the building or structure, or the agent of either, or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a verified written statement by the person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make application. The full names and addresses of the owner, lessee, applicant and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application."

(e) Amend subsection 107.4 to read: "107.4 Description of work. The application shall contain:

1. A general description of the proposed work;

2. The location of the proposed work;

3. The use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building or structure;

4. Provision for special inspections required by Section 1705; and

5. Any additional information required by the code official."

(f) Amend subsection 107.5 to read: "107.5 Construction documents: The application for the permit shall be accompanied by two (2) sets of construction documents drawn to scale with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. The building code official shall cooperate with the fire code official by allowing the fire code official to review all construction documents. Any recommendations made by the fire code official relating to fire safety in construction of a building shall be considered by the building code official and he shall report his decision to the fire code official. If quality of materials is essential for conformity to this code, specific information shall be given to establish the quality of the materials. This code shall not be cited or the term "legal" or its equivalent shall not be used as a substitute for specific information requested. The building code official may waive the requirement for filing construction documents if the work involved is of a minor nature."

(g) Amend subsection 107.6 to read as follows: "107.6 Site survey and site plan required: A copy of the site survey bearing the signature and seal of a Kentucky Registered Land Surveyor shall be submitted for all new buildings or additions; except that the code official may, in his discretion, accept other proof of location."

1. "107.6.1 Site plan: A site plan shall be filed showing, to scale, the size and location of the new construction and all existing structures on the site, the distances from lot lines, the established street grades and the proposed finished grades. The site plan shall be drawn in accordance with the accurate boundary line survey."

2. "107.6.2 Change in site plan: A lot shall not be changed, increased or diminished in area from that shown on the official plot site plan unless a revised plan showing the changes, accompanied by the necessary affidavit of owner or applicant, shall have been filed and approved. Exception: The revised plan shall not be required if the change is caused by reason of an official street opening, street widening or other public improvement."

(h) Amend subsection 107.7 to read: "107.7 Engineering details: The code official may require adequate details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data to be filed. All engineering plans and computations shall bear the signature of the responsible design professional. Construction documents for buildings more than two (2) stories in height shall indicate how the required structural and fire resistance rating integrity shall be maintained and where penetrations will be made for electrical, mechanical, plumbing and communication conduits, pipes and systems."

(i) Amend subsection 107.9 to read: "107.9 Time limitation of application: An application for permit for any proposed work shall be considered abandoned six (6) months after the date of filing if a permit has not been issued. The code official shall grant one (1) or more extensions of time for additional periods not exceeding ninety (90) days each if there is reasonable cause."

(8) Amend Section 108 as follows:

(a) Amend subsection 108.1 to read as follows: "108.1 Action on application: The code official shall examine or cause to be examined all applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of all pertinent laws, the code official shall reject such application in writing, stating the reasons therefor. If the code official is satisfied that the proposed work conforms to the requirements of this code and all laws and ordinances applicable thereto, the code official shall issue a permit therefor as soon as practical, but no later than thirty (30) days."

(b) Amend subsection 108.3 to read as follows: "108.3 Previous approvals: This code shall not require changes in the construction documents, construction or designated use group of a building for which a lawful permit has been issued or otherwise lawfully authorized by approved construction documents, if substantial construction on the project has commenced within one (1) year from the date the permit was issued."

(c) Amend subsection 108.9 to read as follows: "108.9 Notification of changes: The code official shall be notified prior to any construction which does not comply with the building code requirements of the previously approved construction documents."

(d) Create a new subsection, 108.10 Local permit limitation, to read: "108.10 Local permit limitation: Local permits shall not be issued for the construction of buildings subject to state plan review jurisdiction under Section 105.2 until the department has approved construction to begin."

(9) Adopt Section 109, Temporary Structures, in its entirety.

(10) Amend Section 110, by retitling it, Proof of Insurance, and amending subsections as follows:

(a) Amend subsection 110.1 to read: "110.1 Compliance with law: The issuance of a building permit shall be contingent upon presentation of an affidavit to the effect that all contractors and subcontractors employed or that will be employed in the construction, alteration or repair under the permit will be in compliance with Kentucky law relating to worker's compensation and unemployment insurance."

(b) Amend subsection 110.2 to read: "110.2 General applicability: Compliance with this section may be achieved by having an affidavit of general applicability for all permits to be taken during the life of the construction company on file in the office of the code official issuing the permit. The affidavit shall state that the contractor and all persons working in association with that contractor comply, or will comply, with the worker's compensation and unemployment insurance laws."

(c) Delete subsection 110.3 in its entirety.

(11) Amend Section 111, Conditions of Permit, by amending or creating the subsections as follows:

(a) Amend subsection 111.1 to read: "111.1 Payment of fees: A permit shall not be issued until the fees have been paid as prescribed by Section 112 of this code."

(b) Amend subsection 111.2 to read: "111.2 Compliance with code: The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of this code, except as specifically stipulated by modification or legally granted variation as described in the application or permit."

(c) Amend subsection 111.4 to read: "111.4 Compliance with site plan and zoning: All new work shall be located strictly in accordance with the approved plot plan and any local ordinances governing the location of the building."

(12) Amend Section 112, Fees, by amending, creating or deleting subsections as follows:

(a) Amend subsection 112.1 to read: "112.1 General: A permit to begin work for new construction, alteration, removal or other building operations shall not be issued until the fees prescribed by law shall have been paid to the department, if applicable, and to the local building department. If an amendment to a permit necessitates an additional fee because of an increase in the estimated cost of the work involved, the permit shall not be approved until the additional fee has been paid."

(b) Amend subsection 112.2 to read: "112.2 Special fees: Payment of fees for construction, alteration or removal, and for all work done in connection with or concurrently with the work contemplated by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that may be prescribed by law or ordinance for water taps, sewer connections, electrical permits, erection of signs and display structures, marquees or other appurtenant structures, or fees of inspections or certificates of occupancy or other privileges or requirements established by law."

(c) Amend subsection 112.3, New construction and alterations, to read: "112.3 New construction and alterations: The fees for plan examination, building permit and inspections shall be as prescribed in subsection 112.3.1 or 112.3.2, as applicable."

1. Amend subsection 112.3.1, State jurisdiction, to read: "112.3.1 State Jurisdiction: The fees for plan review and inspection and other functions performed by the Commonwealth of Kentucky, Department of Housing, Buildings and Construction shall be paid in accordance with 815 KAR 7:013."

2. "112.3.2 Local jurisdiction: Each local government shall adopt its own schedule of reasonable fees for building permits and the performance of functions under this code. The fees shall be designed to fully cover the cost of the service performed but shall not exceed the cost of the service performed."

(d) Delete subsection 112.5 in its entirety.

(13) Amend Section 113, Inspection, by amending or creating subsections as follows:

(a) Amend subsection 113.1 to read: "113.1 Preliminary inspection: Before issuing a permit, the appropriate code official shall examine or cause to be examined all buildings, structures and sites on which construction has began or for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, or change the use as required by Chapter 34. Construction shall not begin until a local code official has issued a permit for construction and an official representing the department has issued a letter releasing the construction documents for construction (if the department has plan review responsibility)."

(b) Amend subsection 113.2 to read: "113.2 Required inspections: After issuing a building or construction permit, the building code official shall conduct periodic inspections during the critical construction phase and upon completion of the work for which a permit has been issued. A record of all examinations, inspections and violations of this code shall be maintained in accordance with the Kentucky Records and Retention Plan. The owner shall provide for special inspections in accordance with section 1705."

1. "113.2.1 Plant inspection: Where required by the provisions of this code or by the approved rules, materials or assemblies shall be inspected at the point of manufacturer or fabrication in accordance with Section 1703.3."

2. "113.2.2 Off-site construction: In-plant inspections in production and manufacturing facilities for industrialized building systems as well as on-site inspection shall be conducted by the department or its authorized agent. The local code official shall be responsible for inspection of these systems for zoning, water supply and sewage disposal, and other applicable local ordinance purposes."

3. "113.2.3 Trade-name dwelling inspections: Inspections for code compliance of trade-name or brand-name homes shall be the responsibility of the local code official."

4. "113.2.4 On-site construction: On-site construction related to modular home installations may be permitted and inspected by the

local code official having jurisdiction."

(c) Amend subsection 113.3 to read: "113.3 Final inspection: Upon completion of the building, the owner or agent of the facility shall request a final inspection. The code official shall set a time for the inspection and notify the owner or agent. If substantial compliance with the approved construction documents and permit has been achieved, a certificate of occupancy shall be issued, as described in Section 118 of this code. If compliance has not been achieved, violations of the approved construction documents and permit shall be noted and immediately communicated to the owner, agent or other person holding the permit and the fire code official. It shall be the owner's responsibility to fulfill any compliance deficiencies noted."

(d) Create a new subsection, 113.6 Fire code official inspections, to read: "113.6 Fire code official inspections: The building code official shall cooperate with the fire code official by allowing the fire code official to inspect all buildings during construction. Recommendations made by the fire code official relating to fire safety in construction of a building shall be considered by the building code official, and if a certificate of occupancy is issued contrary to the written recommendations, the building code official shall give written notification of his decision to the fire code official at once."

(14) Amend Section 114, Professional Architectural and Engineering Services, by amending or creating subsections as follows:

(a) Amend subsection 114.1, General, to read: "114.1 General: All design for new construction, alteration, repair, expansion, addition or modification work involving the practice of professional architecture or engineering, as defined by KRS Chapters 322 and 323, shall be prepared by Kentucky-licensed professional architects or engineers and all construction documents required for a building permit application for the work shall bear the required signature and seals of the design professionals, as required by law."

(b) Amend subsection 114.2 to read: "114.2 Special inspections: Special inspections shall be made as required by and in accordance with Section 1705."

1. "114.2.1 Seismic Design: Special inspections shall be a requirement for buildings subject to seismic design under Section 1705."

2. "114.2.2 Fees and costs: Fees and costs related to the performance of special inspections by professional services shall be borne by the owner."

3. "114.2.3 Code assurances: If construction on a building began prior to approval by the code official or the construction does not conform to the approved construction documents or the standards required by the code, the building code official may require special inspections and reports if necessary to assure safety."

(15) Adopt Section 115, Workmanship, in its entirety.

(16) Amend Section 116, Violations, by amending or creating subsections as follows:

(a) "116.4 Violation Penalties: A person who violates a provision of this code or fails to comply with the requirements of this code or a person who erects, constructs, alters or repairs a building or structure in violation of an approved construction document or proper direction of the code official or of a permit or certificate issued under the provisions of this code, shall be subject to the penalties provided by KRS 198B.990 and other applicable law."

(b) "116.5 Abatement of violation: The department or any local agency enforcing the uniform state building code may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy or construction of any building on which construction was begun after the effective date of said code, upon an affidavit of the department or the local government agency specifying the manner in which the construction, or, if a building existed prior to the effective date of said code, the reconstruction, alteration, repair or conversion does not conform to the requirements of this code."

(c) Create a new subsection, 116.1 Hindering an inspection, to read: "116.6 Hindering an inspection: A person shall not hinder an inspector enforcing the provisions of this code in the performance of the inspector's lawful duties under this chapter."

(17) Amend Section 117 by amending the following subsection: "117.2 Unlawful continuance: A person who shall continue work in or about the structure after having been served with a stop-work order, except the work that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than ten (10) dollars nor more than $1,000. Each day constituting a separate offense, as required by KRS 198B.990."

(18) Amend Section 118 by amending or creating subsections as follows:

(a) Amend subsection 118.4 to read: "118.4 Certificate Information: If a building or structure is entitled to a certificate, the building code official shall issue a certificate of occupancy within ten (10) days after written application. The certificate shall certify compliance with the provisions of this code and the purpose for which any portion of the building or structure may be used. The certificate of occupancy shall specify the following information:

1. The edition of the code under which the permit was issued;

2. The use group, in accordance with the provisions of Chapter 3;

3. The type of construction, as defined in Chapter 6, and

4. Special stipulations, restrictions or conditions, if any."

(b) Create a new subsection, 118.6 Approval of service equipment, to read: "118.6 Approval of service equipment: If the installation, extension, alteration or repair of an elevator, moving stairway, mechanical equipment, refrigeration, air-conditioning or ventilating apparatus, plumbing, gas piping, electrical wiring, heating system or other equipment are controlled by the provisions of this code, this equipment shall not be used until a certificate of approval has been issued by the code official or other agency having jurisdiction."

(19) Amend Section 119 by retitling it "CHR Regulated Buildings" and by amending or deleting subsections as follows:

(a) Amend subsection 119.1 to read: "119.1 Hospitals, Nursing Homes and Other Institutional (I-2) Facilities: Hospitals, nursing homes and other institutional (I-2) facilities licensed by the Cabinet for Human Resources and inspected under contract with the Cabinet for Human Resources by the Department of Housing, Buildings and Construction shall comply with the Institutional Use Group requirements specified in Chapter 4, including specific references to other sections of this code, and the applicable provisions of the Life Safety Code listed in Chapter 35."

(b) Amend subsection 119.2 to read: "119.2 Day Care Centers: Day care centers and other similar care facilities licensed by the Cabinet for Human Resources which comply with the provisions of NFPA Pamphlet #101 (Life Safety Code) listed in Chapter 35 as approved by the State Fire Marshal shall be deemed to satisfy the life safety requirements of this code."

(c) Delete subsections 119.3 through 119.6 in their entirety.

(20) Amend Section 120, Emergency Measures, by amending subsections as follows:

(a) Amend subsection 120.1 to read: "120.1 Vacating structures: If, in the opinion of the code official, during construction on a building for which a permit is required, there is actual and immediate danger of failure or collapse of a building or structure or a portion of a building or structure which would endanger life or if a building or structure or a portion of a building or structure has fallen and life is endangered by occupation of the building or structure, the code official shall be authorized and empowered to order and require the inmates and occupants to vacate the building or structure. The code official shall cause to be posted at each entrance to the building a notice reading as follows: "This Structure is Unsafe and its Use or Occupancy has been Prohibited by the Code Official." It shall be unlawful for any person to enter the building or structure except for the purpose of making the required repairs or of demolishing the building or structure."

(b) Amend subsection 120.2 to read: "120.2 Temporary safe-

guards: If, in the opinion of the code official, there is actual and immediate danger of collapse or failure of a building or structure (over which the code official has jurisdiction) which would endanger life, pursuant to KRS Chapter 198B and this code, the code official shall cause the necessary work or special inspection to be performed to render the building or structure or any portion of the building or structure temporarily safe, whether or not the legal procedures described herein have been instituted."

(c) Delete subsections 120.4 through 120.6.2 in their entirety.

(21) Amend and retitle Section 121 as "Local Board of Appeal," and amend or create subsections as follows:

(a) Amend subsection 121.1 to read as follows: "121.1 Local Appeals Board: Local appeals boards may be appointed to hear appeals from the decisions of the local code official in accordance with the provisions of subsections 121.1.1 through 121.4."

(b) Create a new subsection, 121.1.1 Appointment, to read: "121.1.1 Appointment: The mayor or county judge executive of a local government which is enforcing the Kentucky Building Code may, upon approval of the local legislative body, appoint a local appeals board, consisting of at least five (5) technically qualified persons with professional experience related to the building industry, three (3) of which shall not be employees of the local government, to hear appeals from the decisions of the local code official regarding building code requirements."

(c) Create a new subsection, 121.1.2 Cooperative agreements, to read: "121.1.2 Cooperative agreements: Local governments which are enforcing the Kentucky Building Code may cooperate with each other and provide a local appeals board and shall adhere to the provisions of KRS Chapter 65 when entering into a cooperative agreement."

(d) Create a new subsection, 121.1.3 Disqualification of member, to read: "121.1.3 Disqualification of member: Local code officials or employees of a local inspection department shall not sit on a local appeals board if the board is hearing an appeal to a decision rendered by the local department. A member of a local appeals board shall not hear an appeal in a case in which the member has a financial interest."

(e) Create a new subsection, 121.1.4 Right to appeal, to read: "121.1.4 Right to appeal: Any party to a decision by the local code official may appeal that decision to the local appeals board. Upon receipt of an appeal from a qualified party, the local appeals board shall convene a hearing to consider the appeal within fifteen (15) days of receipt."

(f) Amend subsection 121.2 to read: "121.2 Notice of meeting: All parties to the appeal shall be notified of the time and place of the hearing by letter sent by certified mail no later than ten (10) days prior to the date of the hearing."

(g) Amend subsection 121.3 to read: "121.3 Board decision: The local appeals board shall render a decision within five (5) working days after the hearing. The board may uphold, amend or reverse the decision of the local building code official, and there shall be no appeal from the decision of the local appeals board other than by appeal to the Board of Housing, Buildings and Construction."

(h) Delete subsections 121.2.1, 121.2.2, 121.2.3, 121.2.5, 121.2.6, 121.5, 121.6.1, 121.6.2 and 121.7 in their entirety.

(22) Create a new Section 122, State Board of Appeals, and subsections 122.1 through 122.8 to read as follows:

(a) "122.1 General: All appeals from the decisions of building code officials shall be conducted in accordance with the appeals provisions of KRS 198B.070. Where a local appeals board exists, a party must first appeal to the local board when aggrieved by a decision of the local building code official. The board shall further hear appeals directly from a party aggrieved by the decision of an agent of the department."

(b) "122.2 Appeal by fire code official: Decisions rendered by the building code official with respect to enforcement of the Kentucky Building Code on any building may be appealed by the local fire code official of the jurisdiction if the fire code official is aggrieved by that decision."

(c) "122.3 Method of appeal: Application for appeal may be made when it is claimed in writing that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction can be used, or that the code official has refused to grant a modification to the provisions of this code covering the manner of construction or material to be used in the erection, alteration or repair of a building or structure."

(d) "122.4 Application procedure: Appeals to the board shall be in writing and shall be address to the Commissioner of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Suite #1, Frankfort, KY 40601; Attention: Appeals Board. The appeal shall include citations of those provisions of the Kentucky Building Code which are at issue, an explanation of why the decision of the state building code official or local building code official relative to those provisions is being contested and a copy of the decision rendered by the local appeals board, if any."

(e) "122.5 Investigation of appeal: The commissioner shall immediately notify the board or the five (5) member committee authorized by the board when an appeal is received. The commissioner or a designated employee of the department shall then investigate the evidence pertaining to the appeal and, based upon the resulted of the investigation, make recommendations to the board or committee on the disposition of the case in question."

(f) "122.6 Employee deferral: Employees of the department shall not investigate or make recommendations on an appeal to his or her own decision, but shall defer in this case to employees who are not party to the decision which led to the appeal."

(g) "122.7 Investigative authority: In conducting an investigation, the commissioner or the designated representatives, acting for the department, shall have the authority to administer oaths and affirmations, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken, regulate the course of any hearings they may schedule, and hold conferences for the settlement or simplification of the issue by consent of the parties."

(h) "122.8 Duration of investigation: The commissioner shall cause the investigation to be completed and forwarded with written recommendation to the board within thirty (30) days after receiving an appeal."

(23) Create a new Section 123, Posting Structures, and subsection 123.1 to read as follows: "123.1 Posting: All signs required by this code to be posted shall be furnished by the owner and shall be of a permanent design. The signs shall not be removed or defaced and, if lost, removed or defaced, shall be immediately replaced."

(24) Create a new Section 124, Effective Dates, and subsection 124.1 to read as follows: "124.1 General: Until July 1, 1994, the department shall accept plans in compliance with the requirements of either the 1990 edition of the BOCA National Building Code or the 1993 edition, together with any Kentucky amendments thereto. Effective July 1, 1994, all plans shall be designed to conform to this code."

Section 3. Chapter 3, Use or Occupancy. Amend Chapter 3 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Add a new subsection 303.5.1 to read as follows: "303.5.1 Incidental Uses: Gymnasiums, Sunday school spaces, multipurpose rooms, libraries and fellowship halls located within or attached to a Use Group A-4 occupancy shall be considered educational for purposes of determining height and area limitations of Table 503."

(2) Amend section 305, Educational Use Group, to read as follows:

(a) "305.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, which are used by more than five (5) persons at one time for

educational purposes including, among others, schools, academies, colleges and universities, shall be classified as Use Group E. Educational type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B. School buildings, or parts thereof, used for business training or vocational training shall be classified in the same use group as the business or vocation taught."

(b) "305.1.1 Day Care Centers: Any licensed facility which is not classified as I-1 or I-2 and which provides care for thirteen (13) or more children or other persons for less than twenty-four (24) hours per day shall be classified as Use Group E. Licensed facilities providing for care of less than twelve (12) persons shall be inspected by the State Fire Marshal under the Life Safety Code listed in Chapter 35 "

(c) Create a new subsection, 305.3 Incidental Uses, to read: "305.3 Incidental Uses: Gymnasiums, vocational shops, multipurpose rooms, libraries and cafeterias located within or attached to an educational occupancy shall be considered educational for purposes of determining height and area limitations of Table 503."

(3) Amend Section 307.0, High-hazard Use Groups, by creating a new subsection 307.1.2 to read as follows: "307.1.2 Referenced Codes: The fire code official shall have exclusive jurisdiction for code enforcement of the storage, handling, processing and transportation of flammable and combustible liquids and other hazardous materials pursuant to 815 KAR 10:040 (the Kentucky Fire Prevention Code); and fees for the installation and alteration of tanks and piping systems shall be paid in accordance with subsection 112.3.1."

(4) Delete subsection 308.3.1, Child Care Facility, in its entirety.

(5) Amend Section 310.0, Residential Use Groups, as follows:

(a) Amend subsection 310.2, Definitions, as follows:

1. Create a definition for "Bed and breakfast establishment" to read: "Bed and breakfast establishment: A building occupied as a one (1) family dwelling unit, but which also has additional guest rooms or suites which are used, rented or hired-out to be occupied or which are occupied for sleeping purposes by persons not members of the single-family unit. The building shall be known as either a bed and breakfast inn or a bed and breakfast home."

2. Delete the definition of "Multiple single family dwelling" in its entirety.

3. Amend the definition of "Multiple-family dwelling" to read: "Multiple-family dwelling: A building or portion thereof containing more than two (2) dwelling units."

(b) Create a new subsection, 310.3.1, Bed and breakfast Inns, to read: "310.3.1 Bed and Breakfast Inn: A bed and breakfast establishment having six (6) or more guest rooms or suites shall comply with the requirements of this code applicable to Use Group R-1."

(c) Amend subsection 310.4, Use Group R-2 Structures, to read as follows: "310.4 Use Group R-2 structures: This use group shall include all multiple-family dwellings having two (2) or more dwelling units sharing a common means of egress and shall also include all boarding houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature."

(d) Amend subsection 310.5, Use Group R-3 structures, to read as follows: "310.5 This use group shall include all buildings arranged for occupancy as one (1) or two (2) family dwelling units, including not more than five (5) lodgers or boarders per family and multiple family dwellings where each unit has an independent means of egress. (See Section 709.0)"

(e) Delete Exceptions 1 and 2 of subsection 310.5 in their entirety.

(f) Amend the language and retitle subsection 310.5.1 as "Bed and breakfast establishments" to read as follows: "310.5.1 Bed and breakfast home: A bed and breakfast establishment having five (5) or less guest rooms or suites shall comply with the requirements of this code applicable to Use Group R-3 and with subsection 423.1."

(g) Amend subsection 310.6, Use Group R-4 Structures, to read as follows: "310.6 Use Group R-4 structures: This use group shall include all detached one (1) or two (2)family dwellings not more than three (3) stories in height, and their accessory structures as indicated in the One (1) and Two (2) Family Dwelling Code listed in Chapter 35. All of these structures shall be designed and built in accordance with the requirements of this code for a Use Group R-3 structure, or with the requirements of the One (1) and Two (2) Family Dwelling Code listed in Chapter 35, except that the requirements of the State Plumbing Code (See Chapter 29) shall supersede those conflicting requirements of the One (1) and Two (2) Family Dwelling Code. Choice of the construction code shall be made by the permit applicant at the time of plans submission. Exception #4 of Section 1010.4, Emergency Escape, may be used to determine minimum size of egress windows under this code or the One and Two Family Dwelling Code."

(6) Add a new subsection 313.4 to read as follows: "313.4 Use Groups A-4 and E: Subsections 305.1 and 305.3 shall supersede requirements for certain uses in A-4 and E."

Section 4. Chapter 4, Special Use and Occupancy. Amend Chapter 4 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend subsection 409.1 to read as follows: "409.1 General: All occupancies in Use Group I-2 shall comply with the provisions of the NFiPA 101 Life Safety Code referenced in Chapter 35. In addition, the following sections of this code shall apply: Table 503 (Area Limitations Only), Sections 412.0, 506.0, 507.0, 705.0, 706.0, 707.0, 708.0, 713.1.2, 710.4, 710.5, 713.0, 714.0, 715.0, 719.0, 720.0, 721.0, 722.0, 806.0, 807.0, 1005.7, 1014.12.1, 1017.2.1, 1017.6, 1027.0, 1211.2, 1511.0, Chapter 6 and Chapters 11 through 34."

(2) Delete subsections 409.2 through 409.5.1 in their entirety.

(3) Amend subsection 412.7 to read as follows: "412.7 Standpipes: A wet standpipe system in accordance with Section 914.0 shall be provided and equipped with one and one-half (1 1/2) inch hose connections on each side of a legitimate stage. Exception: Where the building or area is equipped throughout with an automatic sprinkler system, the hose connections that are supplied from the automatic sprinkler system shall have a water supply of not less than that required by NFiPA 13 listed in Chapter 35."

(4) Amend section 421.0, Swimming Pools, as follow:

(a) Amend the first paragraph of subsection 421.6.1, Water Treatment, to read as follows: "421.6.1 Water treatment: Public swimming pools are regulated by the Cabinet for Human Resources, Department for Health Services, for purposes of water distribution and treatment systems and the proper operation and maintenance of all pool facilities. See 902 KAR 10:120, Kentucky Public Swimming and Bathing Facilities Regulation."

(b) Delete subsections 421.5.3 and 421.6.2 in their entirety.

(c) Amend subsection 421.9 to read as follows: "421.9 Enclosures for public and private swimming pools: Public and private swimming pools shall be provided with an enclosure surrounding the pool area. The enclosure shall meet the provisions of Sections 421.9.1 through 421.9.3."

(d) Delete section 421.10, Enclosures for private swimming pools, spas and hot tubs, in its entirety.

(5) Create a new Section, 422.0 Day Care Centers, to read as follows:

(a) "422.1 Scope: The provisions of this section shall apply to buildings or structures or portions thereof required to be licensed as a day care center which are classified in Chapter 3 under Use Group E. Except as specifically modified by subsections 422.1 through 422.12, day care centers shall meet all applicable provisions of this code. Exception: Day care centers caring for less than thirteen (13) persons are not regulated by this section."

(b) "422.2 Type of construction: The minimum type of construction required by this code shall be modified as indicated in Table 422.2.

(c) "422.2.1 Client load: The client load established for any floor or floors shall be computed at a rate of one (1) person for each thirty-

five (35) square feet of net floor area occupied by the persons being cared for, who shall otherwise be referred to in this code as 'clients.'"

TABLE 422.2

Type of Construction	Age Group	Area Limitations	Number of Stories[b] 1	2	3	4 & over
1A (443)	0 & Up	Not Limited	x	x	x	x[c]
1B (332)	0 & Up	Not Limited	x	x	x	x[c]
2A (222)	0 & Up	34,200	x	x	x	x[c]
2B (111)	0 & Up	22,500	x	x+	NP	NP
2C (000)	0 & Up	14,400	x	x+	NP	NP
3A (211)	0-3	19,800	x	x+	NP	NP
	3 & Up	19,800[d]	x	x	x+	NP
3B[a] (200)	0-3	14,400	x	x+	NP	NP
	3 & Up	14,400[d]	x	x	NP	NP
4 (2HH)	0 & Up	21,600	x	x+	NP	NP
5A (111)	0-3	15,300	x	x+	NP	NP
	3 & Up	15,300[d]	x	x	x+	NP
5B[a] (000)	0-3	7,200	x	x+	NP	NP
	3& Up	7,200[d]	x	x	NP	NP

x: Permitted Construction Type

NP: Not Permitted

x+: Permitted if entire building is protected throughout by an approved automatic sprinkler system.

Note a: This construction type permitted when client load is 100 or less and no less than one (1) layer of one-half (1/2) inch drywall or plaster is attached to walls and ceiling. Any fire ratings characteristic for construction type shall still be applicable.

Note b: Centers shall not be located above the heights indicated for the type of construction.

Note c: In buildings over five (5) stories above ground level, areas of refuge shall be provided for occupants of day care centers by horizontal exits complying with Section 815 of this code.

Note d: A letter from owner/operator shall be submitted documenting the age ranges of the clients that will occupy the floors above the first story."

(d) "422.3 Mixed Use: Where centers are located in a building containing another occupancy, the occupancy shall be separated by a minimum one (1) hour fire separation assembly. Exceptions:

1. In assembly occupancies used primarily for worship.

2. Centers in apartment buildings.

a. If the two (2) required exit accesses from the center enters the same corridor as the apartment occupancy, the exit accesses shall be separated in the corridor by a smoke barrier having not less than a one (1) hour fire resistance rating. The smoke barrier shall be so located that there is an exit on each side.

b. The door in the smoke barrier shall be not less than thirty-six (36) inches wide.

c. The door assembly in the smoke barrier shall have at least twenty (20) minutes and shall be self-closing or automatic closing in accordance with Section 716.5.1."

(e) "422.3.1 Accessory Uses: Any heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children under six (6) years of age from hot surfaces and open flames."

(f) "422.4 Egress: Each floor occupied by clients shall have not less than two (2) remote exits. A mezzanine shall be considered a floor for the purpose of this section."

(g) "422.4.1 Story below exit discharge: The story below the level of exit discharge may be used for a day care center in buildings in any type construction other than Type 2C, 3B or 5B when the following conditions are met:

a. For up to thirty (30) clients, there shall be two (2) remote exits. One (1) exit shall discharge directly outside and the vertical travel to grade shall not exceed eight (8) feet.

b. For over thirty (30) clients, a minimum of two (2) exits shall be provided to the outside, one (1) of which shall exit at ground level. Exceptions:

1. The exit directly to ground level is not required if all exits are protected in accordance with Section 1014.11. Smoke detectors shall be provided in that story and the story of discharge.

2. The exit directly to ground level is not required if one (1) exit complies with Exception #1 and sprinklers, installed in accordance with subsections 906.2.1 or 906.2.2, are used in that story and the story of exit discharge."

(h) "422.4.2 Length of travel: Travel distance:

a. Between any room door intended as exit access and an exit shall not exceed 100 feet;

b. Between any point in a room and an exit shall not exceed 150 feet;

c. Between any point in a sleeping room or suite and an exit access door of that room or suite shall not exceed fifty (50) feet. Exception: The travel distance in (a) and (b) above may be increased by fifty (50) feet in buildings protected throughout by an approved supervised automatic sprinkler system."

(i) "422.4.3 Corridor width: The minimum width of exit access corridors shall be forty-four (44) inches. Exceptions:

1. Thirty-six (36) inches where serving an occupant load of fifty (50) or less.

2. The width required for capacity as determined by Section 1009.0."

(j) "422.4.4 Interior corridors: All corridors shall be one (1) hour fire resistance rated. The corridor walls shall comply with Section 711.0. Exceptions:

1. This corridor protection shall not be required when all classrooms served by the corridors have at least one (1) door directly to the outside or to an exterior balcony constructed in accordance with section 1011.5.

2. As allowed by section 1011.4."

(k) "422.4.5 Special features:

1. Every closet door latch shall be such that children can open the door from inside the closet.

2. Every bathroom door lock shall be designed to permit openings of the locked door from the outside in an emergency."

(l) "422.5 Protection from hazards: Cooking appliances and food preparation areas shall be protected in accordance with Sections 422.5.1 through 422.5.3."

(m) "422.5.1 Commercial cooking appliance: When a day care center has commercial cooking appliances such as ranges, deep fryers or griddles, both of the following shall apply:

1. The kitchen or room in which the appliance is located shall be enclosed by nonfire rated walls and ceiling designed to resist the passage of smoke. Pass through openings and door openings shall be equipped with an assembly which will screen possible flash fires from view.

2. All cooking appliances shall be protected by a commercial exhaust system designed and installed in accordance with the Mechanical Code listed in Chapter 35."

(n) "422.5.2 Domestic cooking appliance: When a day care center has a domestic range with food preparation which does not produce grease laden vapors, one (1) of the following shall apply:

1. The kitchen or room in which the appliance is located shall be enclosed by a one (1) hour fire partition constructed in accordance with Section 711.0. A commercial range hood exhaust and suppression system is not required in this situation; or

2. The kitchen or room in which the appliance is located shall comply with Section 422.5.1, Parts 1 and 2."

(o) "422.5.3 Nongrease producing cooking appliances: Day care centers using nongrease generating cooking appliances such as

microwave ovens, wall ovens and crock pots, shall locate these appliances so as not to be accessible to the clients."

(p) "422.6 Interior finish: All walls and ceilings shall have a Class I or Class II finish rating in accordance with ASTM E-84 listed in Chapter 35."

(q) "422.6.1 Floor finish: All floor coverings within a corridor and exit shall be Class I or Class II in accordance with ASTM E-648 listed in Chapter 35."

(r) "422.7 Fire protective signaling system: A manual fire alarm system shall be provided throughout all day care centers regulated by Section 422.0. Exceptions:

1. Day care centers housed in one (1) room.

2. Day care centers with a calculated client occupant load less than fifty (50)."

(s) "422.8 Automatic fire detection system: Smoke detection systems shall be installed in the following locations:

1. On the ceiling in front of the doors to stairways;

2 At no greater than thirty (30) foot spacing in the corridors of all floors containing the center; and

3. In lounges, recreation areas and sleeping rooms in the center. Exceptions:

1. Centers housed in one (1) room.

2. Hand-wired single-station smoke detectors may be installed if they can be heard throughout the center."

(t) "422.9 Fire protection system supervision: The fire suppression system and alarm system shall transmit alarm and trouble signals to an approved central-station system, proprietary system or remote-station system. Exception: Centers with not more than 100 client calculated occupant load."

(u) "422.10 Fire extinguishers: Class "B" extinguishers shall be provided in any food preparation room. Class "A: extinguishers shall be installed throughout the center in accordance with NFiPA 10 listed in Chapter 35."

(v) "422.11 Barrier-free design: Centers having a client load calculated pursuant to subsection 422.4.3 which exceeds 100 shall meet the requirements of Chapter 11 for accessibility."

(w) "422.12 Engineers/architects law: Construction documents for centers having a client load calculated pursuant to subsection 422.4.3 which exceeds 100 shall bear the seal and signature of a Kentucky licensed architect and engineer."

(6) Create a new Section 423.0, Bed and Breakfast Establishments, as follows: "423.1 Bed and Breakfast Homes: In addition to the requirements of Section 310.5.1, Bed and Breakfast homes shall comply with the following conditions:

(a) All hallways and means of egress serving guest rooms shall be permanently illuminated and emergency lighting shall be provided.

(b) The maximum overnight guest occupant load shall be ten (10) and it shall be posted.

(c) Interconnected smoke detectors shall be provided in accordance with subsections 919.3.2, 919.4 and 919.5.

(d) Each door between guest sleeping rooms and main egress hallway or corridor shall be equipped with an approved self-closing device.

(e) There shall be two (2) remote exits to the outside from the ground floor.

(2) 423.2 Bed and Breakfast Inns: Bed and Breakfast Inns shall comply with section 310.3.1."

Section 5. Chapter 5, General Building Limitations. Amend Chapter 5 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend subsection 506.2 to read as follows: "506.2 Street frontage increase: Where a building or structure has more than twenty-five (25) percent of the building perimeter fronting on a street or other unoccupied space, the area limitations specified in Table 503 shall be increased two (2) percent for each one (1) percent of the excess footage. The unoccupied space shall be on the same lot or dedicated for public use and shall not be less than thirty (30) feet (9144 mm) in width."

(2) Create subsection 506.2.1 to read as follows: "506.2.1 Fire lane access increase: Where the perimeter of a building or structure qualifies for the street frontage increase of Section 506.2 and the unoccupied space is connected to a street by a continuous paved roadway to serve as a fire lane not less than eighteen (18) feet wide, the area limitations specified in Table 503 shall be increased an additional one (1) percent for each one (1) percent of the excess frontage and roadway."

Section 6. Chapter 6, Types of Construction. Amend Chapter 6 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend Table 602, Fire Resistance Ratings of Structure Elements (In Hours), as follows:

(a) Create a footnote to read as follows: "Note m. The fire partitions and floor/ceiling assembly ratings in R-2 buildings may be reduced to one half (1/2) hour if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and if equipped with an NFiPA 13D sprinkler system listed in Chapter 35."

(b) Amend the notation under "Dwelling unit separations" in column "Structure element" within Table 602 to read as follows: "(Sections 711, 713 and Notes f, j and m)."

(2) Amend subsection 602.4.3 to read as follows: "602.4.3 Combustible pipe: Combustible pipe shall be permitted in all use groups and construction types where approved by Chapters 28 and 29 of this code."

Section 7. Chapter 7, Fire Resistant Materials and Construction. Amend Chapter 7 of the BOCA National Building Code/1993 by making the following additions, deletions, or changes:

(1) Amend subsection 713.4, Penetration protection, by creating an additional exception to read as follows: "4. In all buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one-hour enclosure if the following conditions exist:

(a) The cross-sectional area does not exceed thirty-five (35) square inches (22581 mm^2); and

(b) The duct does not penetrate more than three (3) floors; and

(c) The duct does not serve more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

(d) These ducts shall be restricted for use as a bathroom or kitchen exhaust and combustion air supply and relief."

(2) Amend subsection 720.7.2.1, Use Group R, by creating an additional exception to read as follows: "6. When dwelling unit separation walls are constructed to the underside of a fire-resistance rated roof/ceiling assembly or to a ceiling with sixty (60) minute finish rating, the attic draftstopping complying with subsection 720.7.2.2 (i.e., horizontal draftstopped areas not exceeding 3,000 square feet) shall be deemed equivalent."

Section 8. Amend Chapter 8, Interior Finishes, of the BOCA National Building Code/1993 by deleting subsections 807.2.1, 807.2.2 and 807.2.3 in their entirety.

Section 9. Chapter 9, Fire Protection Systems. Amend Chapter 9 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend section 904.0, Fire Suppression Systems, as follows:

(a) Amend subsection 904.2 to read as follows: "904.2 Use Groups A-1 and A-3: Where a Use Group A-1 or A-3 fire area exceeds 12,000 square feet (1116m^2) in area, an automatic fire suppression system shall be provided as follows:

1. Throughout the entire story or floor level where the A-1 or A-3

Use Group is located;

2. Throughout all stories and floor levels below the A-1 or A-3 Use Group; and

3. Throughout all intervening stories and floor levels between the A-1 or A-3 Use Group and the highest level of exit discharge that serves Use Group A-1 or A-3 fire areas, including the highest level of exit discharge. Exceptions:

a. Auditorium areas of Use Group A-1 or A-3 where the main auditorium floor is at the level of exit discharge of the main entrance.

b. Participant sport areas of Use Group A-3 where the main floor of the participant sport area is at the level of exit discharge of the main entrance.

(b) Delete subsection 904.4, Use Group E, in its entirety.

(c) Amend subsection 904.6, Use Group I, by deleting the exception.

(d) Amend subsection 904.9 to read as follows: "904.9 Use Group R-2: An automatic fire suppression system shall be provided throughout all buildings with an occupancy in Use Group R-2 in accordance with Sections 906.2.1, 906.2.2 or 906.2.3. Exceptions:

1. Two (2) story buildings with basement. Use Group R-2 buildings (apartments, condominiums, dormitories, etc.) where all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (i.e., two (2)story building with a basement).

2. Existing buildings. R-2 buildings that exceed two (2) stories above grade but which do not have more than six (6) dwelling units. This exception shall not apply to buildings constructed after the effective date of this code."

(2) Amend subsection 906.2.3 to read as follows: "906.2.3 NFiPA 13D Systems. A sprinkler system in accordance with NFiPA 13D listed in Chapter 35 shall be permitted in the following occupancies:

(a) In buildings of Use Group R-2 if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (i.e., two (2) story building with a basement).

(b) In existing buildings of Use Group R-2 that exceed two (2) stories above grade but have no more than six (6) dwelling units. This shall not apply to buildings constructed after January 1, 1991."

(3) Amend subsection 907.6.3, Domestic connection, to read as follows: "907.6.3 Domestic connection: Two (2) check (one (1) way) valves, one (1) of which may be an alarm check valve, shall be provided at the point where the suppression system piping is connected to the domestic water piping. Shutoff valves shall not be permitted in the suppression system piping. Water supply shall be controlled by the riser control valve to the domestic water piping. Exception: Shutoff valves in the sprinkler system piping are permitted if the valves are supervised in accordance with Section 923.0."

(4) Amend Subsection 914.2.4 to read as follows: "914.2.4 Stages: Standpipe systems shall be installed in legitimate stages in accordance with Section 412.7."

(5) Amend Section 916.0, Yard Hydrants, to read as follows:

(a) "916.1 Private hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located so as to meet the requirements of National Fire Protection Association (NFiPA) Pamphlet #24 listed in Chapter 35. Yard hydrant installation shall be coordinated with the local fire code officials who shall not make recommendations which exceed the requirements of National Fire Protection Association (NFiPA) Pamphlet #24. Yard hydrants shall not be installed on a water main less than six (6) inches in diameter."

(b) Create a new subsection 916.2 to read as follows: "916.2 Public hydrants: Public hydrants not covered by National Fire Protection Association (NFiPA) Pamphlet #24 listed in Chapter 35 shall conform to the standards of the administrative authority of the jurisdiction as provided for by local ordinance."

(6) Amend Section 917.0, Fire Protective Signaling Systems, as follows:

(a) Amend subsection 917.4.1, Use Group A-4 or E, by creating an additional exception to read as follows: "Exception 2. Church buildings which do not exceed 10,000 square feet and in which single station smoke detectors are installed as follows:

1. Smoke detectors may be single station and wired in series so as to sound alarm in sanctuary.

2. Smoke detectors shall be installed in fellowship hall and more hazardous areas such as furnace rooms, mechanical rooms and storage rooms, but shall not be required in Sunday School Classrooms.

3. Detector spacing shall be thirty (30) feet on center in corridors and 900 square feet per detector in open spaces, or in accordance with the manufacturer's specifications."

(b) Amend subsection 917.8.1 to read as follows: "917.8.1 Visible alarms: See Chapter 11 for alarm requirements for visual impairment in buildings and facilities required to be accessible to persons with physical disabilities."

Section 10. Chapter 10, Means of Egress. Amend Chapter 10 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend subsection 1005.3, Protruding objects, to read as follows: "1005.3 Protruding objects: See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

(2) Create a new subsection 1006.3.2 to read as follows: "1006.3.2 Protection of egress: A required means of egress shall not discharge directly into a vehicular path unless guards are provided to protect vehicles from hitting the exit door in its outward opened position and to direct pedestrians in a path running parallel to the vehicular path. The guards shall prevent the exit door from being blocked by movable objects such as dumpsters or parked vehicles."

(3) Amend Section 1007.0, Accessible Means of Egress, as follows:

(a) Amend subsection 1007.1 to read: "1007.1 Accessible Means of Egress: See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

(b) Delete subsections 1007.2 through 1007.6 in their entirety.

(4) Amend Table 1008.1.2, Maximum Floor Area Allowances Per Occupant, by adding a notation to Industrial areas to read as follows: "Note: Use a value of 200 gross for purposes of determining jurisdiction under subsections 105.1 and 105.2, design professional seal requirements, and Chapter 11, accessibility."

(5) Amend Section 1010.0, Number of Exits as follows:

(a) Amend Table 1010.3, Buildings with One (1) Exit, by creating a footnote for Use Group R-2 for two (2) story structures to read as follows: "Note e. When equipped with an NFiPA 13D sprinkler system listed in Chapter 35, the travel distance shall be increased to seventy-five (75) feet and the number of dwelling units per floor shall be increased to eight (8), but not more than four (4) units shall share a single exit."

(b) Amend subsection 1010.4, Emergency Escape, by adding two (2) additional exceptions to read as follows:

1. "4. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 Use Groups) and one (1) and two (2) family dwellings may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum width dimension of twenty (20) inches; and the net clear opening area may be reduced to not less than four (4) square feet. The minimum total glazed area shall be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)"

2. "5. An outside window or exterior door for emergency escape shall not be required in R-2 occupancies when all dwelling units are

not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Chapter 35."

(6) Amend Section 1011.0, Exit Access Passageways and Corridors, as follows:

(a) Amend Table 1011.4, Corridor Fire Resistance Rating, by creating a footnote for Use Group I-1,R to read as follows: " Note e. In R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Chapter 35, the required fire resistance rating shall be one-half (1/2) hour."

(b) Amend the Exception to 1011.4.1, Corridor walls as separation walls, to read as follows: "Exception: Tenant separation and dwelling unit separation walls which are also corridor walls shall not be required to have a fire resistance rating greater than that required by Table 1011.4 where the building is equipped throughout with an automatic sprinkler system in accordance with Sections 906.2.1, 906.2.2 or 906.2.3, as applicable."

(7) Amend Section 1014.0, Stairways, as follows:

(a) Amend subsection 1014.6.1, Profile, to read as follows: "1014.6.1 Tread nosing: See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

(b) Amend subsection 1014.11.4, Exit signs, to read as follows: "1014.11.4 Exit signs: See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

(c) Amend subsection 1014.12, Exterior Stairways, to read as follows: "1014.12 Exterior stairways: Exterior stairways shall have openings on at least one (1) side facing an outer court, yard or public way. The openings shall have an aggregate width of not less than twenty (20) percent of the stairway perimeter and an aggregate area on each level of not less than twelve (12) percent of the total perimeter wall area of each level. Exterior stairways shall not be accepted as an exit in the following cases:

1. Buildings of Use Group I-2 which exceed four (4) stories or fifty (50) feet in height.

2. Floors that exceed five (5) stories or sixty-five (65) feet in height above the level of exit discharge."

(8) Amend Section 1016.0, Ramps, as follows:

(a) Amend subsection 1016.2.3, Restrictions, to read as follows: "1016.2.3 Restrictions: Means of egress ramps shall not reduce in width in the direction of egress travel. Projections into the required ramp and landing width are prohibited except at and below handrail height where, at each handrail, the projections shall not exceed three and one-half (3 1/2) inches (89 mm) into the required width. See Chapter 11 for door opening limitations in buildings and facilities required to be accessible to persons with physical disabilities."

(b) Amend subsection 1016.3, Maximum slope, to read as follows: "1016.3, Maximum slope: The maximum slope of means of egress ramps shall be one (1) unit vertical in eight (8) units horizontal (1:8); except ramps required in accordance with Chapter 11 for persons with physical disabilities, in which case the maximum slope shall be: one (1) unit vertical in eight (8) units horizontal (1:8) if the rise is limited to three (3) inches (76 mm); one (1) unit vertical in ten (10) units horizontal (1:10) if the rise is limited to six (6) inches (152 mm); or one (1) unit vertical in twelve (12) units horizontal (1:12) otherwise."

(c) Amend subsection 1016.4, Landings, to read as follows: "1016.4 Landings: Ramp slopes of one (1) vertical unit in twelve (12) units horizontal (1:12) or steeper shall have landings at the top, bottom, all points of turning, entrance, exit and at doors. See Chapter 11 for maximum vertical rise limitations for buildings and facilities required to be accessible to persons with physical disabilities. The maximum slope of landings shall be one (1) unit vertical in forty-eight (48) units horizontal (1:48). The least dimension of a landing shall not be less than the required width of the ramp except that the landing dimension in the direction of travel is not required to exceed four (4) feet (1219 mm) where the travel from one (1) ramp to the next ramp is a straight run. Exception: Aisles in areas of Use Group A shall comply with Section 1012.0."

(d) Amend subsection 1016.5.1, Drop-offs, to read as follows: "1016.5.1 Drop-offs: See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

(e) Amend subsection 1016.6.1, Surface, to read as follows: "1016.6.1 Surface: See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

(f) Amend subsection 1016.6.2, Exterior ramps, to read as follows: "1016.6.2 Exterior ramps: See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

(9) Amend Section 1017.0, Means of Egress Doorways, as follows:

(a) Amend subsection 1017.1.1, Floor surface, to read as follows: "1017.1.1 Floor surface: The floor surface on both sides of a door shall be at the same elevation. The floor surface over which the door swings shall be at the same elevation as the floor level at the threshold and shall extend from the door in the closed position a distance equal to the door width. Exception: This requirement shall not apply to:

1. Exterior doors, as provided for in Section 1005.6, which are not on an accessible route.

2. Variations in elevation due to differences in finish materials, but not more than one-half (1/2) inch (13 mm). See Chapter 11 for additional requirements on thresholds in buildings and facilities required to be accessible to persons with physical disabilities."

(b) Amend subsection 1017.2.3, Door arrangement, to read as follows: "1017.2.3 Door arrangement: See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

(c) Amend Section 1017.4, Door hardware, to read as follows: "1017.4 Door hardware: All means of egress doors shall be of a side-swinging type. All doors shall swing in the direction of egress where serving an occupant load of fifty (50) or more persons or where serving a high-hazard occupancy. The opening force for interior side-swinging doors without closers shall not exceed a five (5) pound (24 N) force. For all other side-swinging, sliding and folding doors, the door latch shall release when subjected to a fifteen (15) pound (73 N) force. The door shall be set in motion when subjected to a thirty (30) pound (146 N) force. The door shall swing to a full-open position when subjected to a fifteen (15) pound (73 N) force. Forces shall be applied to the latch side. See Chapter 11 for additional requirements for door operation in buildings and facilities required to be accessible to persons with physical disabilities. Exceptions:

1. Doors to private garages, factory and storage areas with an occupant load of ten (10) or less.

2. Horizontal sliding-type doors complying with Section 410.4.2 shall be permitted in a means of egress in occupancies in Use Group I-3.

3. Doors within or serving a single dwelling unit which are not required to be accessible by Chapter 11, are not required to be provided with lever-handled operating devices.

4. Revolving doors conforming to Section 1018.0.

5. Horizontal sliding doors complying with subsection 1017.4.4 shall be permitted in a means of egress in areas of refuge as described in subsection 1007.5 and areas, other than high-hazard occupancies, that serve an occupant load of less than fifty (50).

6. Horizontal sliding doors complying with subsection 1017.4.3."

(d) Amend subsection 1017.4.2, Panic Hardware, as follows:

1. Amend the first sentence to read as follows: "All doors equipped with latching or locking devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater

than 100 shall be equipped with approved panic hardware."

2. Create an exception to subsection 1017.4.2 to read as follows: "Exception: Panic hardware for Use Group A-3 shall not be required for principal entrance/exit doors if:

a. They are free-swinging; and

b. The calculated occupant load does not exceed 150; and

c. The latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

(e) Amend subsection 1017.4.3 by adding the following language to the end of the existing subsection: "Horizontal sliding doors complying with this section shall be permitted. A sign shall be placed on the egress side of the door in a conspicuous location which reads, "In case of emergency, push to open." The sign shall be in letters not less than two (2) inches high and mounted approximately sixty (60) inches above the finished floor."

(f) Amend subsection 1018.5, Adjacent area, to read as follows: "1018.5 Adjacent area: See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

Section 11. Chapter 11, Accessibility. Amend Chapter 11 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1)(a) Amend subsection 1101.1 to read: "1101.1 Scope: The provisions of this chapter shall control the design and construction of facilities for accessibility for persons with disabilities. Facilities that comply with this chapter and the Americans with Disability Act Accessibility Guidelines for Buildings and Facilities listed in Chapter 35 and hereafter referred to as "ADAAG", shall be considered accessible."

(b) Amend subsection 1101.2 to read: "1101.2 Accessible means of egress: Spaces that are required to be accessible shall be provided with accessible means of egress as required in Section 1111.0."

(c) Create a new subsection 1101.3 to read as follows: "1101.3 Preschool, day care and elementary school modifications: The standards set forth in "Recommendations for Accessibility to serve Physically Handicapped Children in Elementary Schools" dated March, 1986; or "Recommendations for Accessibility Guidelines for Children's Environs" shall be used for providing accessibility for children with disabilities in lieu of the listed dimensions and heights identified in this Chapter. These documents are available through the Access Board, Suite 1000, 1331 F Street, NW, Washington, DC 20004-1111. Copies are also available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday."

(2) Amend Section 1102.0, Definitions, as follows:

(a) Under the definition of "Accessible" delete the reference to "CABO A117.1 listed in Chapter 35" and replace it with "ADAAG".

(b) Amend the definition of "Facility" by adding the following language to the end of the present definition: "and associated equipment, roads, walks, passageways and parking lots."

(c) Delete the definition of "Physically disabled person" in its entirety.

(3) Amend Section 1103.0, Applicability, as follows:

(a) Amend subsection 1103.1 to read as follows: "1103.1 New Buildings: All new buildings and facilities, including temporary structures, their associated sites and facilities, shall be accessible to persons with disabilities including but not limited to occupants, employees, students, spectators, participants and visitors. Exceptions:

1. Accessibility is not required in buildings and facilities, or portions thereof, to the extent permitted by this chapter and ADAAG.

2. Areas where work cannot reasonably be performed by persons having a severe impairment (mobility, sight or hearing) are not required to have the specific features providing accessibility to such persons.

3. Buildings and structures exempted by KRS 198B.260.

4. Use Group U.

5. Temporary structures, sites and equipment directly associated with the construction process, such as construction site trailers, scaffolding, bridging or material hoists."

(b) Amend subsection 1103.2 to read as follows: "1103.2 Standard: Details, dimensions and construction specifications for items required by this section shall comply with ADAAG."

(c) Create a new subsection, 1103.3 to read as follows: "1103.3 Alterations and additions to existing buildings: Alterations, repairs and additions may be made to any structure without requiring other areas of the existing structure to comply with this chapter; provided that such new work conforms to that of a new structure and the work does not result in decreased accessibility or usability of a building or facility. Exception: Primary function alterations as required by the owner pursuant to subsection 1110.2."

(4) Create a new subsection, 1104.4 to read as follows: "1104.4 Protruding objects: Walking surfaces, including walks, halls, corridors, aisles and passageways shall be protected from protruding objects as required by Section 4.4 of ADAAG."

(5) Amend subsection 1105.1 to read as follows: "1105.1 Required: Where parking is provided, accessible parking spaces shall comply with ADAAG except as required by subsections 1105.2 and 1105.3."

(6) Amend subsection 1105.2 to read as follows: "1105.2 Multifamily dwellings: Assigned parking spaces shall be provided for apartments occupied by a resident with a disability in accordance with Section 13(4)(a) of ADAAG."

(7) Amend subsection 1105.4 to read as follows: "1105.4 Van spaces: One (1) in every eight (8) accessible parking spaces, but not less than one (1) shall be marked van accessible."

(8) Amend subsection 1106.1 by deleting the reference to "CABO A117.1 listed in Chapter 35" and replacing it with "ADAAG".

(9) Amend subsection 1106.2 by deleting the reference to "CABO A117.1 listed in Chapter 35" and replacing it with "ADAAG".

(10) Amend subsection 1107.2.2 to read as follows: "1107.2.2 Listening systems: Concert and lecture halls, playhouses and movie theaters, meeting rooms and other areas where audible communications are integral to the use of the space shall provide for assistive listening equipment, devices or systems as required by Section 4.1.3(19)(b) of ADAAG."

(11) Amend subsection 1107.2.3 as follows:

(a) Add the following language at the end of the present subsection: "as required by Section 4.1.3(19(a) of ADAAG."

(b) Add an exception to read as follows: "Exception: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than five (5) percent. Equivalent accessible viewing positions may be located on levels having accessible egress."

(12) Amend Table 1107.2.3 to read as follows:

WHEELCHAIR SPACES REQUIRED IN ASSEMBLY AREAS

Capacity of seating in assembly spaces	Number of required wheelchair spaces
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6 plus 1 for each 100 over 500

(13) Amend subsection 1107.2.4 to read as follows:

(a) "1107.2.4 Dining areas, restaurants and cafeterias: In dining areas of occupancies in Use Groups A-2 and A-3, the total floor area allotted for seating and tables shall be accessible."

(b) Amend Exception number 2 of subsection 1107.2.4 to read as follows: "2. In buildings without elevators, an accessible route to a

mezzanine dining area is not required, provided that the mezzanine contains less than thirty-three (33) percent of the total area and the same services are provided in the accessible area."

(c) Create an additional exception to read as follows: "4. Knee clearances and table heights shall comply with Section 4.32 of ADAAG."

(14) Amend subsection 1107.3.2 as follows:

(a) Amend the first paragraph to read as follows: "In nursing homes and long-term care facilities of Use Group I-2, at least fifty (50) percent, but not less than one (1), of the patient sleeping rooms and their bathing and toilet facilities shall be accessible."

(b) In the fourth paragraph, delete the reference to "CABO A117.1 listed in Chapter 35" and replace it with "Sections 4.6.6 and 6.2 of ADAAG."

(c) Create an additional paragraph to read as follows: "All public use areas are required to be designed and constructed to be accessible."

(15) Amend subsection 1107.3.3 to read as follows: "1107.3.3 Use Group I-3: Occupancies in Use Group I-3 (detention and correctional facilities) shall comply with Section 12 of ADAAG."

(16) Create a new subsection, 1107.3.4, to read as follows: "1107.3.4 Alterations: Alterations to facilities listed in Use Groups I-1 or I-2 shall comply with Section 6.1(4) of ADAAG."

(17) Amend subsection 1107.4 as follows:

(a) "1107.4 Use Group R: Occupancies in Use Group R shall provide for accessible features in accordance with Sections 1107.4.1 through 1107.4.5."

(b) Amend subsection 1107.4.1 as follows: "1107.4.1 Accessible guestrooms: In occupancies in Use Group R-1 containing six (6) or more guestrooms, Section 9 of ADAAG shall apply and not less than one (1) accessible guestroom for the first twenty-five (25) guestrooms shall be provided. In hotels with more than fifty (50) guestrooms, roll-in type showers shall be provided in one-half (1/2), but not less than one (1), of the required accessible guestrooms."

(c) Amend subsection 1107.4.2 as follows: "1107.4.2 Accessible dwelling units: In multifamily dwellings of Use Group R-2 and R-3 containing at least twenty-five (25) dwelling units, a minimum of one (1) in twenty-five (25) of the dwelling units shall be accessible in accordance with subsection 1107.4.3 of this section. All dwelling units on a site shall be considered to determine the total number of dwelling units and the required number of accessible units. All rooms and spaces available to the general public and all such spaces available for the use of the residents serving accessible dwelling units shall be accessible. Exceptions:

1. In buildings without elevators, multistory dwelling units are not required to be accessible.

2. Recreational facilities in accordance with Section 1107.4.4.

3. Buildings in which all units on the ground floor or all units where an elevator is provided are adaptable pursuant to KRS 334.360(11)-(13)."

(d) Amend subsection 1107.4.3 to read as follows: "1107.4.3 Minimum requirements for multifamily dwellings: A required accessible dwelling unit shall be on an accessible route and shall have accessible elements and spaces complying with Sections 13.3.2 and 13.4 of ADAAG."

(e) Amend subsection 1107.4.4 to read as follows: "1107.4.4 Recreational facilities: Where recreational facilities are provided serving accessible or adaptable dwelling units in occupancies in Use Groups R-2 or R-3, twenty-five (25) percent but not less than one (1) of each type in each group of such facilities shall be accessible. All recreational facilities of each type on a site shall be considered to determine the total number of each type which are required to be accessible."

(f) Create a new subsection, 1107.4.5, to read as follows: "1107.4.5 Dispersement of elements: Dwelling units shall be dispersed throughout the facility in accordance with Section 13.2.2 of ADAAG."

(g) Create a new subsection, 1107.4.5.1, to read as follows: "1107.4.5.1 Minimum number: When dwelling units are altered in an existing facility, one (1) in twenty-five (25), but not less than one (1), of the dwelling units altered shall comply with the requirements of Sections 13.3, 13.4 and 14.5 of ADAAG for each alteration until the number of accessible dwelling units in each facility equals the number required to be accessible by subsection 1107.4.2 of this section."

(h) Create a new subsection, 1107.4.5.2, to read as follows: "1107.4.5.2 Dispersion: When existing dwelling units are altered and are required to be accessible, they shall be dispersed according to Section 13.2.2 of ADAAG, to the maximum extent feasible."

(18) Create a new subsection, 1107.5, to read as follows: "1107.5 Judicial, legislative and regulatory facilities: Judicial, legislative and regulatory facilities shall comply with Section 11 of ADAAG."

(19) Create a new subsection, 1107.6, to read as follows: "1107.6 Libraries: Libraries shall comply with Section 8 of ADAAG."

(20) Amend subsection 1108.2 as follows: "1108.2 Toilet and bathing facilities: Toilet rooms and bathing facilities shall be accessible and shall be on an accessible route. At least one (1) of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.

(21) Amend subsection 1108.2.1 by deleting the reference to CABO A117.1 and replacing it with "ADAAG".

(22) Amend subsection 1108.3 to read as follows: "1108.3 Accessible elevators: All passenger elevators shall conform to ADAAG listed in Chapter 35."

(23) Amend subsection 1108.4 to read as follows: "1108.4 Drinking fountains: At least fifty (50) percent of drinking fountains, but not less than one (1), provided on every floor shall be accessible, as required by Section 4.1.3(10) of ADAAG."

(24) Amend subsection 1108.5 by deleting the reference to CABO A117.1 and replacing it with "ADAAG".

(25) Amend subsection 1108.6 to read as follows: "1108.6 Fixed or built-in seating or tables: Where fixed or built-in seating or tables are provided, at least five (5) percent, but not less than one (1), shall be accessible and be distributed throughout the facility, as required by Section 4.32 of ADAAG."

(26) Amend subsection 1108.7 to read as follows: "1108.7 Customer service facilities: Customer service facilities shall comply with Sections 1108.7.1 through 1108.7.3 according to the dimensions set forth in Sections 7.2 and 7.3 of ADAAG."

(27) Amend subsection 1108.7.1 to read as follows: "1108.7.1 Dressing and fitting rooms: Where dressing or fitting rooms are provided, at least five (5) percent, but not less than one (1), in each group of rooms serving distinct and different functions shall be accessible and on an accessible route and shall comply with Section 4.35 of ADAAG."

(28) Amend subsection 1108.8 to read as follows: "1108.8 Controls, operating mechanisms and hardware: Controls, operating mechanisms and hardware, including switches that control lighting, ventilation or electrical outlets, in accessible spaces, along accessible routes or as parts of accessible elements, shall be accessible as required by Section 4.27 of ADAAG."

(29) Create a new subsection 1108.9 to read as follows: "1108.9 Specification for tread nosing: Interior and exterior stairs which connect levels that are not connected by an elevator, ramp or other accessible means of travel shall not have open risers and shall comply with Section 4.9 of ADAAG. Exception: Solid risers are not required for stairways serving dwelling units which are not required to be accessible in accordance with Section 1107.4.2, provided that the opening between treads does not permit the passage of a sphere with a diameter of four (4) inches (102 mm)."

(30) Create a new subsection 1108.10 to read as follows: "1108.10 Exit signs: Each door to an enclosed exit stairway shall be equipped with tactile signage reading "Exit" complying with ADAAG and installed on the side of the door from which egress is to be made."

(31) Create a new subsection 1108.11 to read as follows: "1108.11 Door arrangement: The space between doors in series shall not be less than seven (7) feet (2134 mm) as measured when the doors are in the closed position. Exception: Power-operated doors and occupancies in Use Group I-1 and R-3."

(32) Create a new subsection 1108.12 to read as follows: "1108.12 Thresholds at doorways: Thresholds at doorways shall not exceed three-fourths (3/4) inch (19 mm) in height above the finished floor surface for exterior residential sliding doors or one-half (1/2) inch (13 mm) for all other doors. Raised thresholds and floor level changes greater than one-quarter (1/4) inch (6 mm) at doorways shall be beveled with a slope not greater than one (1) unit vertical in two (2) units horizontal (1:2)."

(33) Amend subsection 1109.2 as follows: "1109.2 Signs: Signs which designate permanent rooms and spaces shall comply with Sections 4.30, 30.4, 30.5 and 30.6 of ADAAG. Required accessible elements shall be identified by the International Symbol of Accessibility at the following locations:

(a) Accessible parking spaces required by Section 1105.1.

(b) Accessible passenger loading zones.

(c) Accessible areas of refuge required by Section 1007.5.4.

(d) Accessible toilet and bathing units.

(e) Accessible entrances."

(34) Create a new subsection 1109.3 to read as follows: "1109.3 Visible alarms: Visible alarm-indicating appliances shall be provided in public and common areas of all buildings and areas of buildings housing the hearing impaired in accordance with Section 913 of this code and Section 4.28.3 of ADAAG. Private offices, storage areas, mechanical rooms and other similar unoccupied spaces are exempt."

(35) Amend subsection 1110.2 as follows: "1110.2 Alterations: Each element or space of a building or facility that is altered shall comply with these provisions, unless technically infeasible. Where full compliance is technically infeasible, the element or space shall be made accessible to the fullest extent to which it is not technically infeasible."

(36) Amend subsection 1110.2.1 as follows: "1110.2.1 Alterations affecting an area containing a primary function: Where an alteration affects the usability of, or access to, an area containing a primary function, an accessible route to the primary function area shall be provided. The accessible route to the primary function area shall include any restrooms, drinking fountains and telephones serving the primary function area."

(37) Create a new subsection, 1110.2.1.1, to read as follows: "1110.2.1.1. Owner responsibility: The owner of the building shall be responsible to determine the primary function and compliance with subsection 1110.2.1 and may make any additional alterations the owner may deem necessary, if any."

(38) Amend paragraph 1 of subsection 1110.2.2 to read as follows: "1. Where it is technically infeasible to alter existing toilet rooms or bathing facilities to be accessible, at least one (1) accessible unisex toilet/bathroom shall be provided and shall be located on the same floor and in the same area as the existing toilet/bathrooms. Each unisex toilet/bathroom shall contain one (1) accessible water closet complying with Section 4.16 of ADAAG and lavatory complying with Section 4.19 of ADAAG, and the door shall be lockable from within the room."

(39) Delete subsections 1110.3 and 1110.4 in their entirety.

(40) Create a new Section, 1111.0, Accessible Means of Egress, to read as follows:

(a) "1111.1 New construction: In new construction, all spaces required to have an accessible means of egress by Section 4.1.3(9) of ADAAG shall comply with this section and applicable requirements of ADAAG."

(b) "1111.2 Area of Rescue Assistance: Areas of rescue assistance shall be provided as required by Section 4.3.11 of ADAAG."

(c) "1111.3 Drop-offs: The sides of ramps and landings with a drop-off shall have a curb with a minimum four (4) inch (102 mm) height above the walking surface or shall be provided with a guardrail."

(d) "1111.4 Surface: For all slopes exceeding one (1) unit vertical in twenty (20) units horizontal (1:20) and where the use is such as to involve danger of slipping, the ramp shall be surfaced with approved slip-resistant materials."

(e) "1111.5 Exterior ramps: Exterior ramps and landings shall be designed and constructed to prevent water from accumulating on the walking surface and shall comply with Section 4.8 of ADAAG."

(f) "1111.6 Adjacent area: Each revolving door shall have a conforming side-hinged swinging door."

(39) Create a new section, 1112.0 Accessible Telephones, to read as follows: "1112.1 If telephones are provided, they shall comply with Section 4.31 of ADAAG."

Section 12. Chapter 12, Interior Environment. Amend Chapter 12 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Create a new subsection 1203.2 to read as follows: "1203.2 Alternative Mechanical System: HVAC systems in occupancies reviewed under NFiPA 101 pursuant to Section 119.1 of this code shall be installed in accordance with NFiPA 90A or NFiPA 90B in lieu of the mechanical code listed in Chapter 35."

(2) Amend subsection 1204.1.3, Furred Ceilings, by adding the following exception: "Exception: In Use Group R-3 basement recreation rooms, a furred ceiling height of six feet and eight inches (6'8") around the ducts may be made in the soffit area only for structural beams and mechanicals. The two-thirds (2/3) area requirements listed in this section shall still be met."

(3) Amend subsection 1210.3 to read as follows: "1210.3 Alternative mechanical ventilation: Enclosed attic, rafter and crawl spaces and other uninhabited spaces such as unfinished basements, which are not ventilated as herein required, shall be equipped with a mechanical ventilation system conforming to the requirements of Section M-1606 of the mechanical code listed in Chapter 35."

Section 13. Chapter 13, Energy Conservation. Amend Chapter 13 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend subsection 1304.2 to read as follows: "1304.2 Documentation: Proposed alternative designs, submitted as requests for an exception to the standard design criteria, shall be accompanied by an energy analysis."

(2) Delete Sections 1306.0, 1307.0 and 1308.0 in their entirety.

Section 14. Chapter 14, Exterior Wall Coverings, of the BOCA National Building Code/1993 is hereby adopted in its entirety.

Section 15. Chapter 15, Roofs and Roof Structures. Amend Chapter 15 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend subsection 1512.2 to read as follows: "1512.2 Structural and construction loads: The roof covering system and the material and equipment loads that will be encountered during installation of the roof covering system shall not exceed the capacity of the structural roof components."

Section 16. Chapter 16, Structural Loads. Amend Chapter 16 of the BOCA National Building Code/1993 by creating a new subsection 1601.2 to read as follows:

(1) "1601.2 Certificate of compliance: Design compliance with the provisions of this Chapter and Chapter 18 shall be satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building code official, unless the code official shall notify the designer that a specific code violation exists."

(2) Amend subsection 1612.1.3 to read as follows: "1612.1.3

Seismic ground acceleration table: The effective peak velocity-related acceleration (A_v) and the effective peak acceleration (A_a) shall be determined from Table 1612. For the application of the formulas in Sections 1612.4 and 1612.5 which incorporate the effective peak acceleration coefficient (A_a), the value of A_a shall be determined from Table 1612."

(3) Delete Figures 1612.1.3(1) and (2) in their entirety.

(4) Create Table 1612 as follows:

TABLE 1612

EARTHQUAKE RISK ZONE #1 A_v/A_a <0.10

Design Coefficient values: $A_v = 0.07$ (unless noted, A_v/A_a)
$A_a = 0.05$

Adair	Elliott	Laurel 09/06	Oldham
Allen	Estill 09/05	Lawrence 09/05	Owen
Anderson	Fayette	Lee 09/05	Owsley 09/05
Barren	Fleming	Leslie 09/09	Pendleton
Bath	Floyd 09/06	Lewis	Perry 09/09
Boone	Franklin	Lincoln 09/05	Pike 09/09
Bourbon	Gallatin	Logan 09/06	Powell
Boyd	Garrard	Madison	Pulaski 09/06
Boyle	Grant	Magoffin 09/05	Robertson
Bracken	Grayson 09/05	Marion	Rockcastle 09/05
Breathitt 09/05	Green	Martin 09/05	Rowan
Breckinridge 09/05	Greenup	Mason	Russell 09/05
Bullitt	Hancock 09/07	Meade 09/05	Scott
Butler 09/06	Hardin	Menifee	Shelby
Campbell	Harrison	Mercer	Simpson 05/06
Carroll	Hart	Metcalfe	Spencer
Carter	Henry	Monroe 09/05	Taylor
Casey 05/05	Jackson 09/05	Montgomery	Todd 09/07
Christian 09/09	Jefferson	Morgan 09/05	Trimble
Clark	Jessamine	Muhlenberg 09/08	Warren
Clay 09/06	Johnson 09/05	McCreary 09/06	Washington
Clinton 09/06	Kenton	McLean 09/09	Wayne 09/07
Cumberland 09/05	Knott 09/06	Nelson	Whitley 09/09
Daviess 09/09	Knox 09/09	Nicholas	Wolfe 09/05
Edmonson	Larue	Ohio 09/07	Woodford

EARTHQUAKE RISK ZONE #2 $A_v/A_a \geq 0.10$ but < 0.15
Design Coefficient Values: A_v & $A_a = 0.10$ (unless noted, A_v/A_a)

Bell	Crittenden 14/14	Hopkins 11/11	Trigg 13/17
Caldwall 12/12	Harlan	Letcher	Union 14/13
Calloway 14/14	Henderson 12/11	Lyon 14/13	Webster 12/12

EARTHQUAKE RISK ZONE #3 $A_v/A_a \geq 1.5$ but ≤ 2.0

Design Coefficient Values A_v & $A_a = 0.20$ (unless noted, A_v/A_a)		Design Coefficient Values A_v & $A_a = 0.15$ (unless noted, A_v/A_a)	
Ballard 22/22	Fulton 25/25	Graves 16/18	Marshall 16/15
Carlisle 22/22	Hickman 23/23	Livington 15/16	McCracken 19/19

(5) Amend subsection 1612.6 to read as follows: "1612.6 Architectural, mechanical and electrical components and systems: All components and systems, including sprinkler systems, in buildings shall be designed and constructed to resist seismic forces determined in accordance with this section. Exceptions:

(a) Architectural components in buildings assigned to Seismic Performance Category A are exempt from the requirements of this section.

(b) Mechanical and electrical components and systems in buildings assigned to Seismic Performance Category A or B are exempt from the requirements of this section.

(c) Architectural, mechanical and electrical components and systems in buildings that are assigned to Seismic Performance Category B or C, are in Seismic Hazard Exposure Group 1 buildings, and have a performance criteria factor of 0.5, are exempt from the requirements of this section.

(d) Elevator components and systems in buildings assigned to Seismic Performance Category A or B are exempt from the requirements of this section. Elevator components and systems in buildings that are assigned to Seismic Performance Category C and are in seismic Hazard Exposure Group 1 buildings, are exempt from the requirements of this section.

(e) Buildings located in Risk Zone 1 as shown in Table 1612."

Section 17. Chapter 17, Structural Tests and Inspections. Amend Chapter 17 of the BOCA National Building Code/1993 by amending subsection 1705.1 to read as follows: "1705.1 General: The owner shall provide special inspections as required by this section. The special inspections required by subsections 1705.1 through 1705.12 shall apply to seismic related construction only and this section shall not be mandatory for any other permit or construction. The special inspectors shall be provided by the owner and shall be qualified and approved for the inspection of the work described herein. Exceptions:

(1) Special inspections are not required for work of a minor nature or when warranted by conditions approved by the building official.

(2) Special inspections are not required for building components unless the design involves the practice of professional engineering or architecture as defined by KRS Chapters 322 and 323.

(3) Special inspections are not required for buildings of Use Group R-3 or R-4.

(4) Buildings located in Risk Zone 1, which are not required to be designed by a design professional."

Section 18. Chapter 18, Foundations and Retaining Walls. Amend Chapter 18 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Create subsection 1801.2, Certificate of Compliance, to read as follows: "1801.2 Certificate of Compliance: Design compliance with the provisions of this Chapter and Chapter 16 shall be satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building code official, unless the code official shall notify the design professional that a specific code violation exists."

(2) Amend subsection 1806.1 to read as follows: "1806.1 Frost Protection: Except when erected upon solid rock or otherwise protected from frost, foundation walls, piers and other permanent supports of all buildings and structures larger than 100 square feet (9.30 m^2) in area or ten (10) feet (3048 mm) in height shall extend below the frost line of the locality, to a minimum depth of twenty-four (24) inches, or whichever is deeper, and spread footings of adequate size shall be provided if necessary to distribute properly the load within the allowable bearing value of the soil. Alternatively, the structures shall be supported on piles if solid earth or rock is not available. Footings shall not be founded on frozen soils unless the frozen condition is of a permanent character."

Section 19. Chapter 19, Concrete, of the BOCA National Building Code/1993 is hereby adopted in its entirety.

Section 20. Chapter 20, Lightweight Metals, of the BOCA National Building Code/1993 is hereby adopted in its entirety.

Section 21. Chapter 21, Masonry, of the BOCA National Building Code/1993 is hereby adopted in its entirety.

Section 22. Chapter 22, Steel, of the BOCA National Building Code/1993 is hereby adopted in its entirety.

Section 23. Chapter 23, Wood, of the BOCA National Building Code/1993 is hereby adopted in its entirety.

Section 24. Chapter 24, Glass and Glazing. Amend Chapter 24 of the BOCA National Building Code/1993 by making the following

additions, deletions or changes:

(1) Create a new subsection 2401.1.1 to read as follows: "2401.1.1 Labeling requirements: Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in a location within the Commonwealth of Kentucky shall be permanently labeled by etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 listed in Chapter 35. The label shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."

(2) Amend Paragraph 7.4 of subsection 2405.2, Specific Hazardous Locations, to read as follows: "7.4. The finished floor or walking surface within thirty-six (36) inches (915 mm) on both sides of the glazing."

Section 25. Chapter 25, Gypsum and Plaster, of the BOCA National Building Code/1993 is hereby adopted in its entirety.

Section 26. Chapter 26, Plastic, of the BOCA National Building Code/1993 is hereby adopted in its entirety.

Section 27. Chapter 27, Electric Wiring, Equipment and Systems. Amend Chapter 27 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend Section 2701.0, General, as follows:

(a) Amend subsection 2701.1, Scope, by adding the following sentence: "Tentative Interim Amendments issued to NFiPA 70 and accepted by the department shall be permitted to be used for interpretations of NFiPA 70."

(b) Create a new subsection 2701.5 to read as follows: "2701.5 Electrical inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with Kentucky administrative regulation 815 KAR 35:015."

(2) Delete subsections 2702.2(5), 2702.3, 2703.3 and 2703.4 in their entirety.

(3) In subsections 2704.1, 2704.3, and 2705.1 delete the words "code official" and insert in lieu thereof the words "certified electrical inspector."

Section 28. Chapter 28, Mechanical Systems. Amend Chapter 28 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend Section 2801.0, General, as follows:

(a) Amend subsection 2801.2 to read as follows: "2801.2 Mechanical Code: Except as required by Section 2813, all mechanical equipment and systems which are not covered by sections 2801.3 or 2801.4 shall be installed in accordance with provisions of the mechanical code listed in Chapter 35."

(b) Create a new subsection 2801.2.1 to read as follows: "2801.2.1 Mechanical ventilation alternative: Mechanical ventilating systems may be designed in accordance with the provisions of ASHRAE Standard 62-1989 listed in Chapter 35 as an equivalent alternative to the Mechanical Code listed in Chapter 35."

(c) Create a new subsection 2801.2.2 to read as follows: "2801.2.2 Design of mechanical systems: The building code official may use the actual occupant load in lieu of Table 1008.1.2 in the design of mechanical ventilating systems. This applies to both the BOCA National Mechanical Code/1993 and ASHRAE 62-1989."

(d) Create a new subsection 2801.3 to read as follows: "2801.3 Boilers: All boilers, pressure vessels and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in 815 KAR Chapter 15, Kentucky administrative regulations."

(e) Create a new subsection 2801.4 to read as follows: "2801.4 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ANSI/ASME) BPV-VIII-1, as required by Kentucky boiler administrative regulations set forth in 815 KAR Chapter 15, Kentucky administrative regulations."

(2) Create a new Section 2812.0 entitled "Range Hoods" to read as follows:

(a) "2812.1 Range Hoods. Range hoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Chapter 35. The bottom edge of the hood shall be located at a height of not more than four (4) feet above the cooking surface."

(b) "2812.2 Commercial exhaust system not required: In churches and in other occupancies where the range is merely a convenience for occasional use and where there is minimal or nonexistent grease laden vapors, commercial exhaust systems shall not be required."

(3) Create a new Section 2813.0 entitled "Superseding Provisions for Mechanical Ventilation" to read as follows:

(a) "2813.1 The Mechanical Code listed in Chapter 35 is hereby amended by Sections 2813.1 through 2813.3.2.1 of this code and supersede any conflicting provisions of Sections M-1604 and M-1605 of that Mechanical Code."

(b) "2813.2 Mechanical ventilation."

1. "2813.2.1 Ventilation system: Mechanical ventilation shall be provided by a method of supply air and return or exhaust air. The amount of supply air shall be approximately equal to the amount of return and exhaust air. The system shall not be prohibited from producing a negative or positive pressure. The air distribution system shall be designed and installed in accordance with Section 3 of the Mechanical Code."

2. "2813.2.2 Ventilation rate: The minimum amount of air required shall be determined in accordance with Table 2813.2 based on the occupancy of the space and the occupant load or other parameter as stated therein. The occupant load utilized for design of the ventilation system shall not be less than the estimated maximum occupant load."

3. "Table 2813.2

REQUIRED MECHANICAL VENTILATION AIR

Occupancy classification	Required ventilation air (cfm[d] per person, unless otherwise indicated)
Assembly	
Food services:	
Bars and cocktail lounges	50
Cafeterias, fast food	35
Dining rooms	35
Kitchens	30[a]
Museums	
Exhibit halls	35
Warehouses	10
Public (meeting) facilities	
Assembly rooms	35
Ballrooms	35
Casinos	35
Conference rooms	35
Lobbies	15
Sports and amusement facilities	
Billiard rooms and game rooms	35

Bowling centers (seating areas)	35
Playing floors, gymnasiums, ice arenas	20
Ramps, foyers and lobbies	10
Spectator area	35
Swimming pools and deck areas	0.5 cfm per square foot[b]
Tennis, squash and handball courts (indoor)	20
Theaters	
Auditoriums	35
Lobbies, foyers and lounges	35
Projection booths	20[b]
Stages, TV and mobile studios	10
Ticket booths	20
Transportation (terminals)	
Waiting rooms, ticket and baggage areas, corridors and gate areas	35
Business	
Banks (see offices)	
Vaults	5
Barber, beauty and health services	
Barber shops	35
Beauty shops (hair dressers)	35
Reducing salons	25
Sauna baths, steam rooms	5
Offices	
Conference rooms	35
Duplicating and printing rooms	0.5 cfm per square foot
Office space	20
Waiting rooms	35
Photo studios	
Camera rooms, stages	5
Darkrooms	20
Research institutes	
Animal rooms	40
Darkrooms, spectroscopy rooms	20
Laboratories	35
Laboratories, radioisotope, chemically and biologically toxic	35[b]
Veterinary hospitals	
Kennels, stalls	35[a]
Operating rooms	35[a]
Reception rooms	35
Educational	
Schools	
Auditoriums	35
Classrooms	25
Gymnasiums	20
Laboratories	10
Libraries	7
Lunchrooms, dining halls	35
Music rooms	35
Training shops	35
Factory and industrial	
Working areas	35[c]
Institutional	
Correctional facilities	
Day rooms, activity spaces	1 air change per hour
Group homes	
Bedrooms	30 cfm per room
General living area	50 cfm per room
Kitchens	30[a]
Hospitals, nursing and convalescent homes	
Autopsy rooms	12 air changes per hour[b]
Delivery rooms, trauma rooms	15 air changes per hour
Laboratories	6 air changes per hour
Operating rooms	15 air changes per hour
Patient rooms	2 air changes per hour
Pharmacy, medication rooms	4 air changes per hour
Physical therapy areas and treatment rooms	6 air changes per hour
Recovery and intensive care rooms	6 air changes per hour
Soiled utility rooms, janitor closets	10 air changes per hour
Mercantile	
General	
Sales floors and showrooms	25
Dressing rooms	25
Malls	10
Shipping areas	15
Storage areas	25
Warehouses	10
Special shops	
Automotive service stations	1.5 cfm per square foot
Pet shops	1 cfm per square foot
Florists	25
Supermarkets	
Meat processing rooms	5[a]
Residential	
Dwelling units	
All other rooms	10 cfm per room
Bedrooms	10 cfm per room
General living areas	10 cfm per room
Kitchens	100 cfm per room[a]
Hotels, motels	
Bedrooms (single, double)	30 cfm per room
Living rooms (suites)	50 cfm per room
Storage	
Repair garages, public garages (enclosed)	1.5 cfm per square foot
Warehouses	10
Special areas	
Elevators	15
Exits and corridors	0.02 cfm per square foot
Lockers and dressing rooms	35[a]
Public bathrooms	75 cfm per water closet or urinal[a]
Nonpublic bathrooms	50 cfm per water closet or urinal[a]
Utility rooms	0.02 cfm per square foot

Note a: Recirculation shall be in accordance with Section 2813.3 except that nonpublic bathrooms in Use Groups R-2 and R-3 with a

bathtub or shower shall not be recirculated and shall be mechanically exhausted.

Note b: Mechanical Exhaust required (see subsection 2813.3.1).

Note c: Spaces maintained at temperatures below fifty (50) degrees F. (ten (10) degrees C.) are not covered by these requirements unless the occupancy is continuous. Ventilation from adjoining spaces and infiltration is permitted.

Note d: 1 cfm = 0.0004719 m^3/s; 1 cfm/ft^2 = 0.00507 m^3/s - m^2."

(c) "2813.3 Recirculation."

1. "2813.3.1 Sixty-seven (67) percent recirculation: Not more than sixty-seven (67) percent of the required ventilation air specified shall be permitted to be recirculated, when the concentration of particulates is less than specified in Table 2813.3. Air in excess of the required ventilation air shall be permitted to be completely recirculated. Air shall not be recirculated to another dwelling unit or occupancy of dissimilar use."

2. "Table 2813.3

MAXIMUM ALLOWABLE CONTAMINANT CONCENTRATIONS FOR VENTILATION AIR

Contaminant	Annual average (arithmetic mean) µg/m^3	Short-term level (not to be exceeded more than once a year µg/m^3	Averaging Period (hours)
Particulates	60	150	24
Sulfur oxides	80	400	24
Carbon monoxide	20,000	30,000	8
Photochemical oxidant	100	500	1
Hydrocarbons (not including methane)	1,800	4,000	3
Nitrogen oxides	200	500	24
Odor	Essentially unobjectionable[a]		

Note a: Judged unobjectionable by sixty (60) percent of a panel of ten (10) untrained subjects."

3. "2813.3.1.1 Eighty-five (85) percent recirculation: Not more than eighty-five (85) percent of the required ventilation air shall be permitted to be recirculated when the system is also equipped with effective absorption or filtering equipment so that the condition of the air supplied to the room or space is within the equality limitations of Table 2813.2."

4. "2813.3.2 Exhaust required: All rooms and areas having air with dust particles sufficiently light enough to float in the air, heat, odors, fumes, spray, gas or smoke in such quantities as to be irritating or injurious to health or safety, and rooms or areas as indicated by Footnote b in Table 2813.2, shall have the air exhausted to the outdoors in accordance with Section M-1606.0."

5. "2813.3.2.1 Swimming pool area recirculation: Return air from a swimming pool and deck area shall be permitted to be recirculated in accordance with Section 2813.2 of this code and Section M-1604 of the Mechanical Code when such air is dehumidified to maintain the relative humidity of the area at sixty (60) percent or less. The return air shall only be recirculated to the area from which it was removed."

Section 29. Chapter 29, Plumbing Systems. Amend Chapter 29 of the BOCA National Building Code/1993 by deleting sections 2901.1 through 2908.3.3 in their entirety and insert the following: "2901.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky revised statutes and the Kentucky State Plumbing Code as set out in 815 KAR Chapter 20, Kentucky administrative regulations. Copies are available from the Kentucky Division of Plumbing, The 127 Building, 1047 U.S. Highway 127 South, Suite 1, Frankfort, Kentucky 40601."

Section 30. Chapter 30, Elevators and Conveying Systems. Amend Chapter 30 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend subsection 3004.4.1 to read as follows: "3004.4.1 Periodic inspection intervals: Periodic inspections shall be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(2) Amend subsection 3005.4 to read as follows: "3005.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(3) Amend subsection 3006.3, Accessible Elevators, to read as follows: "3006.3 Accessible elevators: See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

(4) Amend Section 3007.0, Hoistway Enclosures and Venting, as follows:

(a) Amend subsection 3007.4 to read as follows: "3007.4 Location of vents: Vents shall be located at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air. Holes in the machine room floors for the passage of ropes, cables or other moving elevator equipment shall be limited so as not to provide greater than two (2) inches (51 mm) of clearance on all sides."

(b) Create a new subsection 3007.3.1 to read as follows: "3007.3.1 Mechanical ventilation: Mechanical ventilation shall be allowed in buildings other than Use Groups R-1, R-2, I-1, I-2 and similar uses with overnight sleeping quarters if outside exposure for the required vents is not possible. Mechanical ventilation shall conform to Chapter 28 of this code."

(c) Amend subsection 3007.5 to read as follows: "3007.5 Area of vents: Except as provided for herein, the area of the vents shall not be less than three and one-half (3 1/2) percent of the area of the hoistway nor less than three (3) square feet (0.28 m^2) for each elevator car, and not less than three and one-half (3 1/2) percent nor less than one-half (1/2) square foot (0.047 m^2) for each dumbwaiter car in the hoistway, whichever is greater. Of the total required vent area, not less than one-third (1/3) shall be of the permanently open type unless all vents activate upon detection of smoke from any of the elevator lobby smoke detectors. Where mechanical ventilation conforming to the mechanical code listed in Chapter 35 provides equivalent venting, the required vent area shall be reduced if compliance with subsection 3007.4.1 is met."

(5) Create a new section 3014.0 entitled "Vertical Chairlifts and Wheelchair Lifts" to read as follows: "3014.1 General. Except as herein provided, inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Chapter 35. Exception: Vertical wheelchair lifts may have a travel distance not to exceed twenty-three (23) feet and penetrate a floor subject to the following additional requirements.

(a) The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Chapter 35.

(b) The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 3008.0.

(c) All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 3011.0.

(d) All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Chapter 35."

(6) Create a new section 3015.0 entitled "Machine Rooms and Related Construction for Passenger and Freight Elevators and

Dumbwaiters" to read as follows: "3015.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required to the hoistway enclosure in Table 602."

Section 31. Chapter 31, Special Construction. Amend Chapter 31 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Delete Section 3102, Signs, in its entirety.

(2) Amend the first sentence in subsection 3106.1 to read: "An exterior pedestrian enclosed walkway that connects buildings shall comply with this section."

(3) Create a new subsection of 3107.1 to read as follows: "3107.1.1 Approval of plans: Plans showing compliance with this section shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 32. Chapter 32, Construction in the Public Right-of-way, of the BOCA National Building Code/1993 is hereby adopted in its entirety.

Section 33. Chapter 33, Site Work, Demolition and Construction, of the BOCA National Building Code/1993 is hereby adopted in its entirety.

Section 34. Chapter 34, Existing Structures. Amend Chapter 34 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Amend subsection 3401.2 to read as follows: "3401.2 Maintenance and repairs: All equipment, systems, devices and safeguards required by this code or by a previous statute or code for the structure or premises when erected or altered, shall be maintained in good working order. The requirements of this chapter shall not provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures."

(2) Amend subsection 3401.3 to read as follows: "3401.3 Periodic testing: The owner shall be responsible for periodic tests and inspections of all equipment where required by this code."

(3) Delete subsection 3402.8, Lead-based paint, in its entirety.

(4) Amend subsection 3403.1 to read as follows: "3403.1 Compliance: An addition to a structure shall conform to the requirements for a new structure without requiring the existing structure to comply with the requirements of this code for new structures except as required by subsection 102.2 and the addition shall not result in an increase in hazard to the occupants in the existing structure, the addition or the building as a whole. Any existing structure plus additions shall not exceed the height and area requirements of Section 503.0, even if a fire wall separates the existing portion from the addition. Existing fire areas increased by the addition shall comply with Chapter 9. Any alterations made to the existing structure shall comply with the requirements of this chapter and Chapter 1."

(5) Amend subsection 3404.2 to read as follows: "3404.2 Requirements: An alteration to any structure shall conform to the code requirements for a new structure and shall not result in an increase in hazard to the occupants in the existing structure or the building as a whole. Portions of the structure not altered and not adversely affected by the alteration and the unaltered portion which does not create a hazard for the area under alteration are not required to comply with the code requirements for a new structure. If a hazard to the altered or unaltered portion is created, the requirements for new structures shall apply as required by subsection 102.2."

(6) Amend subsection 3405.1 to read as follows: "3405.1 Approval: A change shall not be made in the use of a structure which creates the potential of a greater hazard to the public because of increased structural or fire loading or inadequate exits for the number of occupants without approval of the building code official. If the building code official determines that the structure meets the intent of the provisions of this code for new structures under the proposed new use and occupancy and the proposed change shall not result in any greater hazard to public safety or welfare, the building code official shall approve the change. In making this decision, the building official may require a written opinion from a design professional and the State Fire Marshal."

(7) Amend subsection 3406.1 to read as follows: "3406.1 Compliance: The restoration or renovation of a building on a federal, state or local historic register solely to return the building to its original design shall not require the remainder of the building to comply with this code, except for changes of occupancy or alterations governed by Section 3404.2 or 3405.1."

(8) Amend subsection 3408.2 to read as follows: "3408.2 Applicability: Structures existing prior to August 15, 1982, in which there is work involving additions, alterations or changes of occupancy, shall be made to conform to the requirements of this section or the provisions of Sections 3403.0 through 3407.0. The provisions in Section 3408.2.1 through 3408.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to buildings with occupancies in Use Group H or I."

Section 35. Chapter 35, Referenced Standards. Amend Chapter 35 of the BOCA National Building Code/1993 by making the following additions, deletions or changes:

(1) Add the following reference: "ADAAG - 36 CFR, Part 118, July 26, 1992 and Federal Register, Volume 57, Number 245, Monday, December 21, 1992."

(2) Add the following standards under "ASHRAE": "15-92, Mechanical Refrigeration Systems" and "62-89, Ventilation for Acceptable Indoor Air Quality."

(3) Amend the reference to Safety Code for Elevators and Escalators under "ASME" to read "A17.1-1990 with the exception of rule 102.2(c)(4)."

(4) Amend the reference to the BOCA National Fire Prevention Code 1993 under "BOCA" by adding the following language: "The Kentucky Standards of Safety (815 KAR 10:040 - Fire Prevention Code) as amended by the Kentucky Department of Housing, Buildings and Construction."

(5) Amend the reference to the BOCA National Mechanical Code 1993 under "BOCA" by adding "with the exception of Table M-1604.3, Sections 1604.1, 1604.2, 1604.3 and 1604.6, as amended in Chapter 28 of this code, Section 2813."

(6) Amend the following CABO standard by changing the edition date to "1992": "CABO Model Energy Code-92."

(7) Amend the following NFiPA standards by changing the edition date to "1992": "#54 and #58."

(8) Amend the following NFiPA standards by changing the edition date to "1993": "#30; #30A; #65; #72; #651 and #664."

(9) Delete the following NFiPA standards from Chapter 35: "#71; #72E and #74."

(10) Add the following NFiPA standards to Chapter 35:

(a) "#79-87 Electrical Standard for Industrial Machinery".

(b) "#101-85 Life Safety Code."

(11) Add the following language and list of National Fire Protection Association (NFiPA) Pamphlets to Chapter 35:

"These National Fire Protection Association (NFiPA) Pamphlets are listed for use in fire suppression design and installation only if referenced in a specific code required by this code.

Aircraft hangars	# 409
Pyroxylin plastics	# 40C
Laboratories	# 45
Fireworks	# 1124
L P gas storage	# 58
General storage	# 231
Rubber tire storage	# 231D
Baled cotton storage	# 231E
Rolled paper storage	# 231F
Rangehoods	# 96
Computer rooms	# 75
Archives and record centers	# 232AM
L P gas storage and handling	# 59A
Code for the manufacture and storage of aerosol products	# 30B
Installation of closed-head foam water sprinkler systems	# 16A
Fur storage	# 81
Cooling towers	# 214
Marinas and boatyards	# 303
Racetrack stables	# 150
Clean rooms	# 318
Oven	# 86
Protection of records	# 232"

Section 36. 815 KAR 7:010, 815 KAR 7:025 and 815 KAR 7:060 are hereby repealed.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 23, 1993
FILED WITH LRC: October 11, 1993 at 3 p.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 Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith Walden

(1) Type and number of entities affected: Contractors, architects, engineers, design professionals and users of the Kentucky Building Code.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved because regulation only establishes acceptability and sets standards.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: (Note any affects upon competition): No competition; KBC is statewide code.

(b) Reporting and paperwork requirements: None to persons using KBC.

(2) Effects on the promulgating administrative body: None to the agency because the regulation merely provides accepted standards in construction.

(a) Direct and indirect costs or savings: Cost of printing KBC but this is recouped by the sale of the code books.

1. First year:

2. Continuing costs or savings: Printing of revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(3) Assessment of anticipated effect on state and local revenue: No anticipated effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method of construction was rejected. Board of Housing reviews code sections for adoption or amendment within limits defined.

(5) Identify any statute, rule, regulation or governmental policy which may be in conflict, overlapping or duplication: No known conflict.

(a) Necessity or proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? Yes. Tiering was applied in that the mandatory requirements for buildings are different depending upon the occupancy type and number of persons occupying a building; building size and construction type.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? If yes, complete questions 2-4. Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the Kentucky Building Code.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this regulation.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:580. Additional classes of health care services and providers defined.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.520, 42 CFR 433.56, HB 1 of the Second Extraordinary Session of 1993 General Assembly

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth provisions relating to additional classes of items or services.

Section 1. Additional Classes of Health Care Services and Providers. The additional classes of health care services and providers described in federal regulations at 42 CFR 433.56, except chiropractic services, shall be added to the list of items or services subject to the tax imposed under Section 3 of House Bill 1, Second Extraordinary Session of the 1993 General Assembly (referred to herein as HB 1).

Section 2. Description of Additional Classes of Health Care Services and Providers. (1) The additional classes of health care services and providers shall be those services and providers added to the listing in 42 CFR 433.56 after passage of HB 1, as described in 42 CFR 433.56.

(2) The additional classes include the following:

(a) Ambulatory surgical center services;

(b) Dental services;

(c) Podiatric services;

(d) Optometric/optician services;

(e) Psychological services;

(f) Therapist services;

(g) Nursing services;

(h) Laboratory and x-ray services; and

(i) Emergency ambulance services.

HAROLD R. BLOM, Commissioner

FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: October 14, 1993

FILED WITH LRC: October 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1993 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold R. Blom

(1) Type and number of entities affected: None

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to 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.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the October 4, 1993 Meeting

The October meeting of the Administrative Regulation Review Subcommittee was held on Monday, October 4, 1993, at 10 a.m. in Room 149 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the September 3, 1993 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Tom Smith, Nick Kafoglis and Gene Huff; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Senator Richard "Dick" Roeding; Mike O'Connor, Legislative Ethics Commission; Richard Carroll, State Board of Accountancy; Dave Nicholas, Board of Psychology; Pete Pfeiffer, John Phillips, Ron Pritchert, Fish and Wildlife Resources; Donna G. Dutton, Thomas "Buddy" Sims, Jr., Department of Agriculture; Lisa Payne, Finance; John E. Hornback, Eva Smith-Carroll, Greg Copley, David Gore, Division for Air Quality; Louis Smith, Mike Hulett, Jack Damron, Department of Corrections; Sandra G. Pullen, Transportation Cabinet; Kevin Noland, C. Scott Trimble, Akeel H. Zaheer, Department of Education; Pat N. Miller, Billy Hunt, Kentucky Teachers' Retirement System; Bob Tarvin, Carrie Saufley, School Facility Construction Commission; Bill Ralston, Kembra Taylor, Erin Foley, Labor Cabinet; David Ashley, Department of Financial Institutions; Judith Walden, Department of Housing, Buildings and Construction; David Klee, Ed Crews, Karen Doyle, Mike Littlefield, Jeanne Southworth, Barbara F. White, Donna Demaree, Janice Kline, Jim Townes, Karen Thomas, Ked Fitzpatrick, Anita F. Moore, Julie Watts McKee, Cabinet for Human Resources; John Brazel, Kentucky Chamber of Commerce; Nancy Galvagni, Kentucky Hospital Association; Michael Wooden, Columbia Healthcare Corp.; Monica Glenn Gardner, St. Luke Hospital, Inc.; Dot Darby, Baptist Healthcare System; Frank DeLisi, Northern Kentucky Rehabilitation Hospital; Cindy Rausch.

LRC Staff: Greg Karambellas, O. Joseph Hood, Patrice Carroll, Tom Troth, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines.

The Subcommittee determined that the following administrative regulations did not comply with statutory requirements:

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:260. Crow hunting season. Pete Pfeiffer, Director of the Division of Fisheries, John Phillips, Deer Program Coordinator, and Ron Prichert Waterfowl, Program Coordinator were present representing the agency.

Representative Allen questioned the protecting of crows. He asked if he could shoot a crow on his own land. Mr. Prichert answered that he could shoot a crow on his own land if he observed that crow committing or about to commit an act of depredation. Representative Allen emphasized that crows are a nuisance and asked why would anyone want to protect crows. He said they eat his crops and generally do damage.

Representative Bruce wanted to know what the fine would be for killing a crow in violation of this administrative regulation. Mr. Prichert answered that it would be $67.50 plus court costs.

Asked why they were doing this, Mr. Prichert stated that if they were out of compliance with federal requirements they could lose other migratory bird funds.

Representative Allen questioned why this was being done now. He asked "if this has been around since 1970, why now?" The department representative answered that the state could lose it's migratory bird season dates.

Senator Kafoglis wanted to know the definition of a crow and asked if a person could confuse it with a black bird. Mr. Prichert said that a crow would not be confused with a black bird and added that out west a crow might be confused with a raven.

Representative Allen moved that a letter of objection be attached to the administrative regulation and Senator Huff seconded the motion. The motion passed.

Hunting and Fishing

301 KAR 3:030. Year-round season for some birds and animals. This administrative regulation was amended in the Necessity and Function Section. The last sentence was amended to specify that the purpose of amending this administrative regulation was to "remove crows from the list of unprotected species of wild birds and wild animals listed in this administrative regulation" and to delete the prior stated purpose.

Representative Allen moved that a letter of objection be attached to this administrative regulation that removes crows from the list of unprotected species of wild birds since it goes hand in hand with the previous administrative regulation that was found deficient. The motion passed.

The Subcommittee determined that the following administrative regulations, as amended, complied with statutory requirements:

Board of Examiners of Psychology

201 KAR 26:115. Definition of psychological testing. This administrative regulation was amended to comply with: (1)) KRS 13A.010(2) by inserting the word "administrative" before the word "regulation" in the NECESSITY AND FUNCTION statement; (2) KRS 13A.222(4) drafting requirements by inserting "Definitions" as a title to Section 1; and (3) KRS 13A.220(4) format requirements by renumbering sections.

Cindy Rauch, a concerned parent from Oldham County, Kentucky, objected to this administrative regulation because it does not include protections for minor children, who may be subjected to psychological testing, evaluation and treatment in the schools, without the prior informed written consent of the child's parents.

Ms. Rauch stated that: (1) she was concerned that persons, who are not licensed or certified by the Board of Examiners of Psychology and are not subject the board's administrative regulations, may engage in the practice of psychological assessment, therapy and remediation, particularly in the school system; (2) as a parent, was concerned that psychological assessment and therapy may be occurring without consent of the parent; and (3) parents are legally and financially responsible and accountable for their children and their children's behavior. She asked the Subcommittee to consider an amendment to this administrative regulation to add a provision prohibiting persons from subjecting children to psychological testing or treatment without written parental consent.

Ms. Rauch explained that the amendment would serve to protect both children and parents. In response to Chairman Kerr's inquiry concerning her interests in the board's administrative regulations, Ms. Rauch stated that she holds a degree in psychology and sociology, and a secondary education certificate, and has had many years of experience in job counseling with young adults.

Senator Kafoglis asked how this amendment: (1) might effect current testing practices of school psychologist; and (2) whether school psychologists are required to seek parental consent in advance of testing children. He suggested that the Subcommittee might need to hear from Department of Education officials regarding these questions.

In response to questions concering school system requirements, Ms. Rauch, and Dave Nicholas, representing the board, responded

that they were unaware of the school system requirements regarding testing of children and parental consent.

Mr. Nicholas stated that the amendment would apply only to psychologists who are: (1) licensed or certified by the board; and (2) under the board's jurisdiction. He affirmed that: (1) the amendment serves to protect both children and parents; and (2) if the Department of Education does not currently provide similar protections relating to the testing of children, it would be a good idea if it considered adding parental consent as a prerequisite to testing school children.

The Subcommittee supported this recommendation. Mr. Nicholas agreed to insert the following amendment as a new Section 4(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 permission by the parent or legal guardian."

201 KAR 26:121. Scope of practice. This administrative regulation was amended to insert "shall" in Section 5(2), in order to comply with KRS 13A.222(4)(b) which requires that a duty or obligation be expressed by "shall".

Ms. Rauch raised concerns relating to Section 4(4)(j) which describes "psychoeducational evaluation, therapy, remediation, and consultation", as one of several types of clinical psychological services. She objected to this type of service because it is not clearly defined in the administrative regulation. She stated that the term, "could potentially mean that interns, paraprofessionals, psychological associates, health service providers, and psychiatric nurses could administer tests, evaluate, treat and remediate children in a school or Family Resource Center setting."

Ms. Rauch asked Mr. Nicholas: (1) For the definition of "psychoeducational evaluation, therapy, remediation, and consultation"; (2) Under what circumstances this type of evaluation, therapy, remediation and consultation will be administered to children; (3) The difference between "psychoeducational testing" and "psychological testing"; (4) Who is allowed to practice "psychoeducational" psychology in the school or Family Resource Youth Service Center settings; and (5) Whether parental consent is required before any psychological testing or treatment, or psychoeducational testing or treatment occurs in the: (a) school; (b) Family Resource Center; or (c) before a referral is made.

Mr. Nicholas stated that he was not a psychologist and was unable to respond to the questions raised by Ms. Rauch. He agreed to consult with board members to adequately prepare a response for her and the Subcommittee members.

Chairman Kerr asked whether "psychoeducational" was a recognized term of art in the psychology profession. Mr. Nicholas responded that the terms used in this administrative regulation that relate to the scope of practice for clinical psychology reflect terms used by the American Psychological Association Guidelines.

Chairman Kerr recommended that the: (1) term be defined in the administrative regulation, if it is not a generally recognized term; and (2) the board advise the Subcommittee of its response to Ms. Rauch's questions.

201 KAR 26:125. Health service provider designation. This administrative regulation was amended to: (1) delete language in Section 1 that repeated or summarized statutory language, as required by KRS 13A.120(2)(e), and to restate the provision to refer to the statutory definition of "health service provider" established in KRS 319.050(7); and (2) insert "shall" in lieu of "may" in Section 2, to comply with KRS 13A.222(4)(b) which requires that a duty or obligation be expressed by "shall".

201 KAR 26:130. Complaint procedure. This administrative regulation was amended to comply with: (1) KRS 13A.220(3)(f) by: (a) adding language from Section 1 to the NECESSITY AND FUNCTION statement to clearly summarize the functions intended to be implemented by the proposed administrative regulation; and (b) deleting Section 1 in its entirety; (2) KRS 13A.222(4) drafting requirements by: (a) rephrasing the definition for "presiding officer" in Section 2(8); and (b) deleting lines 3 to 12 in Section 3(5)(b) and inserting those lines in the "formal complaint" procedure in Section 4, as a new Section 4(1)(a), (b) and (c); and (3) KRS 13A.120(2)(e), by amending Section 2(2) because it repeats the definition for "board" established in KRS 319.010(2).

Senator Kafoglis asked board representative, Dave Nicholas, if the board presently accepts and hears anonymous complaints. Mr. Nicholas responded that the board receives anonymous complaints, even though it is difficult for the board to address anonymous complaints because witnesses or the complainant is unavailable for cross-examination in a hearing setting. He noted that the board: (1) makes every effort to deal with these types of complaints effectively; and (2) has chosen to process these complaints informally by: (a) dealing directly with the psychologist and requesting the practitioner to respond to the complaint and provide additional information to the board; and (b) requesting the psychologist to forward that response to the board.

Senator Kafoglis stated that this administrative regulation requires a written formal complaint and would seem to prohibit an anonymous complaint. Mr. Nicholas stated that the administrative regulation only requires the complaint to be in a written form and does not require the signature of the complainant. He assured Senator Kafoglis that, although these types of complaints are administratively difficult to address and prosecute, the board responded to every complaint filed.

Senator Kafoglis stated that it was important to address anonymous complaints, as there are many instances when the concerns of persons who not wish to openly file a complaint deserve evaluation and investigation by the board to determine if there is any merit to the complaint. Mr. Nicholas stated that when information is received by the board, either anonymously or informally, the board on its own initiative has proceeded with a formal complaint.

201 KAR 26:140. Procedures for disciplinary hearings. This administrative regulation was amended to comply with KRS 13A.220(4) format requirements by amending Section 3 and Section 5(2).

201 KAR 26:145. Ethical violations. A statutory citation was corrected in the NECESSITY AND FUNCTION administrative regulation by deleting KRS 319.032(3) and inserting KRS 319.032(2).

201 KAR 26:155. Application procedures and temporary license or certificate. This administrative regulation was amended to comply with KRS 13A.222(4) drafting requirements by: (1) correcting a cross-reference to another administrative regulation in Section 2(2) and Section 4(2); and (2) correcting a typographical error in Section 3(2).

201 KAR 26:165. Inactive status. This administrative regulation was amended to comply with KRS 13A.120(2)(e) by: (1) deleting language in Sections 1 and 2 in their entirety, that repeated statutory language found in KRS 319.071(3) and (2) inserting a statutory reference to inactive status found in KRS 319.071(3).

201 KAR 26:171. Requirements for supervision. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements in: (a) the NECESSITY AND FUNCTION statement; (b) Section 12(b); and (c) Section 13 and 13(2); and (2) KRS 13A.220(4) format requirements in Section 10(1) to (4).

201 KAR 26:175. Continuing education. This administrative regulation was amended to comply with: (1) KRS 13A.220(3)(f) by: (a) adding language to the NECESSITY AND FUNCTION statement to clearly summarize the functions intended to be implemented by the proposed administrative regulation; (a) Section 1, Section 2, Section 3, Section 5(2)(b) and (c), 5(3)(b) and (c), and Section 6(2).

201 KAR 26:180. Requirements for granting licensure or certification in psychology by reciprocity. This administrative regulation was amended to delete "such" in the NECESSITY AND FUNCTION statement in order to comply with KRS 13A.222(4)(c) which prohibits its use.

201 KAR 26:185. Requirements for granting licensure or certification in psychology to an applicant licensed or certified in another state. This administrative regulation was amended to comply with KRS 13A.220(4) format requirements by reformatting Sections 1(1) to

(5) and Section 2.

201 KAR 26:190. Requirements for supervised professional experience. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements by amending Sections 1(3), Section 2, Section 3(4) and 3(4)(b), and Section 3(11); and (2) KRS 13A.220(4) format requirements by amending Section 2(2) and (3).

201 KAR 26:215. Nonresident status. This administrative regulation was amended: (1) to correct the reference to a statutory citation in the NECESSITY AND FUNCTION statement by deleting KRS 319.017(7) and insert KRS 319.015(8); and (2) in Section 2, by inserting the words "Upon the completion of the thirty (30) day period". This amendment was proposed by Senator Kafoglis to clarify that a nonresident licensee or certificate holder would be required to submit to the board a written report of "each date on which psychological services were rendered in this state" only at the end of the thirty day period in which the nonresident was authorized by the board to practice in Kentucky.

201 KAR 26:230. Examinations. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements by amending Section 3(5); and KRS 13A.220(4) format requirements by amending Section 1(1) and 2(7)(d).

Tourism Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:200. Seasons and limits for angling. Pete Pfeiffer, representing the Department, requested that Section 3(27) be amended to change the daily creel limit for sauger from "10" to "15". The Subcommittee agreed to the change.

Game

301 KAR 2:171. Deer hunting season. John Phillips, Deer Program Coordinator, was present. The Department requested that Section 9(19)(a) be amended by inserting "November 1 through" immediately prior to "November 18". This has the effect of adding 17 archery hunting days to the deer season in west Kentucky WMA in McCracken county. The Subcommittee agreed to the change.

Department of Corrections: Office of the Secretary

501 KAR 6:060. Northpoint Training Center. Jack Damron was present representing the agency. This administrative regulation was amended to place KRS 217.177 in the reference Section of NTC13-05-01, and KRS 214.181 and KRS 214.600 to .635 in the reference Section of NTC13-20-01.

501 KAR 6:130. Western Kentucky Correctional Complex. Mr. Damron agreed to add KRS 214.181, 214.600 through .635, and 215.520 to the reference Section of WKCC13-00-01; and in item F, Treatment Without Consent, inmates who are unable to consent because of a mental deficiency or disease and unconscious inmates in need of medical treatment are added to the exceptions to refusal list.

Department of Education: Bureau of Learning Results Services: Assistance and Intervention Services

703 KAR 3:060. Procedures for determining rewards and sanctions. This administrative regulation was amended to add a "two year accountability index" requirement in Section 1(11) pursuant to KRS 13A.222(4)(a).

Chairman Kerr asked: (1) if this administrative related to rewards and sanctions for failing to meet the learner outcomes and (2) if the learner outcomes are going to be promulgated in an administrative regulation.

Kevin Noland responded that: (1) By January 1995 the results from the schools will be in and rewards and sanctions will be applied to the schools; (2) Pursuant to KRS 158.6451 the legislature mandated certain goals that are set out by statute; (3) the Council for School Performance Standards was then required to put those goals in more specific outcomes; (4) the State Board of Elementary and Secondary Education was then required to adopt those goals and outcomes; (5) the State Board adopted those goals in December 1991; and (6) Mr Noland intends to speak with the State Board about the learner outcomes on November 8 and 9.

Chairman Kerr pointed out that the learner outcomes were adopted by the State Board but were never promulgated in an administrative regulation as required by KRS Chapter 13A.

School Facility Construction Commission: Education Technology Funding Program

750 KAR 2:010. Education technology funding program guidelines. This administrative regulation was amended as follows: (1) Sections 1 and 2 were deleted to comply with KRS 13A.120(2)(e), which prohibits an administrative body from promulgating an administrative regulation which repeats or summarizes a statute; and (2) Section 3 was amended to make it clear that grants from private sources were a permitted source of funding.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:200. Confined space entry. Kimbra Taylor, Bill Ralston and Aaron Foley were present, representing the agency. This administrative regulation was technically amended to comply with the drafting requirements of KRS 13A.222(4)(e). Section 2 was renumbered Section 1 and Section 1 was renumbered Section 2. In the new Section 1, after each defined word, delete "." and insert "means". In the new Section 2, change "Section 2(1) to Section 1(1).

Cabinet for Human Resources: Office of Administrative Services: Vital Statistics

901 KAR 5:080. Delayed registration of deaths. Section 1 was amended as follows: (1) by inserting the phrase "such as" and by deleting "but are not limited to" in order to make it clear that this administrative regulation complied with KRS 13A.100, 13A.120(6) and 13A.130, and did not include policies or other requirements that were not set out in this administrative regulation; (2) by deleting language made unnecessary by the action specified in (1).

901 KAR 5:090. Burial and disinterment of dead bodies. This administrative regulation was amended as follows: (1) Section 2 was amended to delete ", and policies" in order to make it clear that this administrative regulation complied with KRS 13A.100, 13A.120(6) and 13A.130, and did not include policies or other requirements that were not set out in this administrative regulation; (2) Section 3 was amended to delete "in the event" and to insert in lieu thereof "if" in order to comply with KRS 13A.222(4)(k), which requires that the word "if" be used to express a condition.

Department for Medicaid Services

Medicaid Services

907 KAR 1:045. Payments for mental health center services. This administrative regulation was amended to add a category for reimbursement called "Family Residential"

Cabinet personnel stated that: (1) this administrative regulation was amended to be consistent with its other administrative regulations; and (2) there is no substantive change proposed to this administrative regulation.

Senator Kafoglis asked what this administrative regulation would do to revenues for Mental Health Centers. Cabinet personnel responded that: (1) the amendment would have no fiscal impact on mental health centers; (2) this amendment improves accountability for expenditures; (3) the amendment matches revenues with expenses; and (4) reimbursements are not being reduced; and reporting requirements are reduced.

Department for Mental Health and Mental Retardation Services: Mental Health

908 KAR 2:060. Mental health and mental retardation manuals for plan and budget instructions, billing instructions, and reimbursement guidelines. This administrative regulation was amended to add a category for reimbursement called "Family Residential."

Cabinet personnel stated that: (1) this administrative regulation was amended to be consistent with its other administrative regulations; and (2) there is no substantive change proposed to this administrative regulation.

Senator Kafoglis asked what this administrative regulation would do to revenues for Mental Health Centers. Cabinet personnel responded that: (1) the amendment would have no fiscal impact on mental health centers; (2) this amendment improves accountability for expenditures; (3) the amendment matches revenues with expenses; and (4) reimbursements are not being reduced; and reporting requirements are reduced.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

General Assembly: Legislative Ethics Commission

2 KAR 2:010. Legislative agent or employer registration statement.

Board of Accountancy

201 KAR 1:300. Rules of professional conduct.

Board of Examiners of Psychology

201 KAR 26:151. Repeal of 201 KAR 26:150 and 201 KAR 26:220.

201 KAR 26:160. Fee schedule. Senator Kafoglis raised concerns that the board has exceeded the maximum renewal fee of one hundred dollars ($100) established in KRS 319.071(1) of this administrative regulation.

At Chairman Kerr's direction, Subcommittee staff advised that: (1) the board cites KRS 319.071(1) and KRS 319.032(1)(k) as statutory authority for the renewal of fees; and (2) these statutory provisions appear to be in conflict.

Subcommittee staff explained that; (1) KRS 319.071(1) provides that the board is authorizes to establish a renewal fee "not to exceed one hundred dollars ($100)."; and (2) alternatively, KRS 319.032(1)(k) provides that: "(1) The board shall promulgate administrative regulations: (k) Notwithstanding the fee schedules specified in this chapter, increasing or decreasing fees as it deems appropriate."

Subcommittee staff stated that the board has based its authority to increase the renewal fee above $100 on KRS 319.032(1)(k). In August, 1990, the board advised the Subcommittee, it sought to raise the renewal fees and received approval by the Subcommittee pursuant to KRS 319.032(1)(k).

Senator Kafoglis questioned the current practice of the board on renewal fees. Mr. Nicholas responded that the renewal fee for a: (1) licensed psychologist and certified psychologist with autonomous functioning is currently $200., with a proposed increase to $300. for a three year license; and (2) certified psychologist or a psychological associate is currently $150., with a proposed increase to $200. for a three year license.

Senator Kafoglis asked for a justification for the board's increase in renewal fees.

Mr. Nicholas stated that: (1) budgetary constraints warrant an increase because the Division of Occupations and Professions, which serves twelve boards, including the Board of Examiners of Psychology, anticipates the continued loss of some or all of the General Funds over the next biennium; (2) the amount of funds spent for legal and investigative services had risen nearly 100% since 1990; (3) the cost of travel and per diem has increased because: (a) the number of board members was increased by the General Assembly in 1992 from seven to nine members; and (b) the board has increased the number of meetings held, and formed committees to work in specific areas; and (c) continuing education will now be required, and this requires more travel and per diem payments to review and approve.

Senator Kafoglis stated that he does not doubt that the increase in renewal fees may be justified, but that it appeared the board was a growing bureaucracy. Mr. Nicholas stated that: (1) he did not believe that was the case; rather more consumers are being protected and more people are filing complaints that are being addressed by the board; (2) consequently, this increase in complaints costs the board additional administrative dollars; and (3) the board operates at less that $90,000 dollars in expenditures per year.

In response to a question by Representative Allen, Mr. Nicholas stated that each board member receives $100. per day, plus travel and lodging, with one board meeting scheduled per month, and some members attending one committee meeting per month.

Department of Fish and Wildlife Resources: Fish

301 KAR 1:085. Mussel shell harvesting. Pete Pfeiffer of the Department of Fish and Wildlife appeared before the Subcommittee representing the agency. Representative Bruce asked Mr. Pfeiffer what the agency was doing in this administrative regulation. Mr. Pfeiffer responded that these recommendations concerning the harvesting of mussels came from a consensus group. Representative Bruce then asked if the fishermen were happy. Mr. Pfeiffer said that as in all consensus agreements no interest was totally happy, but it was a consensus agreement of representatives, including the fishermen.

Game

301 KAR 2:044. Taking of migratory wildlife.

Economic Development Cabinet: Department of Agriculture: Hay Grading

302 KAR 37:010. Standard hay grading program. Senator Smith asked how the hay grading program was going. Department personnel stated that: (1) The program is not going as well as the department had hoped; (2) Last year the department had graded hay worth approximately $200,000; (3) Much of the hay in Kentucky is still not being graded by the Department; (4) The drought in the Southeast and the flood in the North has made it much easier to sell ungraded hay; and (5) If the tobacco program in Kentucky continues to decline then forage crops may be able to supplement the farmer's income.

Senator Smith asked if the program was worth the expense. Department personnel responded that: (1) The initial cost of implementing the program occurred in 1989; (2) The program is being operated with existing Department employees; (3) There is little additional state expense for operating the program; and (4) If the program really begins to become popular the department may have to ask for additional money.

Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory. Jack Damron and Mike Hulett were present representing the Department. Mr. Damron stated that a question had been raised on the initial staff review concerning the statutory authority for a "pretrial contract hold". He stated that that statutory authority is in KRS Chapter 196, which is included in the statutes listed. The administrative regulation was approved without objection.

501 KAR 6:050. Luther Luckett Correctional Complex. Chairman Kerr asked Mr. Damron if the various funds listed in this administrative regulation were deposited in interest bearing accounts. Mr. Damron introduced Mike Hulett to the Subcommittee and stated that he had asked Mr. Hulett to address that question. Mr. Hulett stated that only the "inmate canteen" fund was in an interest bearing account and that interest went to the benefit of the inmates. He stated that if the "imprest cash" fund was drawing any interest it was going to the General Fund and not to Corrections, and the same would be true of the "trust agency account". He further stated that the agency was required to keep the accounts at Farmer's Bank and that the state may well be drawing interest. Representative Yates stated that he thought all state accounts were required to draw interest, and if it wasn't required, there should be a law enacted to require it.

Chairman Kerr instructed staff to draft a letter to the Secretary of Finance asking specifically about the accounts of this agency and

generally about the statutory requirements and practices regarding all state accounts.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 9:010. Motor carrier vehicle registration if paying seat taxes.

Department of Education: Office of Learning Programs Development: Education Professional Standards Board

704 KAR 20:005. Kentucky standards for preparation-certification of professional school personnel program approval.

704 KAR 20:585. Procedures for certificate revocation.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:309. Adoption of 29 CFR Part 1910.141-.149.

803 KAR 2:320. Adoption of 29 CFR Part 1910.1000-1910.1500.

803 KAR 2:403. Adoption of 29 CFR Part 1926.50-.63.

803 KAR 2:500. Adoption of 29 CFR Part 1915, 1917, 1918 and 1919, maritime employment.

803 KAR 2:600. Adoption of 29 CFR Part 1928.

Department of Financial Institutions: Securities

808 KAR 10:160. Definitions.

808 KAR 10:290. Assistant representative.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:020. Parts or materials list.

Electrical Inspectors

815 KAR 35:030. Kentucky certification of electrical contractors.

Cabinet for Human Resources: Department for Health Services: Milk and Milk Products

902 KAR 50:002. Milk for manufacturing advisory committee.

902 KAR 50:005. Grade A milk advisory committee.

Controlled Substances

902 KAR 55:015. Schedule I substances.

902 KAR 55:035. Schedule V substances.

Department for Social Services: Food Stamp Program

904 KAR 3:080. Contingency plan.

Department for Medicaid Services

907 KAR 1:044. Mental health center services.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the November meeting upon agreement by the promulgating agency and the Subcommittee:

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Air Pollution - Mobile Source-related Emissions

401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65. An issue was raised concerning the use of abbreviations in a definitions administrative regulation. Cabinet personnel agreed to work with the subcommittee to assure that abbreviations be included as definitions in the administrative regulation.

401 KAR 65:010. Vehicle emission control program. This administrative regulation was amended to require vehicle inspections every other year rather than every year.

Representative Allen asked if this administrative regulation applied to the entire state of Kentucky. Cabinet personnel responded that the administrative regulation: (1) affected only Boone, Kenton and Campbell County; (2) did not apply to Jefferson County; and (3) requires all cars built after 1968 in the affected counties to be tested.

Representative Allen asked: (1) whether new cars must be tested when they are purchased; (2) why new cars would need to be tested at all, given the advanced technology in the automotive industry; (3) who is responsible, if a new car does not meet the emissions control standards, (4) what is the cost of vehicle inspection; and (5) what tests are performed on the vehicles.

Cabinet personnel responded that: (1) cars must be tested every other year rather than every year pursuant to the Cabinet's proposed amendments; (2) if a new vehicle is purchased in 1993, it would be 2 years (1995) before the vehicle would need to be tested; (3) the implementation schedule for this administrative regulation begins in 1995; (4) probably 70 percent of the emission problems in metropolitan areas come from older cars; (5) in most cases new cars would meet vehicle emission control standards, however, some new cars are not properly adjusted and need to be tested; (6) the owner would be responsible for correcting the vehicle emission problem unless the car is under warranty; (7) any warranty work done on the car would qualify toward the cost of vehicle emission repair; (8) the estimated cost of inspection under this administrative regulation is thirty dollars per inspection; (9) testing will include: (a) a tailpipe test; (b) an antitampering test and (c) a dynamometer test, where the engine is put in gear and the amount of vehicle emissions is checked; (9) each county will have its own building to house the testing equipment and will have sufficient personnel to perform the testing of vehicles; (10) there are approximately 200,000 cars to be tested in Northern Kentucky; (11) A contractor will be hiring inspectors and will be reimbursed by the fees collected from the consumers; (12) the actual number of inspectors needed has not been determined; and (13) there are many programs of this type across the nation, including Jefferson County.

Representative Bruce stated that: (1) used car dealers should be responsible for testing vehicles before they are sold; and(2) the burden for paying for this testing should not be placed upon the consumer.

The cabinet responded that: (1) there needs to be an established schedule for requiring the inspection of vehicles; (2) on older cars the consumer does not have to spend more than seventy five dollars to repair the emissions system; and (3) the consumer will receive a computer generated list of needed repairs after the inspection.

Representative Bruce asked that the repair form contain a statement that the consumer is not required to make repairs to the emissions system in excess of seventy-five dollars.

Cabinet personnel pointed out that: (1) if a vehicle has been tampered with, the fee in excess of seventy five dollars is not waived; (2) the Cabinet would agree to put a statement on the vehicle inspection form specifically spelling out the seventy-five dollar waiver; and (3) the waiver of fees is contained in the administrative regulation.

Chairman Kerr pointed out that the maximum seventy-five dollar fee is for vehicles manufactured prior to and including 1980.

Cabinet personnel stated that for vehicles produced after 1980 the maximum fee for repair for the emissions system is two-hundred dollars.

Representative Allen stated that: (1) many people today do not know much about car repair; (2) it is unfair to charge an owner for tampering with a car if he bought the car without knowing it had been tampered with.

Cabinet personnel responded that: (1) the only way the Cabinet can enforce the administrative regulation is to hold the current owner responsible; (2) the current owner is creating the emissions; and(3) the federal government has filed actions against automotive mechanics who tampered with vehicle emission control equipment.

Representative Allen asked what affect reformulated gasoline will have on the reduction of volatile organic compounds (VOC's) in the atmosphere. The cabinet responded that the reformulated gasoline will: (1) significantly reduce VOCs; (2) reduce the amount of benzene that is omitted from vehicles when they refuel and from underground

storage tanks if they leak; and (3) likely be gasoline required in the future,

The Cabinet furhter stated that: (1) the reformulated gasoline is one part of entire program to reduce VOCs by 15 percent by November 1996; and (2) the cabinet is currently conducting a one year study to see if further administrative regulations are needed to achieve the 15 percent reduction in VOCs.

Representative Allen stated that: (1) he is a firm believer in protecting the environment but government's track record in achieving this and other goals has not been good; (2) any program operated by the government has gotten worse rather than better; (3) there are certainly some good people in government but the programs generally have made little headway in cleaning up the environment; (4) the automobile manufacturers should be ultimately responsible for controlling pollution since that pollution comes from the automobiles; (5) an automobile in Northern Kentucky can be driven 18 to 24 months before the vehicle emissions system is fixed; (6) once the system is fixed it still can break down; and (7) the automobile industry appears to have both the knowledge and the expertise to assure its cars don't pollute the environment.

The Cabinet responded that: (1) even the best vehicle emission control system breaks down from time to time; (2) the program proposed is a two year inspection program; (3) there is an assumption that the system will perform properly once repaired; (4) when there is a sufficient statistical chance that the emissions will be unacceptable again the vehicle will be reinspected; (5) the clean air act has increased the time on a manufacturer's warranty for vehicle emissions problems.

Senator Richard Roeding asked if this is a plan the Cabinet is submitting for reduction of VOCs by fifteen percent by 1996. The Cabinet responded that: (1) this administrative regulation will be submitted as part of a plan if the administrative regulation is approved; (2) there will be a public hearing on the total plan which will include: (a) the reformulated gasoline; (b) the inspection and maintenance program; and (c) the rest of the items that will achieve the 15 percent reduction in VOCs; (3) the public hearing is tentatively scheduled for the first or second week of November; (4) the Cabinet must give at least thirty days notice before the public hearing is held; (5) a similar plan must be developed for the Bullit and Oldham county area; (6) the Cabinet is requesting redesignation on Bullitt County and Greenup County; and (7) this administrative regulation is only applicable to Northern Kentucky.

Senator Roeding asked: (1) if this new inspection program will cost the consumers of Northern Kentucky $6,600,00; (2) how this program compares to the inspection program in Jefferson County; (3) why the program in Northern Kentucky will cost so much more than Jefferson County's program; (4) Why the antitampering testing is necessary; (5) what is the justification for holding a consumer responsible when he unknowingly buys a car that has been tampered with; (6) why the unknowing consumer should be required to pay for a law breaker's mistake; (7) what number of tons per day reduction is needed to achieve the 15 percent VOC reduction by 1996; (8) whether there is any industry the Cabinet can use to reduce the amount of tons per day necessary to achieve a fifteen percent reduction as was done in Butler County Ohio.

Cabinet personnel responded that: (1) the program will cost the consumers of Northern Kentucky at least an additional $6,600,000.; (2) Jefferson County's program is going to become an enhanced inspection program; (3) the cost of Jefferson County' s program will be increasing to approximately $8.50 anually; (4) Jefferson county's emission problem is different than Northern Kentucky; (5) Northern Kentucky will be performing a dynamometer test to simulate driving conditions; (6) the final dollar figure for the test has not been calculated; (7) the thirty dollar figure has been used so that the Cabinet will not be put in the position of having to raise their cost estimates; and the final fee figure will be established by the successful bidder; (8) the department may be without statutory authority to regulate those individuals who are tampering with vehicle emissions systems; (9) it is very important to keep the anti-tampering provisions in this administrative regulation because of the tampering problems that will be found when the inspection program begins; (10) Northern Kentucky needs to reduce VOCs by 9.5+ tons per day to reach the fifteen percent reduction by 1996; and (11) the cabinet has received credit for the Butler County Ohio reduction in VOCs as well as several Northern Kentucky businesses that have closed down.

Senator Roeding stated that this administrative regulation should be written in such a way that it protects unsuspecting consumers rather than penalizes them.

Representative Bruce stated that staff had advised you could regulate car dealers by simply forbidding tampering with emission control devices.

Cabinet personnel pointed out that: (1) the anti-tampering program was in effect in Northern Kentucky in the mid eighties; and (2) it is anticipated that few vehicles will have been tampered with because of the previous program.

Representative Bruce asked what Cincinnati charges for its emission control program. Cabinet personnel responded that the basic inspection program in Cincinnati costs between six and eight dollars.

Cabinet personnel pointed out that the cost is lower in Cincinnati because there are so many vehicles in that area.

Representative Allen asked if Kentucky could simply require that the Northern Kentucky Vehicles be tested in Cincinnati since the program is much cheaper there. Cabinet personnel responded that: (1)Kentucky has no jurisdiction over the state of Ohio's program; and (2) Kentucky's program will be convenient because there will be a location in each county.

Senator Smith asked: (1) whether Kentucky will honor an Ohio test; (2) why Kentucky needs an "enhanced" program when Ohio has a "basic" program; and (3) what effect does the Cincinnati airport have on emissions in Kentucky.

The cabinet responded that: (1) it would work with other localities to come up with the most convenient and economical testing program possible; (2) pursuant to this administrative regulation Kentucky will accept a testing program from another jurisdiction, if the test is substantially equivalent to the Kentucky test; (3) Cincinnati has more emissions than Kentucky from both vehicle and industrial sources; and (4) the enhanced emission program is needed in Kentucky to offset the lack of emissions from any other source; and (5) VOCs are increased in Northern Kentucky becauseof the presence of the Cincinnati airport.

Senator Roeding asked: (1) how a compliance certificate is issued; (2) whether a new bureacracy would be created by this program; (3) whether the certificate will be stamped on the consumer's vehicle title or driver's license; (4) whether the county will be able to override the computer system and register the vehicle if the consumer provides appropriate documentation; (5) what the cabinet will do if the consumer wants to repair the vehicle emissions system himself; (6) whether there will be another fee if the vehicle fails the first emissions test; (7) whether the inspection will involve anything other than vehicle emission; (8) how will the public be notified of the need for the vehicle inspection.

The cabinet stated that: (1) the consumer would receive a compliance certificate after successful completion of the vehicle emissions test; (2) the certificate would be provided as a part of renewing the registration on each vehicle; (3) the cabinet is cooperating with the county clerks so that the inspection program can be monitored on the county clerk's computer system; (4) the county clerk will be unable to register a motor vehicle in the computer until the vehicle inspection is successfully completed; (5) if the consumer provides appropriate documentation, the county clerk can override the computer and register the motor vehicle; (6) if the consumer can demonstrate he has made the corrections himself then the certification would be issued; (7) there will be one free retest after a vehicle

is repaired to check the level of emissions; (8) the cabinet will also look to see whether the consumer has exceeded his maximum expenditure for vehicle repair; (9) a public education program will be implemented to educate the consumer on all aspects of the program; (10) A notice of need for inspection will be sent to all vehicle owners at least 90 days before the vehicle must be inspected or registered; (11) the vehicle inspection program will not cover vehicle safety issues.

Chairman Kerr stated: (1) there did not appear to be an exemption for new cars in the administrative regulation; (2) the testing requirement under the proposed regulation is based on the vehicle identification number(VIN); (3) If a vehicle purchased has an even VIN number it would have to be tested in an even numbered year; and (4) if you bought a vehicle in 1994 then you would have to have it tested in 1994 which would be less than two years.

Cabinet personnel responded that there would be at least a year plus some months before an initial inspection.

Chairman Kerr asked if the decision of the cabinet to go to every other year inspections was based on the credit received by using reformulated gasoline rather than RVP gasoline. He also asked if the decision to use RFG gasoline is to be promulgated by administrative regulation or by executive order.

The cabinet responded that : (1) the RFG requirement is enforced by the federal government; (2) no administrative regulation is needed for implementing RFG; and (3) the Cabinet is implementing the current programs based on VOC credits anticipated from: (a) reformulated gasoline; (b) enhanced vehicle inspection; (c) stationary sources that are no longer in business; (d) new architectural coatings required by the federal government to be used in construction; and (4) other VOC reduction programs deemed workable at this point.

Chairman Kerr asked if the federal law specifically grants authority to implement RFG gasoline to the Governor. That Cabinet responded that the governor is authorized to make that decision.

Chairman Kerr asked staff to research the issue of statutory authority for implementation of the RFG gasoline requirement.

Chairman Kerr pointed out that: (1) federal regulation requires only the implementation of a "basic" vehicle inspection program but the cabinet intends to implement an "enhanced" inspection program; (2) the cabinet's administrative regulation is therefore more stringent than the minimum federal requirement; however, (3) the Cabinet is proposing this administrative regulation because it is required to meet the fifteen percent reduction in VOCs by November 1996.

The Cabinet responded that: (1) this administrative regulation is more stringent than one federal requirement but is no more stringent than another federal requirement; (2) the state of Kentucky gets no VOC credit for a "basic" vehicle inspection program in Northern Kentucky; however (3) the state will only receive credit for an "enchanced" program.

In response to a question from Chairman Kerr the cabinet stated that the the credit for RFG gasoline is approximately 1.5 to 2 percent greater than the credit received for using RVP gasoline.

Chairman Kerr stated that he was concerned about the use of RFG gasoline over RVP gasoline because the cost of RFG gasoline is much higher than RVP gasoline.

The cabinet responded that: (1) the oil companies will not divulge what portion of the market share they have in Northern Kentucky; (2) Ashland Oil may have approximately 40 percent of the market share with 60 percent divided between the other companies; (3) Ashland Oil believes it can produce RFG gasoline for four or five cents more a gallon; (4) RVP gasoline would be three or four cents less to produce than RFG gasoline; (5) Other oil companies estimate an increased cost of six to twelve cents a gallon for RFG gasoline; (6) the cabinet believes the cost of the RFG gasoline will be driven down in Northern Kentucky by competition between the various companies; and (7) the exact increase in cost is unknown at this time but it will be somewhat less than the American Petroleum Institute figures due in part to a Kentucky company producing the gasoline at a lower price.

Chairman Kerr pointed out that: (1) Ashland Oil is the only company producing RFG gasoline at this point in time; and (2) Ashland Oil will have a captive market in Northern Kentucky.

The cabinet responded that: (1) Ashland Oil currently does not product reformulated gasoline; (2) In this part of the country, only Ashland Oil produces the additive MTBE which is a part of reformulated gasoline; (3) there are many other oil companies in other parts of the country that will be moving to this type of reformulated gasoline; and (4) Ashland Oil will not have a captive market.

Chairman Kerr asked if less credit was received by going to an every other year inspection program. The cabinet responded that: (1) Northern Kentucky must reduce VOCs by 9 and1/2 tons per summer day; (2) inspections every other year rather than every year made less than a ton per day difference; (3) there is not an exact offset on VOC credits between withdrawing the Stage II Vapor Recovery System administrative regulation and deciding to use RFG gasoline and "Enhanced" vehicle inspections; and (4) the cabinet must have its computer model for the fifteen percent reduction of VOCs approved by EPA.

Senator Roeding stated that there are currently ten cities using reformulated gasoline.

The cabinet responded that: (1) those ten cities are the most polluted areas from an ozone standpoint.(2) reformulated gasoline cannot be implemented until January 1, 1995; however (3) the RFG gasoline program is in place in those cities.

Senator Roeding asked: (1) whether a motor vehicle's emissions would test higher if reformulated gasoline was not used; (2) what the use of reformulated gasoline will do to the economy of the fuel dealers in Northern Kentucky; and (3) in what cases are the fees on page 32 of the administrative regulation required.

Senator Roeding pointed out that: (1) there needs to be a way to make the cost burden easier on the citizens of Northern Kentucky; and (2) there appears to be significant costs and paperwork requirements even though the Regulatory Impact Analysis says there will be none the first year of the program.

The Cabinet responded that: (1) The type of gasoline used should not have an effect on the vehicle emissions test itself; (2) non-reformulated gasoline should not cause a person to fail the emissions test; (3) the cabinet has looked at the economics of the situation so as not to create a special hardship on business; (3) in every non-attainment area there is a boundary where conditions are going to be different; (4) the cabinet cannot stop individuals from going to attainment areas to buy gasoline; (5) the fees on page 32 are administrative fees in addition to the standard fees; (6) these fees are required to fund the enforcement effort for the vehicle inspection program; (7) there will be ninety days advance warning before the additional fee will be instituted; (8) anyone interested in complying with the law will have ample time to do so; (9) a duplicate certification will cost an additional $5; (10) a temporary exemption certificate for vehicles unable to be inspected will cost $25; (11) while costs are always a factor, correcting an ozone nonattainment area is expensive; (12) the cost and paperwork requirements for the Regulatory Impact Analysis relates to the requirements placed on the state agency.

Representative Allen stated that: (1) there are a lot of unanswered questions about this administrative regulation; (2) the administrative regulation appears to be more stringent than the minimum federal requirement; and (3) the entire General Assembly needs to take a look at this.

A motion was adopted to amend the administrative regulation to require inspections every other year rather than every year.

A motion was made to find the administrative regulation deficient based upon the foregoing discussion.

Cabinet personnel pointed out that: (1) a letter of deficiency means that the state' s implementation plan is automatically deficient because there will not be a fifteen percent reduction by 1996; (2) the 18 month sanctions clock will begin to run November 15, 1993; (3) the air emissions and economic development viability will be

jeopardized in Northern Kentucky; (4) EPA will insist on a program to reduce emisssions; (5) EPA will begin the process of developing its own fifteen percent reduction plan; (6) the subcommittee is free to take whatever action it deems appropriate.

Chairman Kerr asked if it made a difference to EPA that the administrative regulation would go into effect even though found deficient. The cabinet responded that EPA will not consider the administrative regulation as a part of the plan because it will sunset after the next legislative session.

Staff pointed out that the administrative regulation will not necessarily sunset but may sunset if legislation is not passed adopting the administrative regulation into law. The cabinet responded that EPA will not know the status of the administrative regulation and will therefore consider Kentucky's implementation plan to be deficient and the sanction clock will begin to run on November 16, 1993.

Representative Bruce pointed out that the cabinet may want to work with the subcommittee to try to come up with a compromise to allow approval of the administrative regulation.

Subcommittee staff pointed out that: (1) the cabinet may be in a difficult situation because a finding of deficiency will cause the federal government to find the state out of compliance; (2) if the administrative regulation is deferred the Administrative Regulation Review Subcommittee would meet before November 15, 1993; and (3) the jurisdictional subcommittee would have to be asked to meet before November 15, 1993 to ensure the administrative regulation was in place timely.

Senator Smith asked what the penalty is if the state implementation plan is found to be in noncompliance.

The cabinet responded that the federal government could: (1) implement a federal plan, including: (a) Stage II; (b) an enhanced vehicle inspection program; and (2) very quickly impose sanctions starting November 16, 1993.

Cabinet personnel stated that the federal government may move swiftly to impose sanctions on the state including withholding money for roads and economic development.

Chairman Kerr pointed out that he doubted that this administrative regulation could be effective by November 15, 1993 if the agency defers the administrative regulation for one month.

Cabinet personnel responded that: (1)once the deficiency letter is received by the Governor, the state has 18 months to implement the program before sanction would be imposed; and (2) if a good faith effort is not made to implement the program, EPA can begin federal enforcement before the end of the 18 month period; (3) vehicle testing must begin by January 1, 1995.

Senator Kafoglis asked what affect a finding of deficiency would have on federal highway funds. The cabinet responded that: (1) any federal funding that would normally flow to Northern Kentucky can be withheld; (2) Sanctions were imposed in Northern Kentucky on one previous occassion; (3) EPA has said they will react swiftly in this particular case; and (4) Road construction funds could be impacted.

Senator Roeding pointed out that: (1) road funds were withheld in the past; (2) this caused significant problems in Northern Kentucky; but (3) the General Assembly must assure that this administrative regulation is fair to everyone.

Representative Allen agreed to withdraw his motion to find the administrative regulation deficient.

Chairman Kerr requested that all the figures relating to reduction of VOCs be provided to the subcommittee.

The Cabinet agreed to defer this administrative regulation and 401 KAR 65:001.

Department of Education: Office of Learning Programs Development: Education Professional Standards Board

704 KAR 20:470. Principal intern program.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:031. Intertrack simulcasting.

Harness Racing

811 KAR 1:015. Race officials.

811 KAR 1:055. Declaration to start; drawing horses.

Cabinet for Human Resources: Department for Medicaid Services

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

The following administrative regulation was withdrawn by the promulgating agency:

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Asbestos

401 KAR 58:001. Definitions and abbreviations of terms used in Title 401, Chapter 58. John Hornback, Director, Division for Air Quality, appeared before the Subcommittee. Chairman Kerr pointed out to Mr. Hornback that this administrative regulation violated the drafting requirements of KRS Chapter 13A. KRS Chapter 13A requires that when definitions are used, a separate administrative regulation is to be used exclusively for definitions for an entire chapter, or definitions are to be in a separate first section for a regulation. This administrative regulation has added a Section 2 for abbreviations to the separate administrative regulation for definitions, violating the drafting requirements of KRS Chapter 13A. It was also pointed out that abbreviations defined are actually definitions and should simply be included alphabetically within the definitions list. Mr. Hornback stated that this administrative regulation was included with another administrative regulation that had been withdrawn and to keep the package together when refiled the agency chooses at this point to withdraw this administrative regulation. It was pointed out that the agency would need to send a letter to the regulation's compiler stating they were withdrawing the administrative regulation.

OTHER BUSINESS:

Kentucky Teachers' Retirement System (KTRS): Credit of Unused Annual Leave to Calculate Retirement Benefits Upon Retirement.

Questions had been raised concerning whether the: (1) policy established by KTRS setting the maximum credit of unused annual leave for the calculation of retirement benefits had been promulgated as an administrative regulation, and (2) KTRS had statutory authority to determine whether any benefit or salary adjustment: (a) qualified as annual compensation; or (b) was annual compensation because it was offered to all employees.

Pat Miller, representing KTRS, stated that the policy was required to be uniform, and had been established for over two decades. He added that KTRS was unaware that an administrative regulation was required, and that Department of Personnel administrative regulation governing leave for retirement purposes was not used by KTRS.

At the request of Chairman Kerr, Subcommittee staff briefed Subcommittee members and interested parties in the questions raised and the legal issues involved. Subcommittee staff stated that KTRS personnel had referred to the Department of Personnel administrative regulation as authority; that the letter from the Chairman to KTRS did not deny the necessity for uniformity or the authority of KTRS to administer its retirement system; that the Department of Personnel administrative regulation could not be used by KTRS; that KTRS could implement its policy only by promulgating an administrative regulation establishing the policy; that KRS Chapter 161 should be amended to make it clear that KTRS had the authority to establish uniform restrictions on the use of unused annual leave for the calculation of retirement benefits, and, possibly, to establish the maximum amount of unused annual leave that may be used for retirement purposes as is done in statutes governing other retirement systems; and that the issue be referred to the appropriate legislative subcommittee for consideration of an amendment to KRS Chapter 161 during the 1994 General Assembly.

Chairman Kerr stated that questions had been raised because a state employee had raised questions relating to the credit of unused

annual leave by KTRS with members of the Subcommittee. He pointed out that the Subcommittee was aware of pending litigation; had no intention of interfering with such or of requesting Mr. Miller to comment on the pending litigation; and that any citizen had a constitutional right to petition a legislator concerning any issue.

The Subcommittee approved a motion to request LRC to refer these issues and the question of the amendment of KRS Chapter 161 to the appropriate legislative subcommittee.

The Subcommittee adjourned at 2:10 p.m. until November 1, 1993 at 10 a.m. in Room 149 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of September 22, 1993

The Interim Joint Committee on Agriculture and Natural Resources met Wednesday, September 22, 1993, and submits the following report:

The committee determined that the following administrative regulations comply with KRS Chapter 13A:

Department of Agriculture: 302 KAR 15:010E

Natural Resources and Environmental Protection Cabinet, Division for Air Quality:

401 KAR 59:435	401 KAR 59:540
401 KAR 59:450	401 KAR 59:545
401 KAR 59:455	401 KAR 59:550
401 KAR 59:465	401 KAR 59:555
401 KAR 59:485	401 KAR 59:570
401 KAR 59:490	401 KAR 59:575
401 KAR 59:495	401 KAR 59:580
401 KAR 59:500	401 KAR 59:585
401 KAR 59:505	401 KAR 59:590
401 KAR 59:535	401 KAR 59:595

Department for Surface Mining Reclamation and Enforcement: 405 KAR 10:050, 405 KAR 12:001, 405 KAR 12:010

Department of Mines and Minerals: 805 KAR 3:010

The meeting adjourned September 22, 1993, at 2:30 p.m.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of October 5, 1993

The Interim Joint Committee on Transportation met on Tuesday, October 5, 1993 and submits this report:

The Committee determined that the following regulation did not comply with KRS Chapter 13A: 600 KAR 1:100 - Professional engineering and related services procurement.

The Committee determined that the following regulation, as amended by ARRS, complied with KRS Chapter 13A: 600 KAR 3:010 Relocation assistance payments by the Transportation Cabinet.

The Committee determined that the following regulations complied with KRS Chapter 13A:

601 KAR 9:012 - Personalized license plates.
601 KAR 9:015 - Registration of motor vehicle dealers and manufacturers.
601 KAR 9:020 - Demonstrator tag limitations.
601 KAR 9:060 - Commercial vehicle, registration plates.
601 KAR 9:065 - Exempt devices.
601 KAR 9:085 - Requirements for becoming a certified motor vehicle inspector.
601 KAR 9:095 - Information entered into Automated Vehicle Information System (AVIS).

The Committee determined that the following regulation, as amended by the Transportation Committee complied with KRS Chapter 13A. The Committee amendment is on page 19, Section 6(2)(a) and changes the date from December 1992 to September 1993 for applying for a permit to erect an advertising device.

603 KAR 3:080 - Advertising devices.

The Committee adjourned at 2:50 p.m.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of October 7, 1993

The Interim Joint Committee on Education met Thursday, October 7, 1993, and approved the following administrative regulations:

Department of Education
704 KAR 7:090 - Homeless Children Education Program
704 KAR 7:120 - Home or Hospital Instruction
707 KAR 1:061 - Repeal of Existing Regulations
707 KAR 1:160 - Free Appropriate Public Education
707 KAR 1:210 - Individual Education Programs
707 KAR 1:220 - Placement in the Least Restrictive Environment
707 KAR 1:230 - Delivery of Service
707 KAR 1:240 - Confidentiality of Personally Identifiable Information
707 KAR 1:250 - Services in Other Programs
707 KAR 1:260 - Comprehensive System of Personnel Development

Education Professional Standards Board
704 KAR 20:120 - Emergency Certification

Kentucky Higher Education Assistance Authority
11 KAR 10:010 - Paul Douglas Teacher Scholarship Program
11 KAR 10:020 - Deferment and Reduction of Repayment

Workforce Development Cabinet
780 KAR 3:140 - Certification and Professional Development Requirements
780 KAR 7:035 - Technical Institute Standards

The Interim Joint Committee on Education found language throughout 780 KAR 2:015 - Administration of Technical Institutes referring to a technical degree. Senator Ford recommended that a letter be attached to this regulation on the same premise as 780 KAR 4:030 - Technical Degree Requirements for Postsecondary Students.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of October 8, 1993

The Interim Joint Committee on Business Organizations and Professions met on Friday, October 8, 1993, and submits this report:

The Committee determined that 201 KAR 1:300, Board of Accountancy and 201 KAR 31:020, Ky. Board of Registration for Professional Geologists, complies with KRS Chapter 13A.

The Committee adjourned at 2:30 p.m.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of October 13, 1993

This date, the Interim Joint Committee on State Government reviewed the following administrative regulation that was assigned to the Committee October 7, 1993:

Legislative Ethics Commission: 2 KAR 2:010, Legislative Agent or Employer Registration Statement.

The Committee found that the regulation complies with KRS Chapter 13A.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of October 21, 1993

The Interim Joint Committee on Health and Welfare met on Wednesday, October 21, 1993, and submits the following report:

The Committee voted to approve the following LRC referred administrative regulations: 201 KAR 26:121, 201 KAR 26:125, 201 KAR 26:130, 201 KAR 26:140, 201 KAR 26:145, 201 KAR 26:151,201 KAR 26:220, 201 KAR 26:155, 201 KAR 26:160, 201 KAR 26:165, 201 KAR 26:171, 201 KAR 26:175, 201 KAR 26:180, 201 KAR 26:185, 201 KAR 26:190, 201 KAR 26:215, 201 KAR 26:230, 901 KAR 5:080, 901 KAR 5:090, 902 KAR 50:002, 902 KAR 50:005, 902 KAR 55:015 & E, 902 KAR 55:035, 904 KAR 3:080, 907 KAR 1:044 & E, 907 KAR 1:045 & E, 908 KAR 2:060 & E.

The Committee voted to amend 201 KAR 26:115, relating to psychological testing, as follows: In Section 3, subsection (4), after the words "granting of" by inserting "written" and after the word "guardian" and before the period "." by inserting ", unless otherwise required by the courts subject to specific state or federal law".

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates E2

The Locator Index lists all regulations published in VOLUME 20 of the Administrative Register from July, 1993 through June, 1994. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other action which may affect the regulation. NOTE: The regulations listed under VOLUME 19 are those regulations that were originally published in the Volume 19 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1993 bound Volumes were published.

KRS Index E10

The KRS Index is a cross-reference of statutes to which regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication in VOLUME 20 of the Administrative Register.

Subject Index E19

The Subject Index is a general index of regulations published in VOLUME 20 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

VOLUME 19

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

Regulation Number	20 Ky.R Page No.	Effective Date
302 KAR 20:040E	2596	4-30-93
Expires		9-29-93
302 KAR 20:055E	2600	4-30-93
Expires		9-29-93
302 KAR 20:065E	2602	4-30-93
Expires		9-29-93
302 KAR 20:070E	2604	4-30-93
Expires		9-29-93

ORDINARY REGULATIONS:

Regulation Number	20 Ky.R Page No.	Effective Date
201 KAR 20:235	2755	(See Volume 20)
603 KAR 5:230		
Amended	2684	(See Volume 20)
704 KAR 7:120	2539	(See Volume 20)
704 KAR 20:120		
Amended	2316	6-7-93
707 KAR 1:061	2540	(See Volume 20)
707 KAR 1:160	2541	(See Volume 20)
707 KAR 1:170	2543	(See Volume 20)
707 KAR 1:180	2545	(See Volume 20)
707 KAR 1:190	2551	(See Volume 20)
707 KAR 1:200	2554	(See Volume 20)
707 KAR 1:210	2558	(See Volume 20)
707 KAR 1:220	2561	(See Volume 20)
707 KAR 1:230	2564	(See Volume 20)
707 KAR 1:240	2569	(See Volume 20)
707 KAR 1:250	2572	(See Volume 20)
707 KAR 1:260	2574	(See Volume 20)
803 KAR 2:310		
Amended	2736	(See Volume 20)
805 KAR 7:030		
Amended	2740	8-25-93
902 KAR 8:040	2760	(See Volume 20)
902 KAR 8:050	2761	(See Volume 20)
902 KAR 8:060	2763	(See Volume 20)
902 KAR 8:070	2765	(See Volume 20)
902 KAR 8:080	2768	(See Volume 20)
902 KAR 8:090	2770	(See Volume 20)
902 KAR 8:100	2771	(See Volume 20)
902 KAR 8:110	2773	9-3-93
902 KAR 8:120	2774	(See Volume 20)
902 KAR 8:130	2777	9-3-93
902 KAR 8:140	2778	9-3-93
902 KAR 20:004	659	
Amended	2745	(See Volume 20)
908 KAR 2:070	2779	(See Volume 20)

*Statement of Consideration Not Filed by Deadline; Regulation Expired (KRS 13A.280(2))

VOLUME 20

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

Regulation Number	20 Ky.R Page No.	Effective Date
2 KAR 2:010E	483	8-12-93
9 KAR 1:040E	736	9-9-93
11 KAR 3:001E	915	10-4-93
31 KAR 5:020E	736	9-15-93
101 KAR 2:100E	483	8-3-93
101 KAR 3:010E	488	8-3-93
301 KAR 2:044E	492	7-30-93
301 KAR 2:260E	494	7-30-93
301 KAR 3:030E	494	7-30-93
302 KAR 15:010E	4	5-18-93
Expired	1029	10-29-93
415 KAR 1:115E	495	8-13-93
501 KAR 6:020E	277	6-24-93
601 KAR 11:040E	228	6-16-93
Replaced	145	9-3-93
780 KAR 3:070E	918	9-21-93
780 KAR 6:060E	923	9-21-93
806 KAR 2:120E	8	6-15-93
Replaced	247	9-3-93
806 KAR 2:130E	8	6-15-93
Replaced	248	9-3-93
810 KAR 1:031E	496	7-20-93
902 KAR 8:040E	9	5-19-93
Replaced	511	9-3-93
902 KAR 8:050E	10	5-19-93
Replaced	369	9-3-93
902 KAR 8:060E	11	5-19-93
Replaced	513	9-3-93
902 KAR 8:070E	13	5-19-93
Replaced	371	9-3-93
902 KAR 8:080E	15	5-19-93
Replaced	514	9-3-93
902 KAR 8:090E	17	5-19-93
Replaced	516	9-3-93
902 KAR 8:100E	18	5-19-93
Replaced	517	9-3-93
902 KAR 8:110E	19	5-19-93
Replaced		9-3-93
902 KAR 8:120E	19	5-19-93
Replaced	377	9-3-93
902 KAR 8:130E	23	5-19-93
Replaced		9-3-93
902 KAR 8:140E	23	5-19-93
Replaced		9-3-93
902 KAR 20:004E	24	5-18-93
Replaced	797	10-13-93
902 KAR 55:015E	502	7-20-93
902 KAR 65:010E	737	9-1-91

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	20 Ky.R Page No.	Effective Date
903 KAR 5:270E	280	6-16-93
Replaced	155	9-3-93
905 KAR 1:010E	929	9-23-93
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